



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	United Kingdom
Title:	Pregnancy and Maternity Discrimination: Consultation on extending redundancy protection for women and new parents
Date:	8 February 2019
Expert:	Grace James
<u>Context</u>	
Issue at stake:	Pregnancy and Maternity Discrimination Protection
Ground of discrimination:	Sex
Source:	Miscellaneous
Field:	Pregnancy and Maternity Discrimination
Applicable law:	Equality Act 2010 and the Employment Rights Act 1996 and Maternity and Parental Leave etc. Regulations (1999)

Content: Currently, under Regulation 10 of the Maternity and Parental Leave etc. Regulations (1999), before making an employee on maternity leave redundant, employers have an obligation to offer them a suitable alternative vacancy, where one is available with the employer (or an associated employer). This gives the woman priority over other employees who are also at risk of redundancy. An alternative vacancy must be both suitable and appropriate for the woman to do in the circumstances, and the terms and conditions must not be "substantially less favourable" than her previous role. This protection applies while the woman is on ordinary or additional maternity leave.

Evidence from reports undertaken by the Equality and Human Rights Committee and the Department of Business, Energy and Industrial Strategy (EHRC/BIS 2016) and, later the House of Commons Women and Equalities Select Committee (W&Eq 2016) demonstrates that new mothers are being forced out of work when they seek to return following leave. The Government is now seeking views on whether an extended period of additional protection against redundancy, might be the best way to address this issue.

It is proposed that the simplest way of achieving additional protection, and creating a more consistent approach, is to extend the scope of the current protection against redundancy provided for those on maternity leave. This would mean that pregnant women and new mothers who had recently returned to work had the same protection as that enjoyed by those on maternity leave. The Government's provisional view is that six months would be an appropriate length of time, on the basis that it is a long enough period to allow a new mother to re-establish herself in the workplace. In terms of defining when in a pregnancy additional protection against redundancy should begin, the Government believes that this can best be defined as the point a woman informs her employer that she is pregnant in writing.

The Government is also consulting re: the impact of extending the redundancy protection into the "return to work" period for mothers to other groups who are taking extended

periods of leave for similar purposes – i.e. that are akin to maternity leave – e.g. adoptive leave, parental leave, shared parental leave.

The Government intends to form a technical task group to work through certain issues: extending protection into a “return to work” period can create challenges in terms of the interactions of different forms of leave. For instance, when would the “return to work” period start (i.e. when would the six-month period of additional redundancy protection begin) where a period of maternity leave is followed immediately by a period of annual leave, special leave or a career break? There is also the question of how any extended redundancy protection would work with shared parental leave, where parents chose to take that in multiple blocks (i.e. a period of shared parental leave, followed by a period at work, followed by a further period of shared parental leave).

The Government is also seeking views regarding the promotion of awareness of legal rights and protections during pregnancy and maternity.

The consultation closes on 5 April 2019.

Key points of analysis: The key context for this consultation are the findings of a major piece of research undertaken by the Department for Business, Energy and Industrial Strategy and the Equality and Human Rights Commission and an inquiry by the Women and Equalities Select Committee, both published in 2016. The former demonstrated that pregnancy and maternity discrimination is still far too prevalent in the UK with an estimated 54 000 women annually losing their jobs as a result of pregnancy discrimination. Several key witnesses to the Women and Equalities Select Committee highlighted the need to increase protection against redundancy. They recommended an approach similar to that in Germany under which women only be made redundant under specific circumstances and that protection should be extended for 6 months following return to work from leave.

Further information / links

The consultation document is available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf.

EHRC/BIS Report (2016) is available at

<https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>.

W&Eq Report (2016) is available at

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/pregnancy-and-maternity-discrimination-15-16/>.

European network of legal experts in gender equality thematic report (2018) available at

<https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb>.