

Pregnancy and maternity discrimination



As an employer it can be difficult to balance the needs of your business with the rights of employees. This is particularly true in relation to pregnancy and maternity rights.

However, most employers would agree that it is in their interests to support employees who are pregnant or on maternity leave. If an employee feels they have been treated unfairly due to their pregnancy or maternity leave, they may be entitled to make a discrimination claim.

Gill Wilkinson, employment law specialist at Ware & Kay Solicitors in York & Wetherby, looks at the rights of pregnant employees, and those on maternity leave, and advises how employers can avoid discrimination claims.

The different types of discrimination

Pregnancy and maternity are protected characteristics under the Equality Act 2010, which prohibits discrimination in the workplace.

Pregnancy and maternity discrimination can occur where an employer:

- treats a female job applicant or employee unfavourably because of her pregnancy or a pregnancy-related illness; or
- treats a female employee unfavourably because she is on statutory maternity leave, wants to take leave, or has taken leave.

Examples of unfavourable treatment include refusing time off for antenatal care, demotion, dismissal because of pregnancy, failing to give a woman on maternity leave a pay rise, taking pregnancy-related sickness into account, and the denial of

YORK

Address

Sentinel House
Peasholme Green
York
YO1 7PP

Tel 01904 716 000

Fax 01904 716 100



WETHERBY

Address

The Aire Suite
Brunswick Court
Victoria Street
Wetherby
LS22 6RE

Tel 01937 583 210

Fax 01937 587 556



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training or promotion opportunities because of pregnancy or maternity leave.

A failure to carry out a risk assessment and alter working conditions or hours of work to avoid a significant risk to the health and safety of new or expectant mothers or their babies may also be unlawful pregnancy and maternity discrimination.

If a woman on maternity leave is potentially redundant, she has the right to be offered any suitable alternative vacancy with the employer and a failure to do this could be discriminatory.

An employee who is pregnant or on maternity leave may also have a claim for indirect sex discrimination, sexual harassment or victimisation.

Who is protected?

A wide range of individuals are protected from discrimination, including job applicants, employees, apprentices, partners, agency workers and some self-employed contractors. Although the right to statutory maternity leave and pay only applies to employees, a much larger group of individuals benefits from the right not to suffer discrimination at work because of pregnancy or maternity. For example, rejecting a job applicant because she is pregnant or replacing an agency worker because she is off sick with pre-eclampsia could be discrimination. In the case of employees, the protection starts from day one of employment.

Employment tribunal claims

If a job applicant or employee believes she has suffered pregnancy or maternity discrimination, she can bring a claim in the employment tribunal. If her claim is successful, the tribunal can award unlimited compensation, which includes a sum for injury to feelings. In some cases, the tribunal may also make a declaration as to the party's rights or make a recommendation.

In order for the woman to be able to bring a claim, her employer must know, believe or suspect that she is pregnant.

Since July 2013, an employee has had to pay an issue fee of £250 and a hearing fee of £950 to bring a claim of unfair

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dismissal or discrimination, which is likely to put many women off claiming. However, they may approach Acas to try to settle their claim through early conciliation, which is free.

How to avoid claims

Here are our top six tips for avoiding claims for pregnancy and maternity discrimination:

1. Carry out a risk assessment as soon as you know a worker is pregnant and make changes to her working conditions, role or hours as necessary. Keep it under review as the pregnancy progresses.
 2. Take any complaints about bullying or harassment seriously and carry out a full investigation.
 3. Ensure your employment policies clearly state that you give paid time off for antenatal appointments and you do not expect a woman to make up the time.
 4. Take legal advice before taking disciplinary action against a woman who is pregnant, especially if it is for a pregnancy-related illness.
 5. Review your redundancy selection procedure. If a pregnant woman or woman on maternity leave is potentially redundant, ensure you offer her any alternative vacancies and consult with her fully, even if she is not at work.
 6. Keep up to date with entitlements to family friendly leave and pay. Update your employment policies to cover flexible working requests and shared parental leave.
- For more advice, or to review your existing employment policies, contact Gill Wilkinson employment solicitor at Ware & Kay.

NB. The contents of this article are for the purposes of general awareness only. They do not purport to constitute legal or professional advice. The law may have changed since this article was published. Readers should not act on the basis of the information included and should take appropriate professional advice upon their own particular circumstances.

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Contact us

For a free, no obligation discussion call **Gill Wilkinson** on York **01904 716000** or Wetherby **01937 583210**.