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# Dealing with pregnancy and maternity-related problems at work

This information sheet provides a basic outline of:

- what to do if you are experiencing problems at work because of your pregnancy or maternity leave,
- the type of legal claim you can make in pregnancy and maternity-related cases,
- how to bring a claim in an employment tribunal,
- how to negotiate a settlement with your employer, and
- a guide to current levels of compensation awarded by employment tribunals

## What to do if you are experiencing problems at work because of your pregnancy or maternity leave

### *What can I do if I am being treated unfairly at work?*

If you feel you are not being treated fairly at work, for example, if you have had your hours cut during your pregnancy or you have been refused a benefit during your maternity leave, you should approach your employer informally at first and try to solve the problems directly with your manager or Human Resources department. If you are in a trade union, you should speak to your union representative.

The law on pregnancy and maternity-related rights is complicated and there have been many changes over the last few years. Your employer may not understand the law or may have outdated information, therefore, it may help if you can get up-to-date information to show your employer and to help you both talk through and plan what will happen during your pregnancy and maternity leave. You can get up-to-date information from the Maternity Action website and from other organisations listed below.

If you cannot solve the problem informally, you could consider raising a formal complaint.

Note: there are strict time limits for bringing a claim in an employment tribunal and you should bear this in mind while you are pursuing the matter with your employer, see 'How to bring a claim in an employment tribunal' below.

### *How do I complain to my employer?*

If you cannot solve the problem informally with your employer you should make a

formal grievance in writing. All employers should have procedures for resolving grievances. Ask your employer what grievance procedures are in place and who you should complain to.

Your employer should arrange a meeting to discuss your grievance. You have the right to be accompanied at the meeting by a colleague or a trade union representative. Your employer should then give you a decision in writing. If you do not agree with your employer's decision you should appeal. If you are unhappy with the result of the appeal you then have the option of taking your employer to an employment tribunal. If you have not followed the full grievance procedure, any compensation you are awarded by a tribunal may be reduced. If it is your employer's fault that the full grievance procedure has not been followed your compensation may be increased.

Note: If your complaint relates to something that happened before 1<sup>st</sup> April 2009, you should seek further advice about following the grievance procedure. You can get advice from ACAS or your local Citizens Advice Bureau, see 'Where to go for more help' below.

### *My employer and I do not agree, should I resign from my job?*

If at all possible, you should get advice on your case before resigning. You can get free legal advice by telephone or face-to-face from many of the organisations listed below. Before resigning you should bear in mind that you can never be certain of the outcome of a tribunal case.

If you have no option but to resign, for example, if your employer has refused a request for part-time work and you have no childcare available, you should make it clear

to your employer and tell your employer in writing why you are resigning. If you can show that your employer's conduct was so bad that you had to resign you may have a claim for 'constructive dismissal' but you should get legal advice first as these are difficult cases to bring.

If you continue working for your employer while trying to negotiate a solution, you should make it clear to your employer, preferably in writing, that you are continuing to work despite the fact that no agreement has been reached and make it clear that you are not happy with the situation.

You can bring most claims in an employment tribunal while you are still working for your employer but this can be quite hard to do because any indication of legal action will usually bring any remaining goodwill to an end and make it unlikely that there will be an amicable solution to your disagreement. Wherever possible, you should consider legal action as a last resort. It is almost always best to try to negotiate with your employer on an informal basis but if you have exhausted all possibilities you will have to make a decision about whether or not to resign and whether or not to take legal action.

## The type of legal claims you can make in pregnancy and maternity-related cases

### **What claim do I have?**

With pregnancy and maternity-related issues you will often have a number of different claims for the same problem, for example, if you have been dismissed because of pregnancy you can claim 'ordinary' unfair dismissal, 'automatic' unfair dismissal on the grounds of pregnancy and sex discrimination.

If you are not an employee, for example, because you are a job applicant, an agency or casual worker or you are self employed, you cannot claim unfair dismissal or most of

| <b>Types of claims you can make in a tribunal in relation to maternity and parental rights</b>     | <b>Legal Reference</b>                        |
|--|---|
| Failure to give paid time off for antenatal care   | Employment Rights Act (ERA) s.56 & s.57       |
| Failure to provide suitable alternative work on health and safety grounds                          | ERA s.67 & s.70                               |
| Failure to suspend on full pay on health and safety grounds  | ERA s.68 & s.70                               |
| Failure to provide written reasons for dismissal   | ERA s.92 & 93                                 |
| Protection from detrimental treatment related to making a request for flexible work                | ERA s.47E                                     |
| Refusal of application for flexible work   | ERA s.80H                                     |
| Refusal of parental leave  | ERA s.80                                      |
| Refusal of time off for dependants   | ERA s.57A & B                                 |
| Sex discrimination related to pregnancy/maternity  | Sex Discrimination Act 1975/Equality Act 2010 |
| 'Automatic' unfair dismissal because of pregnancy, maternity leave and other types of family leave | ERA s.99                                      |
| 'Ordinary' unfair dismissal  | ERA s.98                                      |
| Unlawful deduction of wages e.g. refusal to pay  | ERA s.23                                      |

the rights under the Employment Rights Act but you can claim sex discrimination.

The table above outlines the different claims you can bring in relation to pregnancy and maternity-related issues.

You will usually have a claim for sex discrimination on the grounds of pregnancy/maternity if you are treated unfairly or dismissed because you are pregnant or have taken maternity leave. It is important to claim sex discrimination as well as any other legal right because with sex discrimination claims you can get compensation for injury to feelings (see guide to compensation below) and there is no upper limit on the amount of compensation which can be awarded.

If your claim relates to refusal of flexible working, you should also claim indirect sex discrimination. Indirect sex discrimination arises when a policy or practice

disadvantages more women than men or more men than women. As statistics show that more women than men have childcare responsibilities it may be indirect sex discrimination to require a woman to work full-time unless the employer can justify refusing flexible working for good business reasons. You should try to get advice about how to claim indirect sex discrimination.

## How to bring a claim in an employment tribunal

### **How do I bring a tribunal claim?**

There are strict time limits for starting a claim in an employment tribunal. You must apply to the tribunal within three months less one day of the event that you are complaining about. For example, if you were dismissed on the 1<sup>st</sup> August your application must reach the tribunal by the

31<sup>st</sup> October. It is sometimes possible to apply later but only for very good reasons. You should fill out an application form ET1 which you can get from the Employment Tribunal Public Enquiry Line or website or your local Citizens Advice Bureau (see 'Where to go for more help'). You can post, fax or email it to the tribunal.

The Employment Tribunal will send a copy of your ET1 to your employer. Your employer then fills out an ET3 form stating its version of events and any defence. The Secretary will send you a copy.

If you are claiming sex discrimination as part of your claim, you can send your employer a Sex Discrimination Act Questionnaire asking a range of questions which may help you to prove sex discrimination. You can do this before you make your tribunal application or within 21 days of making an application. This process is very useful and the Equality and Human Rights Commission can give advice on the questionnaire, see the EHRC guide 'How to use this questionnaire procedure' at [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

#### ***What will happen at the tribunal?***

The Tribunal will give you a date for the hearing. At the hearing, the tribunal will listen to your side of the case and your employer's side. Your employer will be able to ask you questions and you can question your employer and any of your employer's witnesses if you do not agree with what they have said. The tribunal will listen to both sides and decide who they think is telling the truth and what the correct application of the law is to the claim.

You do not have to have a lawyer representing you but as maternity law can be very complicated you may feel that you need legal advice on how to prepare the case or to represent you on the day of the tribunal hearing. You should also bear in mind that your employer may be using a lawyer on their side. If you represent yourself the tribunal members will give you as much help to make your case as they can in order to make sure there is a level playing field on both sides. You may be able to get

free advice or representation from the organisations listed below. You should also check your home contents or building insurance cover to see if you have legal expenses insurance, or whether you can get legal representation on a no-win, no-fee basis.

## **How to negotiate a settlement with your employer**

### ***What happens if my employer offers to settle the case?***

More than half of all tribunal cases are settled before the day of the hearing. Your employer may realise that you have a strong case or they may want to avoid the trouble and expense of a tribunal hearing. They may make you an offer of financial compensation (either directly or through ACAS) if you agree to drop the case. See the guide to financial compensation below and try to get advice before you accept the offer. You need to know approximately how much you would get if you won the case to work out whether it is a fair offer. Your employer may make a low offer at first and you may be able to negotiate.

Your employer may wait until the day of the hearing before making an offer to settle the case. You should think about what you would be prepared to accept in return for dropping the case on the day. You need to be clear about what you want to get out of the case. For example, to receive financial compensation for the way you have been treated or to expose your employer's behaviour in court. You should also bear in mind that the outcome of a case can never be certain no matter how strong or weak you think your case is. It is impossible to predict how the Employment Tribunal will decide your case. However, you can get an idea of your likely chances of success from a legal adviser or by looking at tribunal decisions in similar cases. You should also think about what else you want to ask for in return for settling the case, for example, you could ask your employer to provide an agreed

reference for future use, which is not something that a tribunal would award. You may be able to get what you want by settling the case with your employer, which would not be possible if you go all the way to a tribunal hearing.

## **A guide to current levels of compensation awarded by employment tribunals**

### **What happens if I win my case?**

If you win your case, the tribunal will usually order your employer to pay you compensation. If you were dismissed, a tribunal can order your employer to give you your job back (reinstatement or re-engagement), if you want it, but this is very rare as tribunals will not force two parties to work together where this working relationship has broken down.

If your claim is about a refusal of flexible work, the tribunal cannot order your employer to give you flexible work but the tribunal can order your employer to reconsider your application or award compensation.

### **What sort of compensation could I get?**

In most cases, a tribunal will order your employer to pay compensation to cover your loss of earnings.

For some claims, such as unfair dismissal there is a 'basic award' and a 'compensatory award'. The basic award is calculated according to your age and length of service and is capped at £400 per week for a maximum of 20 years service. The compensatory award can be an amount up to a maximum of £68,400 to cover your financial loss. This is based on your salary and your future employment prospects. The amount of financial loss, such as loss of earnings and pension, is calculated from the date of your dismissal to the date of your tribunal hearing. The compensatory award can also take into account future losses if you have been unable to find a job or have had to take a new job that pays less than

your previous job. Tribunals will not normally award future loss of earnings for more than one year unless you can show that it would be exceptionally hard to find another job.

For sex discrimination claims there is no maximum limit for loss of earnings although the tribunal will not award you more than they think you have lost.

In discrimination claims, the tribunal will make an award for injury to feelings. In 2008 the average award for injury to feelings was £6,612. Lower awards of £500 to £6,000 could be made for less serious cases or one-off acts of discrimination. Serious cases of discrimination could be awarded between £6,000 and £18,000. The maximum compensation, for example, where there has been a lengthy period of harassment could be up to £30,000.

If you have suffered physical or psychiatric injury you can also ask for compensation for personal injury.

Compensation for flexible work requests is capped at £400 per week for a maximum of eight weeks. However, compensation for indirect sex discrimination is not capped, therefore it is important to claim indirect sex discrimination in conjunction with claims for refusal of flexible work, see the guide to pregnancy/maternity-related claims above.

You are expected to “mitigate your loss” which means that you must make real efforts to find another job as soon as reasonably possible and be able to show that you have been trying. You should bring along evidence to the tribunal showing the efforts you have made to find another job, even if you have not been successful, such as job applications and details of interviews.

If you lose your case you will not have to pay your employer’s costs and if you win, your employer will not have to pay your costs. However, an order to pay the other side’s costs can be made if one side has behaved unreasonably or disruptively or where the claim or its defence has been misconceived.

## Where to go for more help

### Maternity Action

Advice on maternity rights and benefits  
[www.maternityaction.org.uk](http://www.maternityaction.org.uk)  
Helpline 0845 600 8533

### ACAS

Free employment law advice  
Telephone: 0845 747 47 47  
[www.acas.org.uk](http://www.acas.org.uk)

### Bar Pro Bono Unit

A small charity which may be able to provide free legal advice or representation.  
Telephone 020 7611 9500 or see  
[www.barprobono.org.uk](http://www.barprobono.org.uk)

### Citizens Advice Bureau

You can find your nearest Citizens Advice Bureau (CAB) if you look in your local telephone book or see  
[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### Community Legal Advice

For free legal advice and help with finding a solicitor or legal adviser in your area telephone: 0845 345 4 345 or see  
[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

### Department of Business, Innovation and Skills (formerly BERR)

For information on employment law and applications for flexible work (form FW(A) see [www.bis.gov.uk](http://www.bis.gov.uk).  
For an interactive guide on maternity rights (TIGER) see the Direct Gov website:  
[www.direct.gov.uk](http://www.direct.gov.uk)

### Employment Tribunal Public Enquiry Line

For information on bringing a tribunal claim and ET1 application forms telephone 0845 795 9775  
[www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk)

### Equality and Human Rights Commission

For information on sex discrimination claims see [www.equalityhumanrights.com](http://www.equalityhumanrights.com)  
Helplines:  
0845 604 6610 England  
0845 604 8810 Wales  
0845 604 5510 Scotland

### Health and Safety Executive.

Health and safety at work Information Line  
0845 345 0055.  
[www.hse.gov.uk](http://www.hse.gov.uk)

### HMRC Employer’s Helpline

If you have a dispute about your Statutory Maternity Pay you can ring the HMRC Employer’s Helpline 08453 147 147.

### Law Centres Federation

To find out if there is a Law Centre in your area telephone 020 7428 4400 or see  
[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

### Working Families

[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)  
Advice on maternity rights and benefits.  
Helpline 0800 013 0313.

*This factsheet was produced by Maternity Action in May 2011. It is always important to get up-to-date advice.*

## More Maternity Action information sheets

[Pregnant at work 2011](#) – a brief guide to your rights to maternity leave and pay

[Rights at work for fathers and partners](#) – a brief guide to rights for fathers and partners

[Additional paternity leave and pay](#) – new rights for fathers and partners

[Time off for working parents](#) – rights to paternity leave, adoption leave, parental leave and time off in an emergency

[Child friendly working hours](#) – rights to ask for changes in your working hours to fit with your childcare or other caring responsibilities

[Money for parents and babies](#) – benefits for families

[Common maternity pay questions](#) – how to qualify for Statutory Maternity Pay, Maternity Allowance and Employment and Support Allowance.

[Rights for parents with more than one job](#) – rights for parents working more than one job

[Redundancy during pregnancy and maternity leave](#) – your rights if you are made redundant

[Dealing with pregnancy and maternity-related problems at work](#) – how to deal with problems at work

[Pregnancy discrimination](#) – what is pregnancy discrimination and what you can do about it

[Discrimination during maternity leave and on return to work](#) - what you can do about discrimination during maternity leave

[Pregnant during maternity leave](#) – your rights if you become pregnant on maternity leave

[Breastfeeding on return to work](#) – your rights if you wish to continue breastfeeding on return to work

[Sickness during pregnancy and maternity leave](#) – rights and benefits during sick leave

[Breastfeeding in public places](#) – your right to breastfeed when you are out and about

[Polish language information](#) - rights at work for mothers, fathers and partners; your right to breastfeed when you are out and about

[Maternity rights for migrants](#) – information for EU nationals and other migrants

[Maternity rights for refugees and asylum seekers](#) – information for refugees, asylum seekers and refused asylum seekers

Available at [www.maternityaction.org.uk](http://www.maternityaction.org.uk)