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# Pregnancy discrimination

**The law protects you against unfair treatment and dismissal because of your pregnancy. This information sheet looks at what kind of treatment amounts to discrimination and what you can do if you are being discriminated against at work.**

Your rights during pregnancy:

- you have the right to a risk assessment to protect your health and safety and that of your baby.
- you have the right to reasonable paid time off for your antenatal care.
- you are protected against unfair treatment and unfair dismissal because of your pregnancy.

All employees have the right to 52 weeks maternity leave and you may qualify for maternity pay. See [Pregnant at work 2011](#), for more information on maternity leave, maternity pay and other rights and benefits.

### **What is pregnancy discrimination?**

The law says that it is sex discrimination to treat a woman less favourably on the grounds of her pregnancy or because she wants to take or has taken maternity leave (Sex Discrimination Act 1975 s3A). To show discrimination a woman does not have to compare herself to how a man might have been treated. She must show that 'but for' her pregnancy she would not have been dismissed or treated less favourably. All employees, casual workers, agency workers, freelancers and self-employed women are protected by sex discrimination law from day one of their employment.

Employees are also protected from detriment or dismissal on the grounds of pregnancy or maternity leave (Employment Rights Act 1996 s99 and Maternity and Parental Leave etc Regulations 1999 reg. 19). This protection applies to employees only from day one of their employment.

This information sheet covers discrimination during pregnancy. For information on your rights during maternity leave and on return to work see the information sheet

[Discrimination during maternity leave and on return to work](#).

Examples of less favourable treatment and detrimental treatment include selection for redundancy on the grounds of pregnancy, dismissal because of pregnancy, refusal of training or

promotion opportunities, reduction of pay or hours, pressure to resign and failure to carry out a risk assessment where there are health and safety risks.

The former Equal Opportunities Commission (now the Equalities and Human Rights Commission) conducted a formal investigation into pregnancy discrimination in 2005. Their final report found that the main areas of unfair treatment during pregnancy were denial of a pay increase, refusal of promotion, having to take lower-paid work, being excluded from training and refusal of time-off for ante-natal care. Women involved in the in-depth interviews experienced a wide range of negative treatment at work, ranging from more subtle changes in the attitudes of their colleagues and employers, to unfair selection for redundancy, dismissal, denial of promotion opportunities and sexual and verbal harassment. Many also reported enforced changes to their job during pregnancy.

### **When does pregnancy discrimination apply?**

You are protected against discrimination once your employer knows that you are pregnant. You do not have to inform your employer about your pregnancy until the 15<sup>th</sup> week before your baby is due when you have to give notice to take maternity leave. However, (aside from the fact that the pregnancy will probably be obvious later on anyway) you may need to tell your employer earlier in order to ask for a risk assessment or to take time off for antenatal care. Once you have told your employer of your pregnancy you are protected against unfair dismissal, unfair treatment and discrimination on the grounds of pregnancy.

There may be some circumstances in which you think that you have been discriminated against because your employer believed you were pregnant or assumed you were trying to get pregnant, for example, following a miscarriage or during fertility treatment. You would need to be able to show that the

treatment was connected with pregnancy and you should seek legal advice.

***I have been dismissed but my employer says that it is because of poor performance not pregnancy.***

An employer will rarely admit that an employee has been dismissed for being pregnant. There will be circumstances when a dismissal during pregnancy may be for fair reasons, such as gross misconduct or persistent poor performance. Except in the most serious cases of gross misconduct, the employer will be expected to have warned the employee and conducted a disciplinary hearing. However, if the dismissal or detrimental treatment is because of your pregnancy or for reasons connected to your pregnancy, such as pregnancy-related sickness absence, it is discriminatory. You are automatically entitled to written reasons if you are dismissed at any time during your pregnancy. If your employer fails to provide written reasons for your dismissal without a good reason, you can complain to a tribunal and can be awarded up to two weeks pay in compensation.

If you bring a tribunal claim for unfair dismissal and sex discrimination during pregnancy, your employer will have to prove that the dismissal was for a fair reason and not because of your pregnancy.

***I have been selected for redundancy because I am pregnant.***

You may have a claim for unfair dismissal and/or sex discrimination if you are selected for redundancy because of pregnancy or maternity leave. For full information about your rights, see [Redundancy during pregnancy and maternity leave](#).

Miss H was selected for redundancy from a pool of two administrators. She was offered an alternative part-time post but after a trial period she decided that it was not suitable. Her manager told her that she had been selected for redundancy because she needed to be more flexible and they thought that a part-time job would suit her better as she was having a baby. She brought a claim in a tribunal. The tribunal found that she had not been unfairly dismissed as her employer had followed a proper procedure but she won her claim for sex discrimination.

***My employer has reduced my shifts because of a downturn in work but no-one else has had their shifts reduced and it is going to affect my maternity pay.***

You may have a claim for discrimination and detrimental treatment if your employer is cutting your shifts because of your pregnancy or in order to avoid payment of Statutory Maternity Pay (SMP). There will be circumstances in which a genuine reduction in work will mean that an employer will have to reduce the amount of work offered to its employees but this must be done in a fair and non-discriminatory manner. You should speak to your employer about the reduction in your shifts and, if necessary, you can raise a formal grievance using your employer's grievance procedure.

If your pay is reduced during the calculation period for SMP, approximately eight weeks or two months before the 15th week before your baby is due, your SMP may be lower or you may not qualify for SMP at all (see [Common Maternity Pay Questions](#) for more information on maternity pay). If you do not qualify for SMP you can claim Maternity Allowance from the JobCentre Plus. If you think that your employer is deliberately reducing your workload to avoid having to pay SMP you can make a complaint to your local HM Revenue and Customs officer who will make a formal decision.

If you are unable to resolve the matter, you should seek legal advice. If you make a discrimination claim, you can also claim for loss of maternity pay.

Miss W worked about 13 hours a week (over two to three days) as a maid in a hotel. A roster was drawn up each week. She informed her employer that she was pregnant and took three days off sick. She was rostered to work for two weeks but, thereafter, was not rostered for any more work. The tribunal found that she had been treated less favourably because of her pregnancy. Her employer said that she was not rostered because there was not enough work available but the tribunal found that another employee had been allocated more than her usual contractual hours. *Walton v The Nottingham Gateway Hotel Ltd*, [2004] ET2600273/04.

***I have asked my employer if I can sit down more while I am working but they will not provide a chair.***

The Management of Health and Safety at Work Regulations 1999 require an employer to carry out a specific risk assessment for a pregnant employee. You should notify your employer in writing that you are pregnant and ask for a risk assessment. If you are concerned about your health and safety at work, you could discuss it with your midwife or GP and, if necessary ask for a letter to show your employer.

Your employer must look at any aspect of your working conditions that could affect your health and safety or your baby's. Your employer should take action to remove any risks or prevent your exposure to risks. If a risk remains, your employer should alter your working hours or conditions. If that is not possible you are entitled to suitable alternative work on similar terms and conditions or, if no work exists, you are entitled to suspension on full pay.

If your employer has not dealt with any health and safety issues adequately and you are forced to take sick leave your Statutory Maternity Pay may be reduced. If you do not qualify for SMP at all you should claim Maternity Allowance instead.

You may have a claim for sex discrimination if your employer refuses to carry out a risk

assessment if there are any health and safety risks that arise during your pregnancy.

Mrs H was a care assistant in a nursing home. Her job involved lifting elderly residents. She informed her employer that she was pregnant and needed a risk assessment. She provided a medical certificate stating that she should avoid heavy lifting. Her employer did not do a risk assessment but offered her a cleaner's job instead. The court decided that failure to do a risk assessment during pregnancy was sex discrimination. *Hardman v Mallon t/a Orchard Nursing Home* [2002] IRLR 516.

***My employer has complained about the amount of time off I am taking for my antenatal appointments.***

Time off for antenatal care can be a leading cause of resentment amongst colleagues and employers. However, it is important for yours and your baby's health that you see your medical practitioners at regular intervals so that any problems are picked up as early as possible. The amount of time off you need is a very individual matter and no two pregnancies are the same. It may help to give your employer as much notice as possible of your appointments, try to minimise disruption as much as you can and talk to your employer about how your work will be covered during your absences.

The law says that employees are entitled to reasonable paid time off for their antenatal care. Your employer cannot ask you to take appointments outside working hours. If you work part-time, you are still entitled to time off where your appointments fall during your working hours if this is unavoidable. You should do everything possible to minimise disruption to your working day by making appointments at a time that will reduce your absence from work but if you have no control over your appointments you are entitled to take a reasonable amount of time off for your antenatal care. This can include classes recommended by your midwife or GP.

***I have had to take a lot of sick leave during my pregnancy, can my employer dismiss me?***

No, it is automatic unfair dismissal and sex discrimination to dismiss a woman for a reason connected to her pregnancy. Your employer should record any pregnancy-related sickness absence separately from any other sickness absence. Pregnancy-related sickness absence should not be taken into account for redundancy or disciplinary matters. For full information on your rights to sick leave and pay, see [Sickness during pregnancy and maternity leave](#).

If you think that your sickness is being caused by your work conditions you should ask your employer for a risk assessment. Your employer should remove any risks to your health and safety and, if necessary, make changes to your working hours or conditions or offer you suitable alternative work.

***My employer has reduced my workload since I became pregnant and I feel that I am being sidelined.***

Less favourable treatment can include a wide range of behaviour, such as reducing an employee's workload or refusing certain projects or clients.

If your employer has reduced your workload because of your pregnancy you may have a claim for sex discrimination and detrimental treatment. Your employer may be cutting work for other reasons, for example, a genuine downturn in the work available but you should speak to your employer about the changes you have noticed and, if necessary, you may wish to raise a formal grievance.

In some circumstances, if your employers conduct is so bad that you feel unable to continue working, you could resign and claim constructive dismissal but you should get advice first as these can be difficult cases to bring.

A reduction in your work may mean that your pay is reduced during the calculation period

for Statutory Maternity Pay (SMP), for example, if you receive performance-related pay or are paid by commission. This could result in the amount of your SMP being reduced in the first six weeks week or that you do not earn enough to qualify for it at all. If you do not qualify for SMP, you can claim Maternity Allowance from your local JobCentre Plus. If you think that your employer reduced your work to avoid payment of SMP you should contact your local HM Revenue and Customs Officer for a formal decision. If you make a tribunal claim you can claim for loss of SMP. For more information, see [Common maternity pay questions](#).

***Ever since I became pregnant my manager has made my job difficult. What should I do?***

Unfortunately many women experience less favourable treatment after announcing their pregnancy at work. Less favourable treatment can include a range of behaviour, such as refusing training or promotion, making comments or assumptions or making the job more difficult. Many women who experience discrimination during their pregnancy are reluctant to make a complaint for fear of rocking the boat before their maternity leave or of jeopardising their return to work. However, if you feel that the treatment is related to your pregnancy, you can talk to your HR manager or union representative. If you want to take it further you can raise a grievance with your employer. If you are unable to solve the matter at work you should get legal advice, see 'Useful contacts' below.

Some women experience discrimination during maternity leave or on return to work, for example, changes to their job, demotion or refusal of flexible work. There is more information on your rights during maternity leave and on return to work in the information sheet *Discrimination during maternity leave and on return to work* which will be available shortly. You should bear in mind that there are strict time limits for making tribunal claims so you cannot always raise matters that arose during pregnancy at a later stage.

Mrs C advised her line manager of her pregnancy. Her manager began treating her less favourably throughout her pregnancy, forcing her to work long hours and sidelining her. Mrs C was reluctant to raise a complaint. However, on return from maternity leave, she made a flexible working request which her manager refused. She appealed against the refusal of flexible work and informed HR of the treatment to which she had been subjected during her pregnancy. Her line manager was reprimanded and her flexible working request was granted.

Refusal of a request for flexible work may be grounds for an indirect sex discrimination claim. For more information on flexible work and what to do if your request is refused, see [Child-friendly working hours](#).

#### **What can I do?**

If you believe that you have suffered less favourable treatment as a result of being pregnant, you should obtain legal advice as soon as possible. There are strict time limits for making discrimination and unfair dismissal claims.

You should ask your employer if they have a grievance procedure and raise a formal grievance. If you still cannot solve the problem, you may wish to start tribunal proceedings to be sure that you do not miss the time limit. You may be able to take the matter to mediation or to negotiate with your employer before your case reaches a tribunal hearing.

See the information sheet, [Dealing with pregnancy and maternity-related problems at work](#), for more on how to negotiate with your employer and how to bring a claim in a tribunal.

#### **Are there any other benefits I can claim?**

Once your baby is born you can claim Child Benefit. From April 2013, Child Benefit will not be payable to families with a higher rate tax payer. You may be able to claim Child Tax Credit and/or Working Tax Credit depending on your family income. For more

information and an application form, telephone the Tax Credit Helpline on 0845 300 3900.

If you or your partner are receiving Income Support, income-based Jobseekers Allowance or Child Tax Credit of more than the family element you may be entitled to a Sure Start Maternity Grant of £500 for your first child (or if there are no other children aged under 16 in your family). Claim on form SF100 (Sure Start), available from Jobcentre Plus offices, from 11 weeks before the baby is due until 3 months after the birth. See [Money for Parents and Babies](#) for more information on benefits.

Employment and Support Allowance is payable to people who cannot work because of illness or disability, see [www.direct.gov.uk/en/disabledpeople/financialsupport/esa](#)

## **Useful contacts**

### **Maternity Action**

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

### **ACAS**

Free employment law advice  
Telephone: 08457 47 47 47  
[www.acas.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](#).

### **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](#)

### **Department of Business, Innovation and Skills**

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

### **Equality and Human Rights Commission**

For information on sex discrimination see [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](#)

### **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](#)

*This information sheet was produced 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)