

# Pregnant Employees Good Employer Practice

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# Pregnant Employees: Good Employer Practice

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## Introduction

In recent decades, women's participation in the labour market has increased considerably and has come close to men's. This rise is particularly evident among mothers of dependent children, who are more often returning to work after childbirth (Dench et al., 2002).

Because of this change in the labour market, interest in the area of women in the workplace and, in particular, in how to avoid pregnancy discrimination has risen. Research indicates that many pregnant women face disadvantage at work, even with the protection of legislation.

This paper aims to: provide recommendations on the basis of current research; highlight the implications for employers; provide a summary of good practice for managing pregnant employees; and give details of how employers can avoid unintentional discrimination.

## Recent research

In September 2003, the Equal Opportunities Commission (EOC) launched a general formal investigation to examine pregnancy-related discrimination in Britain. As part of this investigation, IES was commissioned to conduct in-depth interviews with women who had faced some form of pregnancy-related discrimination in the workplace (Davis et al., 2004). Some individuals had pursued their complaint to an employment tribunal. As well as the in-depth interviews, focus groups took place with women who had recently had a baby and were in work at the time of their pregnancy.

The overall aims of the study were to:

- reach a greater understanding of the incidents, costs and causes of pregnancy-related discrimination and disadvantage to employment
- investigate the effectiveness of the legal framework
- investigate the cost to individuals, employers and to the economy in general
- find out the extent of women's awareness of the law and their access to advice and redress
- make and widely publicise recommendations to help reduce the problems, with follow-up work as necessary.

## Key findings

- The research implies that pregnancy-related discrimination is seen, by those who experience it, as a result of problems with an individual manager or colleague rather than an organisational or society-wide problem.
- There is evidence that employers and employees may be poorly informed about pregnancy-related rights, indicating that greater publicity about these rights could be beneficial.
- There is also evidence of poor employer practice in carrying out risk assessments.
- Only a small proportion of women who face difficulties take proceedings against their employer. This is mainly because of other pressures at the time (ie pregnancy) and a concern that action may affect their work reputation, rather than the quality or availability of suitable advice.
- Negative treatment at work appears to affect women both at the time and in their future attachment to the labour market.
- There is some evidence that women who have experienced pregnancy-related discrimination are less likely to go back to their old employer, with some women less likely to return to work at all.
- Although the research was conducted with women from a wide range of backgrounds and social groups, the experiences reported were largely similar.

On top of these findings, the EOC commissioned an omnibus survey (2005) which investigated attitudes and opinions surrounding pregnancy discrimination. The results suggested that the majority of people (58 per cent of women and 60 per cent of men) felt that problems at work were common for pregnant women and that it was an issue which affected everyone (69 per cent). A high percentage (79 per cent) wished it was easier for new fathers to take time off to spend with their children. A total of 87 per cent agreed that Britain should look after pregnant women at work because the economy needs their skills and expertise, and 90 per cent of respondents agreed that women should not be penalised for being pregnant.

## The benefits to employees and employers

Various research studies have looked into the benefits to employers and employees of putting in place family-friendly policies. Other research has investigated the direct and indirect costs of replacing staff when women decide to leave.

In a 2002 IRS study, organisations stated that compliance with the law was the main reason for providing family leave (93 per cent). Other reasons were: to help maintain effective equal opportunities (78 per cent), to enhance the image of the organisation (69 per cent), to help recruit/retain skilled workers (62 per cent) and to reduce absenteeism (46 per cent).

The research concluded that, although there were drawbacks for companies, they did benefit from providing working parents with time off. This practice helped to recruit and retain staff in a competitive labour market, as well as encouraging equality of opportunity.

A further IES study conducted by Bevan et al., (1999) commissioned by the Department for Education and Employment, identified many family-friendly policies and practices in place within small and medium-sized organisations. These were:

- childcare allowances
- paid family, 'special' or carer leave
- paid paternity leave
- enhanced maternity leave and benefits
- phased return from maternity leave
- job sharing
- flexible starting and finishing times
- voluntary reduced hours worked
- unpaid leave during school holidays
- family access to learning resources
- childcare voucher schemes
- guaranteed Christmas leave for employees with families
- home working and telephone working arrangements.

The research found evidence that organisations benefit in the following ways from putting in place family-friendly employment practices.

- Reduced causal sickness absence – employees felt able to be more honest about their absence. This led to fewer days lost, which cut direct and indirect costs to organisations.
- Improved retention – organisations recognised that some people stayed with them longer because of family-friendly practices. There were financial benefits to the business in retaining staff and avoiding training new employees.
- Improved productivity – organisations felt that employees working flexible hours were more productive than those working traditional hours.
- Improved recruitment – family-friendly practices were positively considered by potential recruits when assessing vacancies and job offers.

- Improved morale and commitment – family-friendly practices improved morale and commitment among employees with caring responsibilities.

A Department of Trade and Industry study (DTI, 2000) found that 78 per cent of employers identified benefits in offering flexible working and leave arrangements. Most frequently mentioned were employee morale and good employee-management relations. Improvements in sickness absence, recruitment and retention were also mentioned.

When women decide to leave employment, in most cases, there are a variety of costs to the employer. IES research by Bevan (1990) identified four main groups of costs:

- administrative costs of separation such as pensions, payroll and exit interviews
- temporary replacement costs such as overtime for other members of staff who are covering the position
- recruitment and selection costs, both direct and indirect (eg management time)
- induction and training costs, both direct and indirect (eg paying wages during the initial unproductive stages of work).

Opportunity Now (1999) calculates that the cost of replacing an employee can be up to 50 per cent of their annual salary (cited in Women and Equality Unit, 2001). A survey by the Chartered Institute of Personnel and Development (2000) estimated that the average recruitment cost is £3,500. Higher costs are also associated with higher qualified employees; these are estimated at over £5,000 for a professional employee, falling to £1,000 for an unskilled manual worker.

As well as recruitment and replacement costs, particular industries may suffer a loss of investment. This is particularly true for highly skilled jobs or those of a specialist nature, although there are associated costs with all type of occupations. The Department of Health (1998) estimates a loss of £200,000 if a doctor leaves, £34,000 if a nurse goes and £22,000 for a physiotherapist. Margaret Jay, Minister for Women (2000) states that:

*'Women have invaluable skills that are essential to the success of the UK plc and shouldn't be ignored'.*

In summary, when an employee leaves an organisation the employer suffers financial loss including leaving costs, replacement costs and loss of investment. These costs to an organisation, along with the potential benefits of providing family-friendly employment practices, should encourage organisations to adopt good practices to keep women in their employment.

## Best practice

Pregnancy is not an illness, and pregnant women are not any less committed to their jobs or less capable of doing them. However, pregnancy affects women differently



and the effects change throughout the term of the pregnancy. To help employers deal well with pregnancy the EOC (2005) has provided extensive guidance outlined below.

## What employers should do

- Treat the pregnant employee the same way as before and the same as other employees.
- Assess health and safety risks that could affect the health of the employee or her unborn child. Take action where hazards are identified.
- Provide information about maternity leave, pay and returning to work.
- Allow time off for antenatal care appointments. This includes parentcraft and relaxation classes as well as medical checks throughout the pregnancy.
- After the first appointment, employers could request a medical certificate confirming pregnancy and written confirmation of the next appointment date.
- Provide the same terms and conditions of employment as before.
- Maintain the same attitude towards her, ensure staff and managers do not make discriminatory assumptions.
- Provide the same opportunities as other staff; this includes training, career development, appraisals, promotion, pay rises and bonus or performance pay.
- If redundancy arises then the normal redundancy procedure should be followed to decide who is made redundant.
- Ensure, if she is selected for redundancy, that you offer her a suitable alternative; if this is not available then provide the same level of redundancy pay as other colleagues.
- Special protection from unfair dismissal applies to pregnancy, and this also covers absence for pregnancy-related sickness. So follow normal sick pay and sick leave procedure unless it would normally result in dismissal.
- Treat a woman on maternity leave the same as all other employees during a reorganisation. She should be kept informed and consulted about her preference.
- Assess the health and safety of employees who have recently given birth and take action where hazards are identified.
- For a breast-feeding employee provide rest periods and comfortable, private facilities where she can express milk. Access to a refrigerator should also be provided to safely store the milk. If she is using a workplace nursery provide rest periods and a private room where she can breast-feed the baby.

- Consider carefully requests to change working hours or shift patterns. Be willing to look at reorganisation with other staff, recruiting part-time staff and job sharing to cover responsibilities.
- Ensure she is made to feel welcome on her return to work. Introduce her to new staff and familiarise her with any changes.
- Ensure all pregnant women and new mothers are treated appropriately regardless of ethnicity and disability. But recognise cultural and religious practices relating to pregnancy and childbirth.

### What employers should not do

- Do not dismiss a pregnant employee because she is pregnant or for any other pregnancy-related issue.
- Do not unreasonably refuse her time off for antenatal classes. Time should not have to be made up even for part-time employees and pay should not be deducted for this time off.
- Do not change her hours of work without consent.
- Do not make changes to her work or her responsibilities unless there are health and safety reasons.
- Do not select a pregnant employee for redundancy unless the normal procedure has been followed.
- Do not dismiss her because of pregnancy-related sickness.
- Do not refuse to allow a woman to return to work because she is breast-feeding or refuse to accommodate breast-feeding.
- Do not dismiss a request to work part time immediately, as this could be unlawful.
- Do not treat certain ethical groups more or less favourably than others.
- Do not treat disabled women less favourably than other women.

### Avoid unintentional discrimination

Employers should take a flexible and sympathetic approach to pregnancy and childbirth. This could help to prevent unintentional discrimination. Where discrimination does take place, a flexible attitude could help to foster a culture where women feel able to voice their concerns and grievances. Paul Smith, director at recruitment consultants Harvey Nash, (2005) says:

*'Women who feel they are being discriminated against should address the issue with their employer immediately in writing. Currently too many cases come to crisis point because of poor lines of communication between employees and their employers'.*

## Helping women back to work

Fiona Cannon, head of equality and diversity at Lloyds TSB, who is chairing the advisory board of the EOC campaign (2005), says:

*'This is not a finger-pointing exercise. Non-returning mothers have serious consequences for both employers and for the women staff.'*

If a woman leaves her job because of pregnancy discrimination, the employer loses her skills and experience as well as any investment in training. Women who take time out of the labour market may suffer financial disadvantage in taking a lower paid job when returning to work.

In an IES study, Hirsh et al. (1992) identified that employer support and understanding was an important factor in the decision to return to work. Although factors outside the employer's control were most important in influencing whether women returned to work, their employers' approaches did play a part for a significant number of women.

- Career break administration was quite or very important to 39 per cent of respondents.
- The general attitude of the employer was quite or very important to 66 per cent.
- The support of colleagues at work was quite or very important to 58 per cent.
- Knowing of other successful role models was quite or very important to 38 per cent.

The study identified that 70 per cent of women thought their employers had good procedures for dealing with their career breaks. This meant that 30 per cent of women felt low satisfaction and that their employers' approaches could have been improved. Women described these aspects of their employers' behaviour as not at all satisfactory or only satisfactory to an extent:

- the level of contact during the career break (46 per cent)
- giving adequate updates to employees on their return to work (39 per cent)
- not informing women in advance about the job they were returning to (39 per cent)
- having good procedures for dealing with the break (30 per cent).

Hirsh et al.'s research, (1992) offers advice to employers about women in the workplace.

- Employers should be flexible and understanding.
- Employers could offer more opportunities in part-time working and job sharing, and if possible provide workplace nurseries and crèches.

- Employers should judge people on their performance, rather than on the stereotype of women who are mothers.
- Employers should treat mothers as equal to their colleagues in areas such as promotion.
- Employers should consider offering financial help with childcare.

Organisations can adopt practices that enable them to deal with their pregnant employees. Women prefer an environment where the practical problems of managing a job and children are acknowledged and discussed, and solutions are found. Employers have an active role to play in fostering this process.

## The law

The Employment Act 2002 stated that an employee who meets the eligibility requirements has the right to request a variation in employment under the Flexible Working Regulations. This includes employees who have children under six or disabled children under 18. Requests must be taken seriously and only limited business grounds can be cited in refusing a request. These are stated by Hammonds (2005):

- the burden of additional costs
- a detrimental effect on the ability to meet customer demand
- inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- insufficient work during the periods the employee proposes to work
- planned structural changes.

Case law is evolving constantly. If in doubt, employers should seek professional legal advice. However, being flexible and accommodating employee wishes wherever possible seem to be key to avoiding legal challenges, and fostering goodwill and employee engagement.

## Conclusion

Recent research indicates that many women are experiencing discrimination during pregnancy in the workplace. However, research has also suggested that there are organisational benefits in providing family-friendly practices and costs of replacing women who leave the organisation are reduced. Employers can implement practical measures to show flexibility and understanding to women in the workplace. Advice

and guidance is available for employers wishing to adopt a best-practice policy for managing pregnant employees.

Encouraging women to return to work has business and labour-market implications. On a business level, pregnancy discrimination wastes valuable skills and incurs costs in labour turnover and large compensation figures. Demographics show that the population of childbearing-aged women in the labour market will grow (Weir, 2002). If women choose not to return to work after childbirth, and births continue at their current rate, the UK workforce will have to find an alternative source of labour (Weir, 2002). This makes it imperative to retain the valuable skills and expertise of women in the workplace.

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