

January 2011

Redundancy during pregnancy and maternity leave – additional questions

We produced an information sheet, 'Redundancy during pregnancy and maternity leave', which outlines your legal rights. This information sheet answers some additional questions.

I am on maternity leave and my employer has just told me that they will have to make cutbacks. Where do I stand if I am likely to be made redundant?

Your employer will have to consider the pool of employees that will be selected for redundancy. Your employer will also have to consider what selection criteria will be used and they must ensure that the selection is carried out objectively and fairly and is non-discriminatory. For example, your employer must not include pregnancy-related sickness absence or absence on maternity leave.

If your employer is planning to make more than 20 employees redundant within a period of 90 days, they should carry out a collective consultation with the union or elected representatives of the affected employees. Your employer should also consult individually with all employees who may be faced with redundancy, regardless of the number of employees to be made redundant. If you are one of the employees affected, your employer should consult with you during your maternity leave. Failure to consult could be sex discrimination.

The consultation process should look at ways of avoiding redundancies, reducing the number of redundancies and minimising the effects of redundancy. For example, your employer could ask for volunteers for redundancy and look at redeployment or retraining opportunities.

If you are facing redundancy during your maternity leave, Regulation 10 of the Maternity and Parental Leave Regulations 1999 says that if there is a suitable alternative job it should be offered to you as you are on maternity leave. Failure to do so could be automatic unfair dismissal.

I am on maternity leave and my job is going. My employer says that when I return from leave I can apply for other jobs.

If you have been selected for redundancy during your maternity leave your employer needs to make it clear when the redundancy takes effect. You are entitled to the minimum statutory notice period or the notice period provided in your contract of employment – see the information sheet on Redundancy. Your employment (and maternity leave) will come to an end at the end of the notice period. If there are any suitable alternative jobs available at any time up to the end of your employment contract you are entitled to be offered a job during your maternity leave and you are not expected to have to apply or attend interviews.

If there are other suitable alternative jobs, Regulation 10 of the Maternity and Parental Leave Regulations 1999 gives employees who are made redundant during either their ordinary or additional maternity leave the right to be offered one of the jobs. Any suitable alternative jobs must be offered to the employee on maternity leave under a new contract that begins on the day immediately following the day on which the previous contract came to an end. Some employers may not be aware of the law on redundancy during maternity leave, so you could give them a copy of the Redundancy information sheet.

If you are made redundant during ordinary or additional maternity leave, you may have a claim for unfair dismissal if your employer fails to offer you one of the suitable alternative jobs. If you and your employer cannot agree about the suitable alternative work it will be up to an employment tribunal to decide whether the employer was reasonable in refusing to offer suitable alternative employment, or whether the alternative employment was 'suitable' or whether the employee was reasonable to refuse an offer of alternative work.

If your redundancy is not going to take effect until after the end of your maternity leave, you will not be protected by regulation 10. However, if your employer delayed your

redundancy until after the end of your maternity leave, in order to avoid giving you alternative work, you may have a claim for unfair dismissal and should seek advice.

I am on maternity leave and my employer is reducing the number of staff. Staff have been told that they must apply for one of the positions.

If your employer is restructuring or reorganising the workplace without reducing the number of staff, there may not be a redundancy situation. Nonetheless, employers should consult with all employees affected, including women on maternity leave. At the end of ordinary maternity leave, you are entitled to return to the same job on the same terms and conditions. If you are returning after additional maternity leave, you are entitled to return to the same job but, if it is not reasonably practicable, your employer can offer you a suitable alternative job. If your employer is reorganising or restructuring the workplace, it will be up to you and other employees to agree the changes.

If your employer is reducing the number of staff there will be a redundancy situation. A redundancy is where the workplace closes down temporarily or permanently or the workplace moves and you cannot get to the new place of work or fewer employees are required for existing work. If you are one of the employees facing redundancy, you do not have to apply for suitable alternative work if you are on maternity leave. Under regulation 10 of the Maternity and Parental Leave Regulations 1999, you are entitled to be offered a suitable alternative post (if any exist) and the redundancy takes effect during your ordinary or additional maternity leave. This is because women on maternity leave may not be able to apply for jobs or attend interviews when they are about to give birth or at home with a small baby. They may also be at a disadvantage because they have been out of the workplace for some time.

If you are affected by any of the issues above, you should seek advice about your individual circumstances from any of the organisations listed in our information sheet

on redundancy. Give your employer or union representative a copy of our information sheet and point out that you are protected by regulation 10. If you think your employer is trying to avoid giving you suitable alternative work you should seek legal advice.

This information sheet was produced by Maternity Action in January 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](#) – 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