



The Royal College of Midwives
15 Mansfield Street, London, W1G 9NH

The Royal College of Midwives' response to the BEIS consultation pregnancy and maternity discrimination: extending redundancy protection for women and new parents.

The Royal College of Midwives (RCM) is the trade union and professional organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our views are set out below.

We note that the RCM would expect the NHS to be an exemplary employer as national terms and conditions are negotiated through the NHS Staff Council and local policies agreed in partnership with trade unions. We would therefore expect NHS policies to go beyond the statutory minimum. Particularly pertinent (but not limited) to pregnant employees and those returning to work from maternity leave might be policies around facilities for breastfeeding or expressing milk and flexible working arrangements.

Our response to this consultation will cover both midwives as healthcare professionals who may be caring for and giving extra support to a woman who is experiencing pregnancy discrimination, and midwives our members in a profession that is over 99% female and could themselves be discriminated against at work. Discrimination at work can cause stress and anxiety potentially impacting the health of both the woman and baby.

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.

Please give reasons for your answer.

The Women and Equalities Select Committee report on pregnancy discrimination in 2016 stated that the law should prohibit redundancy from notification of pregnancy until six months after return from maternity leave, except in specified circumstances, such as closure of all or part of a workplace. The RCM supports this position. Prohibition against redundancy during this period would give preventative protection against loss of work when regulation

10 is not complied with. The RCM believes that if there were dispute around exceptional circumstances to justify a dismissal this could be dealt with through ACAS's existing Early Conciliation function.

Research by the Equality and Human Rights Commission (EHRC) in 2016 revealed that 54,000 women per year are forced out of their jobs due to pregnancy discrimination, Equal Opportunities Commission (EOC) research in 2005 revealed a figure almost half this. The 2016 EHRC research found 77% of women experience negative and potentially discriminatory treatment at work each year due to their pregnancy. Despite this less than 1% of these women go to an employment tribunal case. The RCM welcomed the end of tribunal fees for those bringing claims in 2017, however money is not the only barrier for women going to tribunal; the EOC research in 2005 showed that when there were no fees for claimants the percentage of women going to an employment tribunal case was only 3%.

The current protection for women against discrimination and automatic unfair dismissal throughout pregnancy and maternity leave period ends when ordinary and/or additional maternity leave ends. It can therefore be very difficult to show that subsequent decisions by an employer are a result of maternity discrimination.

The RCM believes that there is good evidence to extend the current protection for six months after the maternity leave period has ended. Clearly women returning to work after what could be a long absence can be at a disadvantage on their return and more vulnerable to redundancy. We would also like to see stronger protection of a prohibition on redundancy (except in limited circumstances) during the extended six month period.

Do you agree that six months would be an adequate period of "return to work" for redundancy protection purposes?

Yes

Please give reasons for your answer.

The RCM believes that six months is enough time to be re-established in the workplace following time out of work. However we also believe that local policies developed in partnership with trade unions to support work life balance and promote flexible working are important to keeping parents and those with caring responsibilities in work. The RCM has found that the number of midwives aged 35-44 has been declining due to fewer opportunities to work flexibly, this age group is likely to have child care responsibilities. A 2016 RCM survey of midwives who had left midwifery or were considering leaving found that 76% of those who responded would be very/quite likely to return if there were opportunities to work flexibly. Legislative change to protect from redundancy is welcome and important, but unionised workplaces with good working practices to support families are also key to preventing wider discrimination.

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

No

Do you think a different reference point should be used?

Yes

Please say what that should be and why.

Under the Equality Act 2010 the protected period begins when the pregnancy begins. The RCM believes that redundancy protection should begin from this point. If a woman were selected for redundancy who had not yet informed their employer they were pregnant, the redundancy decision should be reviewed to ensure that it has not been taken as a result of pregnancy. There are numerous reasons why a woman may not want to inform their employer of their pregnancy, from the very personal such as suffering a miscarriage to fear of discrimination. Indeed the EHRC research revealed that 11% of women felt that they were less valued at work as a result of informing their employer of their pregnancy with 7% feeling under pressure to leave their job. Clearly it is advisable for a woman to inform their employer of their pregnancy, particularly if there are specific health and safety concerns, a risk assessment needs to be carried out, and to access time off for antenatal appointments. Creating a supportive working environment where pregnant women feel valued and not likely to be discriminated against is key to ensuring women feel comfortable to inform their employer of their pregnancy at an early stage.

Do you agree that the most direct equivalents to return to work from statutory maternity leave are:

- a) Adoption leave - Yes
- b) Shared parental leave - Yes
- c) Longer periods of parental leave - Yes
- d) Other

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?

Yes

Please explain reasons for your answer.

The RCM believes any parent who has spent an extended period of time away from work looking after their child/children could face the same disadvantages when returning to work.

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.

The relationship midwives build with women means that they often feel comfortable disclosing a wide range of issues. Midwives may be providing care and support to women experiencing pregnancy discrimination at work and a woman may well disclose that they are experiencing discrimination to their midwife. Like other forms of stress, this can have a negative impact on the health of both the woman and baby.

A midwife should not be expected to give advice on employment and discrimination at work – they are clinicians first and foremost. However, they are well placed to distribute and signpost government and third-sector information regarding pregnancy and maternity rights,

along with many other types of information that women during this time find useful. We believe that online information should be clear, easy to read and understand and easy to navigate to through relevant government websites.

The consultation document states that the MATB1 and Start4Life campaign emails have been updated with a link to advice and guidance for pregnant women and new mothers. However, the link that is referred to has not been provided on the consultation document. The MATB1 form is not provided until around 20 weeks, at which point a woman may already be experiencing discrimination at work. The EHRC research found that more women reported experiencing discrimination or disadvantage whilst pregnant than during maternity leave or on return to work. Women reported feeling under pressure to leave their jobs, being dismissed or unfairly targeted for redundancy, being blocked from accessing antenatal appointments, exposed to health and safety risks and being treated poorly as a result of pregnancy related conditions such as morning sickness. Therefore there is a strong argument that there needs to be another way to get information to pregnant women on their rights at an earlier stage of their pregnancy than the MATB1 form provides.

The RCM suggests a printed publication containing detailed information on employment rights, health and benefits should be produced to be shared with all women at their first booking in appointment as most women are booked into maternity care at within 10 weeks and are beginning to make decisions about their care. There should also be a digital version of information which can be easily adapted into the various pregnancy apps being developed by NHS Trusts across England and by the third-sector, which are growing in popularity amongst women. The availability of printed information rather than just in digital format is important to ensure equity of access as not all women may have easy access to the internet. With diverse groups of women accessing maternity services, for many of whom English is not their first language and with record numbers of women in work information should also be made available in other languages. This information used to be provided in the form of publications with information on health, employment rights and benefits.

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