

# **Submission to the Lord Young review of health and safety protection**

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## **1. About Maternity Action**

Maternity Action is a national charity working to end inequality and promote the health and wellbeing of pregnant women, new mothers and their families. Maternity Action provides information and training on the rights, benefits and access to healthcare; and engages in policy development, campaigning and research.

Maternity Action had sought to provide input on health and safety issues facing pregnant women and breastfeeding women. We were advised that the review did not intend to cover the issues we wished to raise in relation to breastfeeding women.

## **2. Health and safety protection for pregnant women at work**

The law protecting pregnant women in the workplace states:

- An employer who employs women of childbearing age must assess any risks to pregnant women and new mothers in their workplace when preparing their general risk assessment.
- An employer must undertake a specific risk assessment on receipt of written notification that a worker is pregnant, has given birth within the past six months or is breastfeeding.
- When a specific risk assessment identifies risks or hazards, the employer must take steps to remove these or provide the woman with suitable alternative work. If this is not possible, she should be suspended on full pay.

Current health and safety law and practice are failing to protect pregnant women and new mothers at work. The EOC found that almost half of women did not know that they were entitled to a risk assessment at work when pregnant, and 50% of pregnant women did not receive a risk assessment. Risk assessments which are carried out are often not done well, or adjustments to work are not made (EOC 2005). Despite the low levels of compliance with requirements to conduct a risk assessment and make necessary adjustments, women infrequently take enforcement action.

## **3. Impacts**

Poor health and safety protection for pregnant women has long term impact on the health of mothers and their children. It also results in significant financial costs for women and their families, employers, the benefits system and the NHS. The Equal Opportunities Commission (EOC) examined this issue in some detail in their 2005 investigation into pregnancy discrimination (EOC 2005). This resulted in little action and there is now an urgent need to address the deficiencies in health and safety protection for pregnant women in the workplace.

A failure to conduct risk assessments for pregnant women and to make adjustments to their work leaves women with the choice between continuing to work in an unsafe environment or leaving their job.

This problem is widespread. Each year, 30,000 women lose their jobs due to pregnancy discrimination (EOC 2005). It is not known what proportion lose their jobs as a result of inadequate health and safety protection. Others are forced to take sick leave as a consequence of the lack of adjustments to their work.

This has serious financial implications for women and their families. For women, being forced to leave employment during pregnancy means a loss of earnings and a loss of maternity pay. Women who have been forced into unemployment can be left relying on benefits during the child's early years when it is particularly hard to find new employment.

Taking sick leave in approximately weeks 18-26 of pregnancy can mean that a woman drops below the earnings threshold for Statutory Maternity Pay resulting in a reduction in income during the period of maternity leave.

Being forced to leave work undermines the financial stability of women and their families during the crucial period of a child's first year and can affect the ability of partners and fathers to share in the care of children as they work longer hours to make up for financial shortfalls (EOC 2005).

There are financial implications for employers. Losing pregnant workers because of an unsafe work environment leads to the additional and avoidable costs of recruiting and training new staff, or covering periods of sick leave. The EOC estimated that the total direct recruitment costs to replace women who lose their jobs due to pregnancy discrimination is estimated to be in the region of £80m to £120m (EOC 2005). The precise proportion of costs attributable to poor health and safety management is unclear.

For women who remain in their jobs, an unsafe work environment can lead to serious health problems and problems for their pregnancy including miscarriage or premature birth. As well as detriment to the health and wellbeing of the mother, there can be long term impacts on the physical and psychological health of their child. 20% of premature births are caused by occupational factors, leading to occupational fatigue. Premature birth is one of the main causes of long-term health problems in children and can increase babies' chances of cerebral palsy, blindness and chronic lung disease. Anxiety in late pregnancy is associated with higher rates of behavioural and emotional problems in young children (EOC 2005).

A recent report by the EHRC found that a quarter of workers in the meat and poultry processing sector mentioned poor treatment of pregnant workers. Women attributed repeated miscarriages to the lack of adjustments to work. Reports were also received of pregnant workers being forced to continue work that posed risks to their health and safety, including heavy lifting and extended periods of standing, under threat of losing their job (EHRC 2010).

Poor health and safety protection for pregnant women results in avoidable costs to the NHS. Premature births cost an average of £20 000 more than births at term. The costs vary widely according to the length of gestation. A birth at 28 weeks gestation costs, on average, £56 700 more than a child born at term (Mangham and others 2009). An antenatal admission costs between £499 and £1450 (Department of Health and others 2009).

Effective health and safety protection for pregnant women and new mothers is essential if women and their partners are to have a real choice about remaining in the workforce during their childbearing years.

## 4. Causes

### a. Lack of awareness

Awareness of the relevant health and safety legislation is low amongst women and their employers.

The EOC found that just over half of USDAW members who worked while pregnant knew that they had a right to a risk assessment, and only 25% knew of the right to suspension on full pay on health and safety grounds. Women working for agencies or in temporary work presumed that they did not have the same entitlement to a risk assessment as permanent staff (EOC 2005).

In a survey of employers who had managed a pregnant worker within the last 3 years, when asked about their statutory entitlements, just 8% mentioned the right to a risk assessment and only 8% of employers had developed guidelines for line managers relating to the health and safety of pregnant staff (EOC 2005).

In 2006, Maternity Action spoke to 14 small businesses during preparation of the online toolkit, 'Managing employees who are pregnant or new parents', for the EHRC (Bragg and Kirk 2006). Eleven of the employers were unaware of their obligation to undertake a health and safety risk assessment for pregnant employees. This included managers with specific training in this area and employers with a strong commitment to good practice.

One of the managers who had not undertaken risk assessments was a factory manager whose training was in health and safety and who had recently supervised a pregnant worker. Another manager was from a voluntary organisation which had a stated commitment to good practice in managing pregnancy at work. This organisation reviewed its policies and procedures annually, with review by external consultants every few years. Once they were made aware of their health and safety obligations towards pregnant women, both of these informants were anxious to take immediate action to comply.

### b. Workplace culture

Even when employers are aware of their obligations in relation to pregnant employees, there is evidence of essential health and safety needs being widely ignored or taken for granted (EOC 2005). A workplace culture which is negative toward pregnancy and working parents contributes towards this lack of compliance.

#### **Case study**

*A had taken a period of sick leave during her pregnancy. When she returned to work, she asked for a risk assessment to be done. Her manager refused, saying "It's all a load of crap". She asked for a footstool and this was refused on grounds of cost. She asked not to work alone in the office as she was concerned about the risk of fainting and not receiving any help. No action was taken on this. She asked to work from home but this was refused, even though she had regularly worked from home before her pregnancy.*

#### **Case study**

*B's manager had responded with annoyance when she told him she was pregnant and continued to make negative comments throughout her pregnancy. He made it*

*clear he did not want her to return from maternity leave. She was very upset at the ongoing harassment and the thought of losing her job. She ended up in hospital with bleeding and was signed off work for a week. She rang Maternity Action very distressed at the thought of returning to such a difficult work environment when she was feeling so unwell. She was also concerned that taking further sick leave at this time would affect her entitlement to Statutory Maternity Pay. She believed that the stress of work had contributed to her illness.*

### **c. Perceived inability to comply**

The EOC found that some employers are concerned about how to conduct an appropriate risk assessment for a pregnant employee. Some feel that they are not qualified to judge what it is safe for a pregnant woman to do. (EOC 2005).

A lack of HR experience and support also contributes to failure to comply with health and safety regulations around pregnant employees, particularly for small employers who do not have dedicated HR staff, and may only experience a pregnancy in the workplace very infrequently.

The HSE provides information on health and safety for pregnant women and new mothers, however this information is not filling this gap. During consultations with small businesses in development of the EHRC pregnancy toolkit, Maternity Action found that two of the three HR managers who were undertaking risk assessment relied on materials purchased from private consultancies. The third business had developed specific material internally and shared this between the various branches (Bragg and Kirk 2006).

#### **Case study**

*C ran a small business with fewer than ten staff. The cleaner advised that she was pregnant. C was unsure what health and safety adjustments were required. She was particularly concerned about the safety of cleaning products and the awkward movements required to vacuum under the desks. She searched the internet for information on this but didn't find anything.*

For small employers, concerns about the possibility of having to suspend a woman on full pay may also contribute to the low level of compliance. Although this happens in less than 1% of cases this cost is not recoverable (EOC 2005).

### **d. Lack of enforcement**

There is a profound absence of enforcement of the health and safety laws in place to protect pregnant women in the workplace. The responsibilities for enforcement are divided between the HSE and Local Authorities and there is little evidence of action by any of these agencies. The onus for pursuing enforcement lies with individual women. There is no requirement for employers to proactively monitor and report on compliance. Women who pursue matters through the Employment Tribunals face significant delays and substantial costs.

Failure to conduct a risk assessment can amount to sex discrimination. Women commonly resort to leaving work or taking sick leave rather than making a tribunal claim for failure to undertake a risk assessment. There is currently no time limit for completion of a risk assessment.

Failure to make adjustments to manage risks is an area of particular concern. Many adjustments can be made simply and at no cost to the employer. There is no clear route of action for women where adjustments are not made.

**Case study:**

*D worked in a childcare centre. She had a break in the morning and at lunchtime, but no break during the afternoon. As her pregnancy progressed, she found the afternoons increasingly exhausting. She asked for a 15 minute break in the afternoon where she could sit down and have something to eat and drink. This was refused. She offered to take this as unpaid leave and was again refused. Her employer had undertaken a risk assessment early in her pregnancy but refused to revisit it as her pregnancy progressed. She didn't want to start her maternity leave early, but felt that this was her only option.*

**Case study:**

*E had a midwife's certificate stating that she should not work nights because of risks to her and her baby's health. Her manager said that she had to work nights because of staff shortages. She didn't know what to do about this.*

Where it is not possible to manage a risk, employers must offer women suitable alternative work. If this is not available, the woman should be suspended on full pay. There is very little case law in this area and it is not clear how effectively this legislation is being enforced.

## **5. Recommendations**

Since the 2005 EOC report, there have been some actions taken to attempt to improve protection for pregnant women at work.

- Pregnant women are now routinely given a leaflet outlining their rights at work and their employer's obligations. This includes health and safety.
- The EHRC has a free, online toolkit for small businesses on managing staff and new parents at work, written by Maternity Action. A 2007 Manchester Metropolitan University study on supporting small firms in the North West to manage maternity described it as 'the most comprehensive package of support available' (Rouse and others 2007). The toolkit was praised for covering each stage of the maternity process, for the initial guidance in the checklists, for the step-by-step guidance in the calendar, and for the templates for policies and risk assessments.

While Maternity Action welcomes these developments, it is clear from our own work and from recent research that the problem persists.

Action is necessary to raise awareness amongst employers that health and safety risk assessments for pregnant women and new mothers are legal obligations.

Employers require additional support to conduct specific risk assessments. Model risks assessments developed by trade associations and sectoral bodies in partnership with unions offers a useful way forward. Micro businesses face particular challenges associated with limited resources and further support should be provided. This could be in the form of HR support.

Women need to be made aware of their rights. This requires further investment in awareness raising. Women need information on how to identify risks, and information on how to complain if health and safety laws are not followed.

Laws on risk assessments need to be tightened to provide a time limit for completing the risk assessment.

There needs to be a clear route for women to take action if health and safety obligations are not met. Agencies tasked with enforcement need to have sufficient resources to undertake this work. These rights should be in addition to the right to take action in the Employment Tribunal.

## References

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Note: All case studies are women and employers who have contacted Maternity Action.