



Maternity rights . . . and wrongs

Maternity Action Advice Line

Maternity Action's Advice Line opened on 4th May 2011 and by 30th November 2011 had received over 1103 calls from parents, parents-to-be and their advisers. Calls range from questions about entitlement to maternity pay or benefits, how to request flexible working, to more complex questions about discrimination, health and safety and redundancy.

The case studies outlined in this briefing offer real examples, received by the Advice Line, of the complex situations women have to deal with whilst pregnant or when returning to work after maternity leave. It also highlights the need for specialist advice, both to ensure that women's statutory rights are upheld and to support women to pursue cases of discrimination.

All names have been changed.

Pregnancy discrimination

In 2005, the Equal Opportunities Commission estimated that 30,000 women lose their job every year because of their pregnancy¹. There has been no national research into the incidence of pregnancy discrimination following the economic downturn, but all the indications are that it may have increased significantly.

Discrimination is experienced by women at all stages of their employment. We hear from women starting a new job who have had offers retracted or terms and conditions changed – for the worse – when they inform their new employers of the pregnancy; women who discover that they are pregnant after they start a new job who are bullied for 'having lied' when they accepted the job; and women who have been working for the same employer for many years who find they are denied their statutory rights, overlooked for promotions and face unfounded disciplinary action when they notify their employer of their pregnancy.

Hayley was offered a job as a care worker in July 2011. In the time it took for her CRB check and references to be completed, she had found out that she was pregnant. When her new employer called her to arrange a start date Hayley told her about her pregnancy. Her employer's response was that they would have to push back her start date and may have to retract the job offer as, due to her pregnancy, she was no longer able to do the manual handling work that the job required.

Katya, a migrant worker, worked in a cafe. She had originally agreed to work 10 hours per week, but had increased her hours to 35 hours per week at the request of the cafe owner. She told the cafe owner that she was pregnant as soon as she found out. One week later she had a miscarriage scare and was advised by her GP to rest so she was off sick for one day. On her return to work, she worked a full day and at the end of her shift was dismissed. Her employer said that she had been stealing food and drink from work (she was entitled to food and drink as she was working seven hour shifts). When she received her pay she discovered that she had only been paid for 10 hours per week.

Denise had worked for a small estate agent for a few years and had always had a good working relationship with her employers. Immediately after giving them notice of her pregnancy and that she would take six months maternity leave, she received an email from her boss telling her that disciplinary action was being taken against her. The issues outlined had not previously been raised with her. From that time, she was also reprimanded constantly, sometimes about duties that did not fall within her job description. Her employer looked through her desk, read her emails and positioned the security camera on her desk. He has also withheld commissions due to her (with no explanation) and delayed paying her. She was signed off from work with stress.

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Return to work

Unfortunately, pregnancy is not where maternity-related problems at work end. Common issues women face when they return to work after maternity leave are: that changes have been made to their job in their absence without any consultation (often that the role has effectively been demoted); and that their request for flexible working is not properly considered or is refused on discriminatory grounds (such as an employer's belief that a woman with young children will be an unreliable employee).

Before her maternity leave, Wendy worked as Social Care Officer (SCO); a role in which she administered medication and had supervisory responsibility. She made a request to return to work on part-time hours and was told it was impossible for an SCO to work part-time because of the detrimental impact on the quality and continuity of the service. She was told that she could return on part-time hours at the lower level of Social Care Worker; a post in which she would no longer administer medication or supervise staff. Both posts work the same shift patterns and follow an established handover system to ensure continuity between staff/shifts.

Health and safety

Pregnant and breastfeeding women at work have the right to additional health and safety protection to ensure that their working conditions do not put them or their baby at risk. In practice, women report employers' reluctance to carry out assessments and refusal to take any action to eliminate risks.

Mary worked in a shop where she had to stand for long periods of time. She was refused permission to have a chair beside the till to sit on when there were no customers to be served on the grounds that there was a risk that someone would trip over the chair. She was also refused permission to keep a bottle of water beside the till. The reason given was that there was a health and safety risk associated with having water by an electrical device.

Belinda returned to work when she was still breastfeeding her baby so she asked for a risk assessment. Following a very short meeting with her manager, she was told that the staff toilets offered a private place for her to express milk, and that if she needed to breastfeed, her baby was not allowed on the premises and she would not be paid for any time she took to leave the premises to breastfeed him.

MATERNITY ACTION'S ADVICE AND INFORMATION SERVICE

Maternity Action provides advice and information on employment rights, benefits, breastfeeding rights and entitlement to NHS maternity care.

Telephone advice is available on 0845 600 8533. From January 2012, the lines will be open on Wednesday and Thursday 3-7pm and Friday 10am-2pm.

There are over 30 information sheets available online at www.maternityaction.org.uk. These cover an introduction to maternity and parental rights through to detailed information on sickness during pregnancy, dealing with redundancy, and breastfeeding on return to work. There are specialist information sheets on the rights of migrant women. Information is available in Polish and Spanish.

Redundancy

Although the law is supposed to protect pregnant employees and women on maternity leave, in fact they are particularly vulnerable in redundancy situations, both as a result of falling foul of unfair selection procedures and the failure of employers to understand and apply the extra protection offered to women who are on maternity leave when their post ends due to redundancy². A lack of access to information about the situation at work, for example through intranet sites or internal newsletters/bulletins, compounds the difficulties that women on maternity leave face, as they are reliant upon their manager or colleagues to keep them informed.

On the day Jane returned from maternity leave, her employers gave her maternity cover a permanent position at the company. Just over a month later, they announced that all employees in her department were at risk of redundancy due to a re-structure across the company. The selection criterion chosen to decide who would be offered the remaining jobs was performance over the previous year – when Jane was on maternity leave. Jane was selected for redundancy based on this assessment and told that there were no other jobs available with the company.

Nila was given notice that her post was being made redundant during her maternity leave and would end a few weeks after she returned to work. She had discussed her right to be offered a suitable alternative position with her employers when they gave her notice of her job ending, but was not offered any other position or sent any information about vacancies within the company while she was on maternity leave. When she returned to work, she

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found out that new posts had been available that were suitable alternatives to her post but by that time, they had all been filled.

Where there is a redundancy situation employers have a duty to offer any suitable vacancy to a woman whose job becomes redundant while on maternity leave. However, there is widespread lack of understanding of this. There are also difficulties with the scope of the law as it only applies to women who are given notice of their contract ending (rather than being put at risk) during their maternity leave. In many organisational restructures, there are stages before this happens in which women must rely on discrimination law to protect them from disadvantage. It is hard for women to assert their legal rights when they are juggling a new baby with return to work.

Lucila's department was being restructured with four existing posts at her level being deleted and two new posts created. She was told that selection for the two new posts would be based entirely on performance in an interview. She argued that she should be offered one of the new posts as a suitable alternative but was told by her employer that because at that stage her job was 'at risk' (rather than having been made redundant) she must go through the interview process. Her colleagues in work were offered interview training and given half a day in work to prepare for the interview.

Poor understanding of the special redundancy provisions applying to women on maternity leave increases the vulnerability of women during the recession.

Paternity leave

Following the introduction of Additional Paternity Leave and Pay in April 2011, we have started to receive calls from fathers-to-be who want to take up their rights.

Michael wanted to take Additional Paternity Leave (APL) from 20 weeks after the birth of his baby, but was unable to as his partner was not returning to work after her maternity leave; she had resigned to take up a training course.

Robert's wife died soon after giving birth. He called the advice line to find out if he was entitled to APL and Additional Statutory Paternity Pay (ASPP). He was entitled to 52 weeks' APL and 30 weeks ASPP (his wife had been paid SMP for 9 weeks).

Maternity pay

The most popular topic of calls to the Advice Line is entitlement to maternity pay, particularly Statutory Maternity Pay (SMP). The problems raised are often the consequence of a lack of awareness of the full eligibility criteria for SMP and of employers failing to act appropriately.

Many women assume that as long as they are employed whilst they are pregnant, their employer must pay them maternity pay without being aware of the full eligibility criteria for SMP and the very specific calculation period used to decide their average earnings.

For example, women who are pregnant when they return from maternity leave may find that they miss out on SMP for their subsequent pregnancy because the period in which average earnings are calculated falls in a period of unpaid maternity leave. Similarly, women who have been off sick and paid Statutory Sick Pay during their pregnancy can find that they miss out on SMP or receive less than they expect to.

Cristina had worked for her employer for two years, earning the same amount each week. She had received her first SMP payment and the amount paid was less than she was expecting based on her usual weekly pay. She had, however, been off sick and received Statutory Sick Pay (SSP) during the calculation period for SMP but had not been informed that this would affect her SMP. Two weeks on SSP reduced her SMP from £135 per week for 6 weeks then £128.73 for 33 weeks to £120 for 39 weeks. Her employer had not notified her before her SMP was paid how much she would get.

Administrative problems with maternity pay have also been highlighted by callers who report that employers are not confirming entitlement to SMP until they are on maternity leave and are failing to return the necessary paperwork to them when they don't qualify for SMP.

Rebecca gave notice for SMP, knowing that she was not entitled to it as her earnings were too low but that she needed proof that she was not entitled to SMP from her employer to be able to claim maternity pay from Jobcentre Plus. She phoned the Advice Line when she was already on maternity leave with her baby due in a week's time because her employer was refusing to give the MATB1 and SMP1 certificates back to her so she was unable to claim Maternity Allowance.

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Access to specialist advice

The complexity of and frequent changes to maternity law mean that parents and parents-to-be can struggle to get the right advice about their situation. Generalist advisers may not be familiar with the detail of maternity rights as it is only one of a range of issues they advise on.

This is reflected in a growing demand for specialist advice and information. Over 15,000 information sheets are currently downloaded from Maternity Action's website each month; an increase of more than 40% since this time last year. Demand for telephone advice is high; while Maternity Action answers an average of 44 calls per week, we receive another 320 calls each week that we are unable to answer due to resource constraints.

Jacqui went to a talk at a new parents' group by an advice worker from a local advice service. During this talk the adviser told the group that that Statutory Maternity Pay was paid for 26 weeks, when in fact it is payable for 39 weeks.

Calls to the Advice Line and Maternity Action's investigation into the awareness of Maternity Allowance eligibility by Jobcentre Plus staff³ also highlight inadequate knowledge within administrative offices.

Cathy graduated in July having worked for an agency throughout her course earning £50 per week. She was told by an adviser at Jobcentre Plus (JCP) that she wasn't entitled to anything because she hadn't paid National Insurance Contributions and worked in the same job for 26 weeks. She left the JCP office in tears. She had worked for more than 26 weeks and always earned more than £30 per week so was entitled to Maternity Allowance.

CONCLUSIONS

Calls to the Maternity Action Advice Line demonstrate the lack of awareness of maternity rights amongst both parents/parents-to-be and employers and the complex and stressful situations that pregnant women and new parents face as a result.

Maternity Action calls for these issues to be addressed by:

- **Investing in raising awareness with pregnant women and new parents about their rights at work**
- **Provision of free, accessible, specialist advice on maternity rights for all pregnant women and new parents.**
- **Raising awareness amongst employers about their legal obligations, including the provision of detailed practical guidance on maternity rights and benefits at work.**
- **Conducting research into the nature and prevalence of pregnancy discrimination at work, including discrimination in selection for redundancy.**

BY ROZ HAMPSON

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- 1 Greater Expectations: Final report of the EOC investigation into discrimination against new and expectant mothers in the workplace, Equal Opportunities Commission, June 2005
 - 2 If a woman's post comes to end due to redundancy whilst she is on maternity leave she must be offered a suitable alternative job (if one is available) in preference to their colleagues and without taking part in a recruitment or selection process; Maternity and Parental Regulations 1999, reg 10
 - 3 Improving access to maternity pay for migrant women: Maternity Allowance, February 2010