

Maternity Rights

An employee who is pregnant or absent from work on maternity leave is given statutory protection by the law from the date she informs her employer of her pregnancy until the end of her maternity leave period that is called the ‘protected period.’

During the protected period, employers must observe a number of legal obligations towards their employees which include the following statutory rights: time off with pay for ante-natal care; protection from automatic unfair dismissal and not to be subjected to a detriment; up to 52 weeks maternity leave; 39 weeks statutory maternity pay for those who are entitled; on returning to work after maternity leave, the right to return to the same or a similar job; if a redundancy situation arises during maternity leave, the right to any suitable vacancy in priority over other affected employees; protection from sex discrimination if the reason for the discrimination is because of pregnancy or maternity leave; the right to request flexible working arrangements if the employee’s child is below a certain age.

A woman has the statutory right not to be discriminated against by being refused a job interview or employment for the reason that she is pregnant or may become pregnant or has child-care responsibilities.

From 05 October 2008, employees absent from work during the 52 weeks’ period of statutory maternity leave, and whose expected week of childbirth begins on or after that date, are entitled to their normal terms and conditions as stated in their contracts of employment for the whole of the maternity leave period. In other words, the distinction between ordinary and additional maternity leave is mostly removed so that all of their contractual entitlements remain in place throughout both periods of leave, except their entitlement to pay.

If an employee is pregnant or on maternity leave, she has the right not to suffer a detriment (being a ‘disadvantage’ of some kind). For example, telling a pregnant woman that there is no point in her attending a meeting because she will be on maternity leave when a particular deal comes to fruition may amount to a detriment. Similarly, informing a woman that her future career progression within the organisation depends on whether or not she has more children, may also amount to a detriment. An employee is entitled to protection against being subjected to a detriment regardless of how long she has been employed by her employer. If an employee reasonably believes that she has suffered a detriment, she can make a claim to an employment tribunal for breach of her rights. If successful, she will be awarded compensation for any financial loss she has suffered and a further award for injury to feelings.

A dismissal of an employee for reasons connected with her pregnancy, childbirth or maternity leave is automatically unfair. The normal qualifying period of one year’s continuous employment with her employer is not required when making a claim. Some of the ‘reasons connected with her pregnancy’ are: ante-natal care; miscarriages; pregnancy-related illnesses and IVF treatment.

If, on returning to work after maternity leave, the employee encounters a hostile or an intimidating atmosphere in which job changes are proposed by the employer including demotion, unjustified redundancy, change of place of work, redeployment to different

work and so on, conduct by an employer of this sort may constitute a breach of an implied term that the law deems to be contained in all contracts of employment to the effect that an employer will not, without just cause, conduct itself in such a way that is likely to destroy or seriously damage the relationship of trust and confidence of the employment relationship. If an employer does act in this way and its conduct could be said to be a fundamental breach of contract, then an employee will have the option of terminating the contract of employment, with or without notice, and making a claim for constructive dismissal (being either unfair, wrongful or both) to an employment tribunal.

Many of the potential claims which a pregnant employee can pursue will overlap. For example, a claim in respect of a constructive dismissal may also include a claim for being subjected to a detriment and that such actions may amount to less favourable treatment under the Sex Discrimination Act 1975. Less favourable treatment includes: withholding offers of employment; or opportunities for promotion or training; or being subject to any other detriment. The latter does not include pay, as employees on statutory maternity leave are instead entitled to statutory maternity pay providing they meet certain qualifying conditions.

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