



# EU Pregnant Workers Directive: Proposed amendments

## Introduction

The European Union (EU) Pregnant Workers Directive is an important piece of European legislation which outlines minimum legal entitlements for workers across the EU. It covers leave, pay, health and safety, breastfeeding rights and other aspects of work and pregnancy. Amendments to the Directive are currently under discussion within the EU. There is an opportunity to influence the amendments to the Directive and achieve the best possible legal protection for pregnant women, new mothers, women who are breastfeeding, and their families.

## About the Directive

The Pregnant Workers' Directive is a European Union directive on pregnant women and new mothers at work. The UK and other EU member states are obliged to implement the Directive.

In March 2010, the Women's Rights and Gender Equality Committee of the European Parliament adopted a report proposing a series of amendments to the Directive. The report will be voted on by the European Parliament, probably in July 2010. It will then be reviewed by the Council which consists of representatives of each of the EU member states. Once adopted, the UK and other EU member states have two years in which to make the necessary changes to national legislation to implement the new Directive.

The Directive sets out minimum legal standards for all EU countries. The UK exceeds these minimum standards in some areas and falls short of them in others. The amendments would improve worker's rights in the UK in the following key areas:

- Protection against unfair dismissal on return from maternity leave
- Maternity pay
- Breastfeeding rights

- Health and safety
- Paternity pay
- Flexible working
- Compulsory maternity leave
- Adopting parents
- Parents of premature babies
- Extended maternity leave for parents with additional needs

There are ongoing difficulties in achieving support for the amendments. An earlier version of the amendments was debated in the European Parliament in 2009 and was returned to the Women's Rights and Gender Equality Committee for redrafting. Debate on the current report has been deferred while a report is prepared on the social and economic impacts of the extension of maternity leave.



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### Protection against unfair dismissal on return from maternity leave (Amendment 52)

The proposed amendments prohibit dismissal and all preparations for a dismissal of a worker from the beginning of her pregnancy until at least 6 months following the end of her maternity leave, save in exceptional cases. The amendments will require an employer to provide written reasons, on request, for any dismissal which occurs during this period.

Currently, a woman who is dismissed or treated unfairly because of pregnancy and maternity leave can claim unfair dismissal and/or sex discrimination. Women are automatically entitled to written reasons if they are dismissed at any time during their pregnancy and maternity leave.

There is evidence of widespread discrimination against pregnant women and new mothers. The Equal Opportunities Commission inquiry into pregnancy discrimination found that 30,000 women each year lose their jobs as a result of pregnancy discrimination.<sup>1</sup> This is roughly 7% of all pregnant women in the workforce each year. The Alliance Against Pregnancy Discrimination in the workplace has found that the situation has worsened during the recession.<sup>2</sup>

Formally extending protection against unfair dismissal to the six months after return to work would help reduce discrimination. Requiring employers to provide written reasons for dismissal during this extended period would reinforce these protections. Under UK law, a woman on maternity leave who is made redundant is entitled to be appointed to a suitable alternative position if that is available. Maternity Action has received reports of employers delaying redundancies until women return from maternity leave in order to avoid this obligation. The extension of the period of protection also addresses the practices of unscrupulous employers who seek to reduce the risk of pregnancy discrimination claims by unfairly dismissing women after return from leave, rather than during pregnancy or maternity leave.

The proposed amendments would prohibit dismissal except in exceptional circumstances during the six months after return to work. It is arguable that this would exclude an ordinary redundancy where jobs are being reduced or minor matters of capability or conduct.

### Maternity Pay (Amendment 64)

The proposed amendments prescribe a minimum of 20 weeks of maternity leave paid at 100% of the woman's last monthly salary or her average monthly salary.

Currently, women who are entitled to Statutory Maternity Pay receive 90% of their wages for six weeks followed by 33 weeks at the flat rate of £124.88. Statutory Maternity Pay is paid by employers, however, small employers can reclaim 104.5% and all other employers can reclaim 92% of any SMP they have paid out.

Increasing the rate of maternity pay would be an important step towards women's equality. The following countries offer at least nine months of pay which is set at two-thirds or more of earnings: Denmark, Estonia, Finland, Germany, Greece (part of the workforce only), Hungary, Iceland, Norway, Portugal, Slovenia, Sweden.<sup>3</sup> The International Labour Organisation recommends at least 18 weeks of maternity leave paid at wage replacement levels.<sup>4</sup>

There is a strong association between paid maternity leave and improvements in maternal and child health and wellbeing. The recent Strategic Review of Health Inequalities in England post-2010 ('the Marmot Review') recommended that all families receive 12 months paid leave and that families be guaranteed a living income during this period. The Marmot Review noted the association between paid parental leave and better maternal and child health, including lower rates of maternal depression, fewer low birth-weight babies, more breastfeeding and more use of preventive health care. It emphasised the importance of overcoming inequalities by addressing not just the most disadvantaged families but those across the social gradients.<sup>5</sup>

This amendment is of particular importance for low income households. These households face great difficulty surviving on a single income supplemented by Statutory Maternity Pay, or on Statutory Maternity Pay alone. These households are least able to save to cover income shortfalls during maternity leave or to repay any debts incurred during maternity leave after return to work.

The previous UK Government opposed this amendment on grounds of the additional costs during a time of recession. It is important to note that there is a considerable time lag between the timing of current debate and the point at which the UK would be obliged to incorporate the changes into national law. This is likely to be in excess of three years, by

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which time the present, difficult financial circumstances are likely to have eased.

**Breastfeeding rights (Amendment 71)**

The proposed amendments provide for legislated breastfeeding breaks at work. These apply to all workers who are breastfeeding, without limitation on the age of the child. Full time employees are entitled to two separate breastfeeding breaks per day of an hour each, unless some other arrangement has been agreed with their employer. The time available for these breaks increases by 30 minutes for each additional child in the case of multiple pregnancies. Part time workers have reduced entitlements.

Currently, there is no general entitlement to breastfeeding breaks. An employer is required to undertake a health and safety risk assessment if a woman advises in writing that she is breastfeeding. Women are entitled to breastfeeding breaks if this risk assessment identifies risks to the health of mother or baby if breastfeeding breaks are not provided. This is a complex legal framework which leaves women uncertain about their entitlements prior to return to work. There is limited legal recourse for women whose employers refuse to provide breastfeeding breaks.

Breastfeeding has significant health benefits for mothers and babies. Over their lifetime, breastfed babies have reduced rates of many infectious and immunological diseases, reduced rates of some cancers, better cardiovascular health, and reduced rates of obesity. Mothers who breastfeed have reduced rates of breast and ovarian cancer.<sup>6</sup>

The limitations of the current legal protection create barriers to women continuing to breastfeed on return to work. Return to work is one of the main reasons why women give up breastfeeding.<sup>7</sup> Greater ease of breastfeeding on return to work will impact on duration of breastfeeding and may also impact on commencement rates as breastfeeding becomes normalised.

**Health and safety (Amendment 37)**

The proposed amendments state that women should not be required to do night work or to work overtime for the 10 weeks before the baby is born; the rest of pregnancy where this is necessary to protect the



Photo: Maternity Action

health of mother or unborn child; and during the entire period of breastfeeding.

Currently, a pregnant woman whose doctor advises against night work on health and safety grounds must be transferred to day work or suspended on full pay. There is no general right not to work nights or overtime during pregnancy. Women who are breastfeeding have no general right not to do night work or overtime and must negotiate this with their employer in the context of a health and safety risk assessment.

The proposed amendments provide pregnant women and breastfeeding women with clear and enforceable rights to refuse night work and overtime. This will enable women at risk of stress and exhaustion to better protect their health and their baby's health.

**Paternity Pay (Amendment 50)**

The report recommends that all workers be entitled to two weeks of paternity leave on full pay. This is a recommendation rather than a mandatory requirement.

Currently, fathers and same sex partners who meet the eligibility criteria are entitled to two weeks of paternity leave which is paid at a fixed rate of £124.88.

Increasing Statutory Paternity Pay to wage replacement levels will increase the number of fathers and partners who will take up the leave.

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While the vast majority of fathers and partners take leave at the time of the birth, 20% use no paternity leave and 30% use a combination of paternity leave, annual leave and other forms of leave. One-third of those who did not use their full leave entitlement said that they couldn't afford to take two weeks paternity leave at the statutory rate.<sup>8</sup>

### **Flexible working (Amendment 55)**

The report recommends that employees be entitled to work part time for up to one year with full protection from the possibility of dismissal and full rights to recover their full-time position and pay at the end of this period. This is a recommendation rather than a mandatory requirement.

Currently, parents of a child under the age of 17 or a disabled child under the age of 18 have the right to request flexible working, including part time work. Their employer must seriously consider their request but can refuse a request if there are good business reasons for doing so. Once a flexible working request has been approved, an employee has no right to return to full time working and must negotiate this with their employer.

Introducing an absolute right to part time working for twelve months would enable more new parents to remain in the workforce and to balance work and family responsibilities. In the most recent Work-Life Balance survey, 17% of employees who requested changes to the way they worked had their request declined.<sup>9</sup> It is not clear what proportion of these employees were new parents. Introducing a right to return to full time working after twelve months would enable parents to make a smooth transition back to full time working, if they wish to do so.

### **Compulsory maternity leave (Amendment 40)**

The proposed amendments extend compulsory maternity leave to 6 weeks after childbirth. This is to be fully paid.

Currently, compulsory maternity leave is two weeks or four weeks if the woman works in a factory. It is an offence for an employer to permit an employee to work during this period.

The proposed amendment would bring the duration of compulsory maternity leave into line with International Labour Organisation recommendations.

Extending compulsory maternity leave is likely to be of greatest benefit to vulnerable workers on low incomes who may be under pressure to return to work early. Ensuring that this leave is fully paid should address the financial implications for low income earners of extending the period of compulsory leave.

### **Adopting parents (Amendment 20)**

The proposed amendments would give adopting parents the right to maternity and paternity leave on the same conditions as other parents.

Currently, adopting parents are entitled to similar leave to other parents. Statutory Adoption Pay is paid at a fixed rate of £124.88 for 39 weeks, compared to Statutory Maternity Pay which is paid at 90% of average wages for the first six weeks and £124.88 for the remaining 33 weeks.

This amendment would increase the payments to adopting parents to bring this into line with other parents. This would overcome a historical anomaly and improve support for adopting parents.

### **Parents of premature babies (Amendment 45)**

The report proposes that parents of premature babies have additional maternity leave which is proportionate and allows the special needs of the mother and child to be accommodated.

Currently, parents of premature babies have the same entitlement to maternity leave and pay as any other parents.

This amendment would acknowledge the additional needs of parents of premature babies. Babies may remain in hospital for weeks or months after the birth and have ongoing health problems. Providing longer leave would enable parents to bond with the baby, to provide care for any health problems the baby might be experiencing, and minimise the stress and anxiety experienced by many parents of premature babies who return to work before they and their baby are ready.

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**Extended maternity leave  
(Amendment 45)**

The report provides for additional maternity leave for mothers of children with disabilities; mothers with disabilities; teenage mothers; mothers with multiple births; or where the birth occurs within 18 months of the previous birth. The report states that this additional leave should be proportionate and allows the special needs of the mother and child to be accommodated.

Currently, there are no additional leave entitlements for parents in these circumstances. The amendment would enable these parents to access additional leave based on their specific circumstances.

**CONCLUSIONS**

The proposed amendments to the Pregnant Workers Directive offer the chance to significantly improve the rights of pregnant women, new mothers, women who are breastfeeding, and their families. Maternity Action calls upon UK MEPs to support the report of the Women's Rights and Gender Equality Committee; and for the UK Government to support the proposed amendments at the Council

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BY ROSALIND BRAGG AND KATIE WOOD

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**About Maternity Action**

*Maternity Action is a national charity working to end inequality and promote wellbeing for all pregnant women, new mothers and their families.*

*For further information on our campaigning work and for detailed information on maternity and parental rights and benefits, see our website at [www.maternityaction.org.uk](http://www.maternityaction.org.uk)*

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- 1 Equal Opportunities Commission, 2005, *Greater Expectations: Final report of the EOC's investigation into discrimination against new and expectant mothers in the workplace*, EOC: Manchester
  - 2 Alliance Against Pregnancy Discrimination in the workplace, 2009, *Pregnant women and new mums at risk of redundancy*, Maternity Action and others: London
  - 3 P. Moss (ed), 2009, *International review of leave policies and related research 2009*, Employment Research Series No. 102, Department of Business, Innovation and Skills
  - 4 International Labour Organisation, 2000, 'Maternity Protection Recommendation 2000 R191'
  - 5 Strategic Review of Health Inequalities in England post 2010, 2010, *Fair society, healthy lives: the Marmot Review*, London: The Marmot Review
  - 6 World Health Organisation, 2009, *Infant and young child feeding*, Geneva: WHO
  - 7 K. Bolling, C. Grant, B. Hamlyn, A. Thornton, 2007, *Infant feeding survey 2005*, London: The Information Centre
  - 8 D. Smeaton and A. Marsh, 2006, *Maternity and paternity rights and benefits: Survey of parents 2005*, London: DTI
  - 9 H. Hooker, F. Neathey, J. Casebourne, M. Munro, 2007, *The Third Work-Life Balance Employee Survey: Main findings*. Employment Relations Research Series No. 58. Department of Trade and Industry