



Pregnancy and maternity discrimination: extending redundancy protection for women and new parents

Department of Business, Energy & Industrial Strategy consultation
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PREGNANCY AND MATERNITY DISCRIMINATION

Question 1: To what extent do you agree that protections against redundancy for a period following return to work should be aligned with those already in place during maternity leave?

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

Strongly agree

Question 2: Please give reasons for your answer

The evidence suggests that many women are dismissed on or shortly after their return to work from maternity leave.

Redundancy is a permitted reason for termination with no requirement to prioritise the returning employee in terms of suitable alternative employment (SAE) where the decision to make the role redundant is taken after the end of maternity leave.

Extending the protection and the right to be offered SAE for a period after maternity leave ends, may have two key benefits for the employee;

1. Practical Benefits

In pure practical terms, an extended period of protection gives returning employees more time back in the workplace to re-establish themselves with their employer. After being absent from the workplace for up to a year returning employee will benefit from a period during which they can transition back into work, build their confidence and update their skills. Women returning are generally at a disadvantage as compared to other employees who have not been absent, in terms of finding alternative employment in the event of a redundancy situation. Extending the period of protection so that they have the right to be offered SAE will assist in addressing that disadvantage.

Returning to work after maternity leave can be daunting and this extension would allow for a period of readjustment. Returning employees may also require more flexibility at least during a short period following their return (for childcare reasons), which may be more difficult to secure if they are compelled to look for alternative employment.

2. Cultural Change

An extended period of protection can also assist with rebuilding an employer's confidence in the returning employee. In our experience some employers do have a negative perception of employees returning from maternity leave, typically this relates to concerns regarding the contribution those employees may be able to make on their return and/or the flexibility they may require. In some cases, employers have put in place cover or alternative working arrangements during the maternity absence which they would prefer to retain.

Extending the period of protection may discourage employers who may resort to using redundancy as a pretext for preventing the employee from returning and go some way to combatting a perception/concern, regarding a reduced contribution to the business and/or the problems of meeting requests for flexibility.

Other Measures;

In our experience women who have been discriminated against on the grounds of pregnancy/maternity leave find it difficult to access justice during the period of maternity leave. The demands, both practical and emotional of a new baby make it very difficult for most women during the maternity leave period, to consider bringing a claim to enforce their rights. For that reason, we would propose an extension of the time limit for issuing a claim during maternity leave. We have been involved in a number of cases where women have expressed profound distress because they are having to take action to protect their legal position when they want to and should be enjoying time with their new baby – it is a concern that new mothers have to deal with the distraction, stress and anxiety of litigation during this period in order to enforce their rights. We are cognisant of the difficulties this may place on employers and consideration should perhaps be given to requiring the employee on maternity leave to register a complaint with ACAS within a prescribed time frame perhaps within 3 months of the alleged discrimination which would then trigger an extension and perhaps an extended period of conciliation to the end of the

maternity leave period (allowing the employer to preserve evidence/take witness statements/investigate internally).

Question 3: What costs do you believe the extension would bring

a) For individuals – *None identified*

b) For businesses - *The cost of updating policies and retraining HR professionals and other decision makers.*

Question 4: What benefits do you believe the extension would bring

a) For individuals – *Increased protection; deterring discrimination and supporting more a transition back into work.*

b) For businesses- *improving workplace diversity and being an employer of choice by supporting women returning to work. Supporting mothers benefits the employer directly in terms of retaining talent. Benefits also include reducing costs and management time which may otherwise be spent dealing with grievances and/or litigation and the risk to reputational damage.*

Question 5: Do you agree that 6 months would be an adequate period of “return to work” for redundancy protection purposes?

Yes

Question 6: Please give reasons for your answers

6 months sends a strong message to employers. We considered whether 3 months may be sufficient however the risk is that employers may simply wait until this after this relatively short period, and then seek to make the employee's role redundant, putting in place only interim measures in the meantime. 6 months is long enough for employers to take a more committed view and implement long term strategies to support the employees return.

Question 7: If you think a different period of “return to work” would work better, please say what that should be and explain why

N/A

Question 8: Should pregnancy for redundancy protection purposes be defined as starting at the point a woman informs her employer that she is pregnant in writing?

Strongly agree

Question 9: Do you think a different reference point should be used?

No

Question 10: If yes, please say what that should be and explain why

Question 11: Do you agree that the most direct equivalents to return to work from statutory maternity leave (on the basis that they are forms of leave that can potentially be taken by parent of either gender for longer periods) are:

- a) adoption leave (yes / no)
- b) shared parental leave (yes / no)
- c) longer periods of parental leave* (yes / no)
- d) Other

Question 12: If other, please explain your reasons.

Question 13: Supposing that the additional redundancy protection afforded by MAPLE is extended to mothers returning to work after maternity

leave, to what extent do you agree that the same protection should be extended to those groups?

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

Strongly agree

Question 14: Please explain the reasons for your answer.

In the interests of promoting equality in the workforce the same protection should apply for all types of leave. There is evidence to suggest that employees are reluctant to take shared parental leave for fear of it being career limiting. To have two different types of protection may also be confusing for employer – there is a benefit in having legislation aligned in practical terms in addition to the more fundamental benefit in promoting and supporting equality in the workplace.

Question 15: Are there other forms of leave which should be considered for additional redundancy protection on return to work?

No

Question 16: Please give your reasons.

Parental leave is unpaid. You are entitled to 18 weeks' leave for each child and adopted child, up to their 18th birthday. The limit on how much parental leave each parent can take in a year is 4 weeks for each child (unless the employer agrees otherwise).

Question 17: How effective have these steps been in achieving their objective of informing pregnant women and new mothers of their employment rights?

Very effective / fairly effective / not very effective / not at all effective /

Question 18: Please give your reasons.

In our experience women often have some understanding however generally the view of both employees and some employers is that the law is complex.

Question 19: How effective have these steps been in achieving their objective of informing employers of their rights and obligations in relation to pregnant women and new mothers?

Very effective / fairly effective / not very effective / not at all effective /

Question 20: Please give your reasons.

There is significant information available through various sources including ACAS and government websites.

Question 21: How do you think these steps might be improved?

See below.

Question 22: Please outline any further steps which should be taken to provide advice and guidance to employees and employers about the employment rights of pregnant women and new mothers and employers' obligations towards them.

We would suggest a recommendation that employers when notified of an employee's pregnancy, provide the employee with a document setting out certain fundamental rights to include information about the protection afforded under MAPLE. We discussed making this a legal requirement with a financial penalty however considered that the preferred approach may be to make it a recommendation with this being a factor a tribunal could take into account in determining whether there has been discrimination, including the possibility of drawing an inference where the information has not been provided.

Question 23: If further steps should be taken, who is best placed to take that action?

Employers.

Other suggestions to increase protection in this area;

A specific statutory questionnaire procedure to encourage more transparency (this may assist with obtaining information for example around alternative employment and disputes over whether alternative roles qualify as SAE): Government to introduce and employers to provide the information within a prescribed time frame with tribunal able to draw an inference if information is not provided or replies are evasive or incorrect.