



BIRMINGHAM LAW SOCIETY
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**Consultation response to the Gov.uk's Make
Work Pay: Enhanced dismissal protections for
Pregnant Women and New Mothers**

January 2026

Response of the Employment Law Committee of the Birmingham Law Society to consultation on leave for bereavement including pregnancy loss.

This response has been prepared by the Employment Law Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Employment Law Committee whose members include specialists in employment law from all branches of the legal profession.

Make Work Pay consultation: Enhanced dismissal protections for pregnant women and new mothers

Question 7: In your view, how common are concerns or complaints related to unfair dismissal or treatment during pregnancy?

[Choices: Very common, Common, Occasional, Rare, Non-existent, Don't know. If relevant, please provide any further detail that supports your answer. If you are aware of any direct evidence of discrimination and unfair treatment, please provide a summary of that evidence or a link to where it is published.]

- Based on our experience, concerns related to unfair dismissal or unfavourable treatment during pregnancy are raised occasionally. We see more concerns raised either informally or through employer internal procedurals (e.g. grievance procedures) than at Tribunal. We believe this is likely due to concerns about the complexity and length of the Tribunal process and competing demands with young children. We do not have much visibility of concerns or complaints which are not formalised. We do see a correlation between pregnancy and redundancy dismissals.
- We do not have access to direct evidence reflecting the above (other than Tribunal statistics available publicly). This answer is based upon our collective experience only.

Question 8: In your view, how common are concerns or complaints related to unfair dismissal or treatment during new motherhood (i.e. on Maternity Leave or when recently returned to work).

[Choices: Very common, Common, Occasional, Rare, Non-existent, Don't know. If relevant, please provide any further detail that supports your answer. If you are aware of any direct evidence of discrimination and unfair treatment, please provide a summary of that evidence or a link to where it is published.]

- Based on our experience, concerns or complaints about unfair dismissal or unfavourable treatment during new motherhood are raised occasionally. The points made in response to question 7 apply equally to this question.
- We do not have access to direct evidence reflecting the above (other than Tribunal statistics available publicly). This answer is based upon our collective experience only.

Question 9: In general, when do you think pregnant women and new mothers are at most risk of unfair treatment?

[Choices: During pregnancy, During Maternity Leave, Soon after they have returned to work (e.g. within six months of returning), Some time after they have returned to work (e.g. after six months of returning), Other, Don't know. If relevant, please explain your answer and any supportive data/ evidence.]

- We believe pregnant women and new mothers are at most risk of unfair treatment (1) during maternity leave; and (2) some time after they have returned to work (e.g. after six months of returning) for the following reasons. In terms of junior employees, we believe they are at most risk during pregnancy, whereas with senior employees after they have returned to work.

- Most employers are aware of, and tend to be mindful of, the protections for pregnant workers. Many employers have standardised processes, such as for conducting health and safety risk assessments, to ensure compliance. Furthermore, most pregnant workers remain visible in the workplace until they go on maternity leave, so they are not “forgotten” or overlooked when discussing important business or work changes.
- When new mothers are on maternity leave, we feel this is where they are at greater risk of unfair treatment. This is because they are not visible in the workplace and so, in our experience, can be overlooked when a business is making decisions (e.g. around future work allocation, promotions and sometimes redundancies). Although not commonplace, as employees on family leave are not visible in the workplace, employers can easily forget to send them details of current vacancies or details of events which may limit their future employment potential. Furthermore, in our experience, some employers become confused as to how to structure and pay benefits, pension contributions and incentives for those on maternity leave – which can inadvertently lead to unfair treatment.
- Where the employer has hired maternity cover or others have taken over duties, there is also a greater risk of unfair treatment if the employer would prefer to retain the maternity cover or if they do not wish to re-distribute duties back to the employee who has taken maternity leave – which may, again, limit employment potential. These discussions and decisions often take place before the employee returns.
- We also believe that new mothers are at greater risk of unfair treatment some time after they return to work (e.g. after six months). At this point in time, they will have been thought to have “settled back in,” any leeway or informal adjustments (not required under EqA 2010) are likely to have reduced and many will have full workloads. However:
 - In some cases, their physical and mental health may not have reverted back to pre-pregnancy status. This will vary from individual to individual. Some employees may still be breastfeeding. Some may also be suffering from post-partum depression or anxiety (whether diagnosed or undiagnosed).
 - They will still have a young child under two who needs lots of care. Some may not be sleeping through the night (which may affect the mother’s health and concentration and increase the risk of “burn out”). Young children at nursery or other childcare settings also fall ill regularly due to their immature immune systems.
 - This can all have an impact on a new mother’s productivity, attendance levels and ability to take on a higher workload. Some employers are mindful of the additional pressures. However, we feel there is the greatest risk of unfair treatment at the later stage when the new mother has been back for a while and is expected to work at pre-pregnancy standards. We would highlight that these same points apply equally to

other new parents (and not just new mothers) and also apply to carers of dependant children or relatives.

- We do not have access to direct evidence reflecting the above. This answer is based upon our collective experience only.

Question 10. In general, when do you think pregnant women and new mothers are at most risk of dismissal? (Please select all that apply)

[Choices; During pregnancy, During Maternity Leave, Soon after they have returned to work (e.g. within six months of returning), some time after they have returned to work (e.g. after six months of returning), other, don't know. If relevant, please explain your answer and provide any supportive data/evidence.]

- We believe that pregnant women and new mothers are at most risk of dismissal some time after they have returned to work. The points made in respect of question 9 apply equally here.
- Furthermore, line managers are often mindful of protections upon a return to work. However, some may feel that, if time has elapsed since the return to work, it will be more difficult for the employee to argue that any dismissal is discriminatory.
- We do not have access to direct evidence reflecting the above. This answer is based upon our collective experience only.

Question 11. What impact have the 2023/24 extended redundancy protections for pregnant women and new mothers had on how pregnant women and new mothers are treated in the workplace?

[Choices: Positive, Negative, Negligible, Don't Know. If relevant, please explain your answer and any supportive data/ evidence.]

There is a positive impact as employers are factoring the extended redundancy protections into their restructuring proposals.

Question 12. What kind of test should be used to assess whether a pregnant woman or new mother was fairly dismissed during the protected period?

[Choices: A. Replace the current 'range of reasonable responses' test for fairness with a new stricter standard that employers must meet, alongside proving a fair reason. B. Narrow the scope of the existing five fair reasons, and/or remove some of them altogether. C. Other D. Don't know. If relevant, provide an explanation for your answer.]

- Replace the current “range of reasonable responses” test for fairness with a new stricter standard that employers must meet, alongside proving a fair reason with a presumption that the dismissal is unfair unless the employer can rebut it.
- We feel that narrowing the scope of, or removing some of, the fair reasons for dismissal for pregnant and new mothers is not ideal. It is likely to be confusing for employers and may restrict their ability to run a business profitability and to the required standard (particularly for smaller employers). We agree with the

point in the consultation that this could inadvertently lead to employers being less willing to employ those of childbearing age.

- It also presents difficulties for employers in relation to conduct or issues which have occurred before the protected period but continue throughout the protected period (e.g. as per the examples in paragraphs 41 and 45 of the consultation document).
- Furthermore, narrowing scope or limiting the fair reasons could also lead to employers attempting to “manufacture” or shoe horn reasons for dismissal to ensure that this fits within the narrowed scope. For example, if an employer wished to dismiss a new mother for poor performance during the protected period but “capability” was removed as a fair reason, we may see some employers attempt to argue that the employee had instead committed misconduct (e.g. by refusing to follow a reasonable request).

Question 13. If ‘A’ to question 12, what should that new test be? (Please select all that apply)

[Choices: A. Continuing the employment of the pregnant woman or new mother would have a significantly detrimental effect on the business. B. Continuing the employment of the pregnant woman or new mother poses a health and safety risk to customers, staff, or the public. C. Continuing the employment of the pregnant woman or new mother has a serious negative impact on the wellbeing of others. D. Other. E. Don’t know. If relevant, please explain your answer.]

- We think the best way to structure this would be a combination of the tests set out in A, B and C. So for example, the new test would be:
 - There was a fair reason;
 - The employer followed a fair procedure; and
 - Where the dismissal is for an employee in the protected period, [for any reason apart from redundancy given extended protection exists], continuing the employment of the employee would:
 - have a significantly detrimental impact on the profitability, financial viability or operation of business; and/or
 - pose a serious health and safety risk to customers, staff or any other third party; and/or
 - have a serious negative impact on the wellbeing of others; and/or
 - amount to a breach of immigration law, working time legislation or other right to work legislation [new ground suggested]; and/or
- This will allow sufficient flexibility for employers so as not to impede the making of difficult but necessary business decisions whilst also providing a

suitable level of protection during the protected period. To help prevent abuse, we recommend producing statutory guidance on how each of these grounds should be interpreted (with illustrative examples).

[We have not answered Questions 14 to 18 as they only require a response is Option B is selected to Question 12.]

Question 19. When should employees be entitled to the enhanced dismissal protections?

[Choices: A. When the employment relationship begins (when they agree with an employer that they'll start work for them, e.g. when a contract is signed). B. From the day they start work. C. After an initial period of employment of between 3-9 months, aligned with a typical probation period. D. Other – please specify. If relevant, please explain your answer.]

- We think this should begin from the day the employee starts work, to mirror the other protections during the protected period.
- In our experience, most responsible employers would not seek to dismiss during the probationary period when made aware that the employee is pregnant (from both a legal risk and wellbeing perspective). Concerns about pay could potentially be mitigated by introducing qualifying periods of service for enhanced pay in maternity policies.

Question 20. At what point should the enhanced dismissal protections start for pregnant women?

[Choices: A. When the employee becomes pregnant. B. When the employee becomes aware that she is pregnant. C. When an employee informs her employer that she is pregnant. D. Other - please specify. If relevant, please explain your answer.]

- When an employee informs her employer she is pregnant. We do not think it would be fair to employers to impose these additional protections before the employer is aware of the pregnancy. As set out in the consultation document, this could lead to a situation of the employer being liable for unfair dismissal without knowing they needed to comply with the additional test.
- We feel that the challenges and burdens for employers in having an earlier start point outweigh the risk to pregnant employees in this case. However, we suggest that any guidance recommends employers seek medical advice if an employee is experiencing (and the employer is aware of) unusual medical symptoms which could impact the employee's attendance, performance or conduct (which is best practice in any event).

Question 21. When should the protection 'window' for new mothers entitled to maternity leave end?

[Choices: A. 18 months from the birth of the child – aligning with the 2023/24 redundancy protections. B. Six months from the return to work (the "return to work" being the end of the Maternity Leave Period). C. Don't know.]

- We believe this should be 18 months from the birth of the child (aligning with the 2023/24 redundancy protections). This would ensure that all new mothers

are on an even footing and would not penalise those who had to go back to work earlier (e.g. for financial reasons).

- Although this may be slightly more burdensome on employers (due to the calculations needed), we feel it is a fairer approach overall and would help avoid confusion over two definitions of protected period.

Question 22. Should women who are not entitled to Maternity Leave have protection against dismissal for two weeks after the end of their pregnancy?

[Choices. A. Yes. B. No – please explain your answer. C. Other – please explain your answer. D. Don't know.]

- Yes.

[Not responding to Questions 23 to 25, as indicated.]

Question 26. Do you think that parents who take long, family leave entitlements (i.e. Adoption Leave, Shared Parental Leave or Neonatal Care Leave) are vulnerable in a dismissal situation?

[Choices: Yes, No or Don't Know. If relevant, please explain your answer and provide any supportive data/evidence.]

- In our opinion, yes they could be vulnerable in a similar way to new mothers. However, in lesser numbers.
- We do not have access to evidence for the above. Our answer reflects our collective opinion only.

Question 27. Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave? (Please select all that apply):

[Choices: A. Adoption Leave. B. Shared Parental Leave. C. Neonatal Care Leave. D. Bereaved Partner's Paternity Leave.]

- Yes, in principle. Although additional thought and guidance would need to be given as there are distinctions between the different types of leave – e.g. what about discontinuous shared parental leave?
- As covered in the question, we do not believe that the enhanced dismissal protections should extend to those taking short term family leave (e.g. paternity leave). However, if paternity leave is extended as part of the wider family leave review, consideration should be given as to whether the enhanced dismissal protection should be extended further.

Question 28. Thinking about your answer to question 27, should the protection against dismissal start from the first day of the leave?

[Choices: A. Yes; B. No, C. Don't know. D. Other – please specify. If relevant, please explain your answer.]

- Yes, but thought will need to be given to discontinuous periods of leave.

Question 29: Thinking about your answer to question 28, how long should the protection against dismissal last? (Please select all that apply)

[Choices: A. For Adoption Leave, it should follow on from the approach of the enhanced redundancy protections for Adoption Leave (i.e. 18 months from the birth of the child/placement for adoption or entry into Great Britain). B. For Shared Parental Leave, Neonatal Care Leave and Bereaved Partner's Paternity Leave, it should follow on from the approach of the enhanced redundancy protections for Shared Parental Leave and Neonatal Care Leave (i.e. if the employee takes less than six weeks of continuous leave, the protection ends on the last day of the leave; if they take more than six weeks of continuous leave, the protection ends 18 months from the birth of the child/placement for adoption or entry into Great Britain). C. Other – please explain your answer.]

- A and B – provided these are similar to the approach taken in maternity cases.

Question 30. How do we ensure women, including those from minority groups, are aware of the enhanced dismissal protections for pregnant women and new mothers? (Please select all that apply)

[Choices: A. Through intermediaries / trade unions / advice organisations (e.g. Pregnant then Screwed, Maternity Action, Working Families). B. Clear information in onboarding and employee handbooks. C. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive). E. Other - please specify. Please explain your answer – we welcome separate detail on how women from minority groups can be made aware as part of your answer.]

- Other – may we suggest that a fact sheet of this information is provided to all pregnant individuals by the health visiting service or community midwives? This will help ensure it reaches the maximum numbers of pregnant individuals, without placing a further burden on employers.
- Intermediaries may be useful but are likely to reach a smaller group. Information at onboarding or employee handbooks is not ideal as it will place an additional burden on employers and will often be forgotten by employees later down the line.

Question 31. How do we ensure employers are aware of this change?

[Choices: A. Through intermediaries / advice organisations (e.g. business groups). B. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive). C. Other - please specify.]

- A combination would be useful. Particular engagement with sector specific organisations may also be helpful (e.g. NHS Employers).

Question 32. How can we best support businesses, including smaller businesses, through this change and to avoid disputes escalating to the Employment Tribunal? (Please select all that apply)

[Choices: A. Clear guidance. B. Awareness raising campaign. C. Employer training / webinars / workshops. D. Templates / model policies / checklists. E. Free advice routes. F. More information about dispute resolution (e.g. Acas early conciliation). F. Other - please specify. Please explain your answer.]

- Our suggestion would be clear guidance (with illustrative examples), employer training videos (which could be used by smaller employers to train line managers) and template policies/ checklists.

Question 33.: What unintended consequences, if any, do you think could arise from the enhanced dismissal protections? (Please select all that apply)

[Choices: A. Increased discrimination – hesitancy in or avoiding hiring women of childbearing age. B. Negative perception of workplace fairness/culture. C. Employers delay dismissal decisions until after protection period lapses. D. Negative impact on hiring generally. E. Legal uncertainty - employers avoid fair dismissal due to risk. F. Administrative burden (e.g. additional documentation). G. Unsustainable or unrealistic asks on small businesses. G. Other - please specify. H. None. Please explain your answer.]

- The main unintended consequences we feel could arise would be A, B (if protection only available to maternity returners and not other types of leave), C and G. However, we feel these could be mitigated by clear guidance and helpful illustrative examples.

Question 34: What unintended consequences, if any, do you think could arise if the policy were to exclude capability and SOSR as fair reasons to dismiss a pregnant woman or new mother (paragraph 36)? Please explain your answer.

- If capability was excluded, it would leave employers in difficult situations operationally and financially if an employee is unwell and unfit to return to work. Employers would have to wait for a long period to be in a position to fairly dismiss on capability grounds.
- It may also lead to reluctance to hire employees of childbearing age if unable to dismiss for these reasons. Poor performance would be a particular concern.

Question 35: What action(s) could be taken to mitigate against any unintended consequences? (Please select all that apply)

[Choices: A. Clear guidance. B. Training and support for employers. C. Other - please specify. D. None.]

- A combination of A. and B.

Question 36 (optional). What do you think are the main causes of pregnancy and

maternity discrimination? (Please select all that apply)

[Choices; A. Lack of awareness. B. Negative attitudes or bias. C. Cost and operational pressures. D. Fear of legal risk or complexity. E. Poor communication (e.g. during Maternity Leave). F. Other - please specify. Please explain your answer and provide any supportive data/evidence.]

- In our experience, this would be lack of awareness, negative attitudes, cost and operational pressures and poor communication.

- We do not have evidence in support of the above. This response is based on our collective experience only.

Question 37 (optional): What other changes should the government prioritise to tackle pregnancy and maternity discrimination? Please explain your answer and provide any supportive data/evidence.

- *Training support for employers to send to line managers*

Birmingham Law Society's Employment Law Committee

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