

Response to the Department of Business, Energy and Industrial Strategy's consultation on pregnancy and maternity discrimination

British Pregnancy Advisory Service and Pregnancy Sickness Support Joint Submission

1. To what extent do you agree that protections against redundancy for a period following return to work should be aligned with those already in place during maternity leave?

Strongly Agree

2. Please give reasons for your answer.

Women are protected against pregnancy and maternity discrimination and automatic unfair dismissal throughout their pregnancy and maternity leave period. Currently, this protection ends when the ordinary and/or additional maternity leave ends and it can be very difficult to show that subsequent employment decisions have arisen as a result of her pregnancy or maternity status. Given that uptake of shared parental leave remains disappointingly low, the impact on this is not only at an individual level but also extends to the equal representation of women with children in the wider workforce.

One woman in touch with the Pregnancy Sickness Support helpline told them – “When I was on maternity leave I did 8 keep in touch days and was involved in all new plans going forward. But then towards actually going back to work I was advised my position wasn't viable in London and if I wished to continue my employment I would have to commute from Essex to Guildford in Surrey - a three hour each way commute (in good traffic) which they admitted was not possible so I could 'choose' redundancy. I had put into place childcare etc for my daughters and was preparing to return to work mentally and two weeks prior to my return this happened. So I sought an employment lawyer. I am pretty sure [my pregnancy-related sickness] made my employers think I wasn't fit to work in that environment any longer.”

3. What costs do you believe the extension would bring: a) For individuals b) For businesses

b) As employers are reimbursed their Statutory Maternity Pay payments, it can be considerably cheaper for an employer to make a woman on maternity leave redundant as they avoid the costs of notice pay. We believe that the law should require employers to redundancy and notice pay (if they meet the normal criteria) to remove any potential incentive to make employees on statutory leave redundant. Whilst this could be seen as an additional cost for employers it ensures that the cost of making an employee on statutory leave redundant is not different from the cost of making other employees redundant – thus reducing the incentive to behave in a discriminatory fashion.

4. What benefits do you believe the extension would bring: a) For individuals b) For businesses?

n/a

5. Do you agree that 6 months would be an adequate period of “return to work” for redundancy protection purposes?

Yes

6. Please give reasons for your answers

n/a

7. If you think a different period of “return to work” would work better, please say what that should be and explain why

n/a

8. Should pregnancy for redundancy protection purposes be defined as starting at the point a women informs her employer that she is pregnant in writing?

Disagree

9. Do you think an earlier reference point should be used?

Yes

10. If yes, please say what that should be and explain why.

Pregnancy can have a serious health impact on women even during the first trimester – including but not limited to medical conditions which may have an impact on their ability to do their job such as severe nausea and vomiting during pregnancy. Around 30% of women will require time off work to manage nausea and vomiting in pregnancy (NVP) and a further 1-1.5% will be diagnosed with HG. 9 With nearly 1m pregnancies in the UK in 2013, we can estimate that around 10,000 women per year may suffer with HG and many thousands more with sickness that affects their ability to go about their daily lives.

Women may also be aware of their pregnancy and then miscarry during the first trimester (around 80% of miscarriages happen in the first 13 weeks).

bpas and Pregnancy Sickness Support provide services for women suffering from severe NVP who feel unable to take the extended periods off work associated with the condition, and who consider abortion to be their only option. We undertook research into women’s experience of abortion for hyperemesis, and the factors that influenced their decision. (I could not survive another day: April 2015) These included the inability to look after existing children, or function in any way that would enable them to continue their normal routines. A quarter of women surveyed were worried about losing their job, and cited concerns about their ability to cope financially on low levels of sick pay.

At this stage, women may feel uncomfortable sharing the news of their pregnancy with their workplace owing to advice from medical professionals, a previous history of ill-health or miscarriage, or a desire to keep her pregnancy private in the initial weeks.

However, the pregnancy may still impact on her ability to do certain aspects of her job, or require additional support or sick leave – which may negatively impact her work performance and thus increase the likelihood of negative work outcomes such as redundancy or being passed over for promotion.

One woman in touch with the Pregnancy Sickness Support helpline related her experience with severe nausea and vomiting throughout pregnancy – “When I first got ill (3weeks pregnant) I was still hiding the pregnancy. Luckily my first hospital admission fell on a Friday (I worked Tue/Wed/Thu). I had a very stressful position and was in charge of 16 office departments around the UK but carried on working right through. At my worst I was totally bed bound. I had to tell them I was pregnant earlier than I’d liked due to illness.”

We therefore recommend that protection extends to include the entirety of a woman’s pregnancy after notification of a health professional – regardless of when she informs her employer. In all cases a woman should not have to tell her employer about her pregnancy until she feels ready or unless she has a very specific reason such as health and safety in order to be protected.

11. Do you agree that the most direct equivalents to return to work from statutory maternity leave (on the basis that they are forms of leave that can potentially be taken by parent of either gender for longer periods) are:

- a. adoption leave yes
- b. shared parental leave yes
- c. longer periods of parental leave yes
- d. Other n/a

12. If other, please explain your reasons.

13. Supposing that the additional redundancy protection afforded by MAPLE is extended to mothers returning to work after maternity leave, to what extent do you agree that the same protection should be extended to those groups?

Strongly agree

14. Please explain the reasons for your answer.

There are strong grounds for extending regulation 10 protection to all types of statutory family leave listed above (shared parental leave, adoption leave, and longer periods of parental leave). We consider that this should apply to parents who take four weeks or more of parental leave. All parents irrespective of their sex may face the same disadvantages in a redundancy situation when returning to work after a period of time spent looking after their child/children.

Privileging maternity leave, particularly over shared parental leave, in terms of rights is likely to result in continued discrimination where employers are more willing to employ men who are not entitled to these rights regardless of whether or not they become parents.

15. Are there other forms of leave which should be considered for additional redundancy protection on return to work?

Yes

16. Please give your reasons.

Leave as a result of pregnancy-related sickness.

Current pregnancy and maternity protections are focused overwhelmingly on women who intend to continue with their pregnancy and do not suffer a miscarriage prior to 24 weeks. In terms of discrimination, this is unjustifiable. It is unjust to accord pregnant women different legal protections on the basis of their pregnancy intentions or outcomes. We believe women attending abortion consultation and treatment should be able to access this as paid time off in the same way as antenatal appointments are treated, and that time to recover should be treated as pregnancy-related sickness and not count towards overall sick leave, should they wish. This should also be made explicit in law for women undergoing miscarriage.

17. How effective have these steps been in achieving their objective of informing pregnant women and new mothers of their employment rights?

Don't know

18. Please give your reasons.

Women's knowledge/understanding of legal provisions relating to pregnancy and maternity discrimination do not necessarily reflect their experience in employment – or combat their negative expectations. A 2014 bpas study found that three quarters (74%) of women surveyed said they believe it is difficult to combine paid work and children.

ONS figures show that 5 in 10 (50.5%) mothers work 30 or more hours in their usual working week compared with almost 7 in 10 (69.7%) women without dependent children. Only 1 in 4 women with a dependent child aged between one and five worked full time.

While working part-time or deciding not to return to employment after having children will be the preferred option for some women, it will not be suitable or preferable for all. Evidence suggests many women with children want to work and work more hours but are currently unable to do so. A survey by the Resolution Foundation and Mumsnet found that one in five mothers who are employed would like to work an average of an extra 10 hours a week, and over a third (37 per cent) of stay-at-home mothers said they would like to work and do so for an average of 23 hours a week.

This is not just an issue for women when they are already pregnant - not being at the right point in their career or education was a reason for not starting a family soon for half

of all women under 30, and one in five (18%) women aged 30-34. A survey by Opportunity Now found that 81% of female non-parents believed having children will affect their career progression: in this research, women were also more than twice as likely as their male counterparts to be nervous about the impact on their career.

Information, therefore, cannot just be available to pregnant women – it needs to be a mainstream part of employment advice and guidance which is clear to both women and their employers. Fears about their career should not be the driving force behind women's reproductive choices, and government should play an essential role in ensuring that is not the case.

19. How effective have these steps been in achieving their objective of informing employers of their rights and obligations in relation to pregnant women and new mothers?

Not at all effective

20. Please give your reasons.

The Pregnancy Sickness Support helpline hears from over 1000 women per year many of who are experiencing 'problems' with their employer. Many have been given inaccurate information regarding their rights as a pregnant woman in employment and who have been treated in an unfair manner, for example:

- Women haven't been made aware that pregnancy related sickness leave has to be counted separately from all other leave and cannot be used for disciplinary processes, discrimination or redundancy.
- Some have been told that adaptations needed to ensure they are safe at work and to maintain their privacy and dignity aren't possible and therefore they need to get a fit note issued from their GP when the employer should be signing them off on full pay.
- Women have issues with not being entitled to SSP/SMP and are not being advised as to what else they are entitled to
- Reasons for sick leave during pregnancy are being discussed throughout staff members and women are facing judgment and gossip from colleagues who have no understanding of the condition.

One woman told the Pregnancy Sickness Support helpline – “The only info my employer gave me was my employee handbook. This contained generic information about maternity leave & pay. I had to take mat leave early so I could sort being paid properly as I had been on statutory sick pay as a result of pregnancy-related sickness. My employer didn't stay in touch or ask how I was getting on, my husband took my sick notes in and that was it. I only heard from them when they wanted / needed something. I didn't return after my Mat leave finished.”

21. How do you think these steps might be improved?

Employers need to receive comprehensive guidance information detailing their responsibilities for pregnant employees as well as sick pregnant employees – this needs

to be issued by the government and women can ask to see a copy of for this to be included in their employee handbooks.

22. Please outline any further steps which should be taken to provide advice and guidance to employees and employers about the employment rights of pregnant women and new mothers and employers' obligations towards them.

Pregnancy discrimination is embedded in existing law in The Statutory Maternity Pay (General) Regulations 1986. S21 of the regulations sets out the calculation of 'normal weekly earnings' for the calculation of Statutory Maternity Pay. However, this fails to account for pregnancy-related sickness which may mean that women are receiving Statutory Sick Pay during their qualifying week. This decline in income as a result of pregnancy-related sickness can thus have a serious impact on the income a woman can expect to receive throughout her maternity leave – causing undue hardship and enshrining discrimination as a result of pregnancy-related sickness.

One woman in touch with the Pregnancy Sickness Support helpline reported her experience with a large, national company – “On one occasion I was very sick at work, and a senior manager suggested I go home and work there. On my return I requested that I do this formally. I suggested I come in every other day and work at home every other day. I put in writing how his would help me do more work. I was told this was a selfish suggestion, that the rest of the team were sick of me and no one else asked to work at home 'just because they were pregnant'.

I was periodically off sick and back in throughout the pregnancy. I hugely regret not just getting signed off the whole time. I still have somewhere tally charts I kept of how many time I was sick at work - some days it would be dozens of times. I never once received any sympathy or acknowledgement of the effort I was making to continue to work. One reason I did try so hard was because although HR said it wouldn't I had read up and knew that my sick leave/SSP would affect maternity pay. In the end HR agreed I was correct on this and I left at 29 weeks for maternity leave. My manager verbally agreed that as I had had to do this I could use parental leave at the end of my maternity leave to enable me to have a full year off. She reneged on this at my flexible working request meeting 9 months later.”

These regulations should be amended to allow for pregnancy-related sickness impacting on a woman's income, enabling them to claim their full entitlement of Statutory Maternity Pay based on income prior to pregnancy or on a new/revised employment contract signed during their pregnancy – preventing pregnancy-related sickness impacting on income throughout maternity leave.

23. If further steps should be taken, who is best placed to take that action?

The step to amend The Statutory Maternity Pay (General) Regulations 1986 should be undertaken by the Secretary of State for Business, Energy and Industrial Strategy in conjunction with the Secretary of State for Work and Pensions.