

# PREGNANCY AND MATERNITY RIGHTS AT WORK



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## Introduction

It is important that midwives and maternity support workers are aware of the significance of pregnancy discrimination and the effect this has on women. You may be caring for a woman who is being discriminated against at work and this may be affecting her health and her pregnancy. You may need to give extra support and help to women who are experiencing pregnancy discrimination.

Also, as our profession is over 99% female, we do not want to see midwives and maternity support workers discriminated against during their pregnancy. It is important that RCM workplace representatives and heads of midwifery are aware of the rates of pregnancy discrimination and the rights of pregnant workers, to make sure that pregnant midwives and maternity support workers are supported throughout their pregnancy.

We have called on the Government to make sure pregnant women are not denied their rights and they are not discriminated against. Discrimination can have costly effects for the NHS but most importantly it can have devastating effects on the health of the woman and her baby. We are working with the Equality and Human Rights Commission, the TUC and Maternity Action on the campaign to make sure that women are not denied their rights at work. You can search for the latest campaign news on Twitter, using the hashtag #motherswork.

This publication gives you information about:

- the latest statistics on pregnancy discrimination
- the effects of pregnancy discrimination
- the rights of pregnant workers and mothers at work.

**This guide has been prepared for members of the Royal College of Midwives (RCM). For information on becoming a member, please visit [www.rcm.org.uk](http://www.rcm.org.uk)**

**This publication is part of our equality publications series. If you have any questions about this publication on any others in the equality series, please contact Amy Leversidge, by emailing [amy.leversidge@rcm.org.uk](mailto:amy.leversidge@rcm.org.uk)**

**We would like to thank the TUC for help with this publication.**



## How common is pregnancy discrimination?

The first legislation protecting women from unfair dismissal because of pregnancy was introduced 40 years ago. Further legislation since then has strengthened maternity rights. Women are now protected from any unfavourable treatment at work because of pregnancy or maternity leave. They can take up to 52 weeks' leave and 39 weeks' Statutory Maternity Pay, and have the right to return to the same or a similar job when they return to work. Yet, despite these legal rights, pregnancy and maternity leave is still a time when everything changes for many women at work.

The Equality and Human Rights Commission and the Department for Business Innovation and Skills released their report 'Pregnancy and Maternity Related Discrimination and Disadvantage' in the summer of 2015 (see note <sup>1</sup> below). The report sets out the findings of their interviews with 3,034 employers and 3,254 mothers. The surveys cover the views and experiences of employers and mothers on a range of issues related to managing pregnancy, maternity leave and mothers returning to work.

The report shows very disturbing findings. Here are some examples.

- Around one in nine mothers (11%) reported that they were dismissed, made redundant when others in their workplace were not, or treated so poorly they felt they had to leave their job. If we 'scaled this up' to the general population, this could affect as many as 54,000 mothers a year.
- One in five mothers said they had experienced harassment or negative comments related to pregnancy or flexible working from their employer or colleagues. If we scaled this up to the general population, this could affect as many as 100,000 mothers a year.
- 10% of mothers said their employer discouraged them from going to antenatal appointments. If we scaled this up to the general population, this could affect up to 53,000 mothers a year.

Also, there can be long-term effects on a woman's career if she has a baby. According to the TUC's 'Pregnancy Test' publication (see note <sup>2</sup> below), poor treatment at the time of pregnancy or maternity leave can have long-lasting consequences for a woman's future employment and pay. About a quarter of women do not return to work after maternity leave and only a minority (17%) of these women made a personal choice to become stay-at-home mothers.

1 Pregnancy and Maternity Related Discrimination and Disadvantage First Findings - Surveys of Employers and Mothers (2015) The Equality and Human Rights Commission and the Department for Business, Innovation and Skills (<https://www.gov.uk/government/publications/pregnancy-and-maternity-discrimination-and-disadvantage-in-the-workplace>)

2 The Pregnancy Test: Ending Discrimination at Work for New Mothers (2014) The TUC (<https://www.tuc.org.uk/sites/default/files/pregnancytestreport.pdf>)

Women are more likely to consider stopping work altogether if they experience ill treatment during pregnancy or maternity leave. Women are also far less likely to return to work if there are no family-friendly arrangements such as flexible working, family leave or help with childcare in their workplace. Also, the pay gap between men and women widens considerably for women in their 30s and 40s, which are the main years for having children.

## What are the effects of pregnancy discrimination?

It is very disturbing that the rates of discrimination against pregnant women are so high. Discrimination at work can cause stress, anxiety and depression, which can have an effect on the health of the woman and her baby.

In particular, it is very worrying that the number of cases of women being denied time off for antenatal care are increasing. The right to time off to attend antenatal appointments is vital to make sure that women are able to access antenatal care early in their pregnancies and can get continuous assessment and advice during pregnancy.

During the antenatal appointments, the midwife will give women valuable advice about smoking, nutrition and exercise and will carry out essential screening tests and identify whether the woman needs extra care. Antenatal appointments give women the opportunity to talk to their midwife and ask questions or discuss any issues they may have. They will be able to ask the midwife questions about how the baby is developing, and discuss their birth plan. Evidence shows that missing antenatal appointments can increase the risk of smaller babies, premature babies, miscarriages and stillbirth. This is particularly important for women with complex health needs.

It is important that midwives and maternity support workers can support women who may be discriminated against at work, as this may be affecting their health and pregnancy. You may need to give extra support and help to women who are experiencing pregnancy discrimination.

Also, as our profession is over 99% female, we do not want to see midwives and maternity support workers discriminated against during their pregnancy. It is important that RCM workplace representatives and heads of midwifery are aware of the rates of pregnancy discrimination and the rights of pregnant workers, to make sure that pregnant midwives and maternity support workers are supported throughout their pregnancy.

## What rights do pregnant workers and mothers have?

Pregnancy and maternity is a protected characteristic under the Equality Act 2010. Women have the right not to be dismissed or made redundant for pregnancy-related reasons and they have various other maternity rights at work.

To help you support women you are caring for who may be facing pregnancy discrimination at work, this section gives you information about the rights that, by law, employers must provide to pregnant women and new mothers who work for them. This section also includes information about rights for midwives and maternity support workers working under Agenda for Change terms and conditions in the UK. It is important to remember that there is a difference between an 'employee' and a 'worker'. 'Employees' are entitled to all the rights described below (this includes employees on fixed-term contracts or apprentices). However, some working women will have fewer rights than the legal minimum for employees. This is because not everyone who works for someone else is an employee in the eyes of the law (for example, if you were taken on through an agency or because you are a casual worker), and some rights apply only to employees.

This section gives information on the following.

- Rights of pregnant women at work.
- Rights to maternity leave and pay.
- Rights during maternity leave.
- Rights when returning to work.
- Rights to shared parental leave and pay.
- Rights to request flexible working.

At the end of this guide there are links to further information, including TUC guides on adoption and surrogacy and the NHS terms and conditions handbook.

## Rights of pregnant women at work

The box over outlines the legal rights relating to antenatal care, health and safety protection at work and protection from dismissal and discrimination. This should help you understand, support and care for women who may be experiencing pregnancy discrimination at work. Women may have better rights than the legal minimums set out below. The box below also outlines the arrangements for midwives, maternity support workers and other NHS staff employed under Agenda for Change terms and conditions.

### Legal rights to antenatal care

The right to paid time off to go to antenatal appointments includes appointments with midwives and medical staff and can also include relaxation or parentcraft classes if recommended by a doctor or midwife. There is no maximum amount of time off. Women are allowed reasonable time off to attend the appointment, including time to travel to and from it.

Employers can ask for evidence of a woman's pregnancy or the appointment, but not if it is their first antenatal appointment. Employers cannot force women to make up the lost time or to take annual leave to cover the appointment. A pregnant agency worker who has worked for the same hirer in the same role for 12 weeks or more is also entitled to paid time off to attend antenatal appointments.

### Legal rights to health and safety protection

Employers must take reasonable steps to protect pregnant women and their unborn baby from harm in the workplace. If there are any risks (for example, from working hours, stress, lack of hygiene, heavy lifting or working with hazardous chemicals), employers must temporarily adjust a pregnant woman's work to avoid the risk.

If it is not possible to make adjustments, women are entitled to be offered suitable alternative work at the same rate of pay and, if that is not possible, they are entitled to be suspended from work on full pay.

All pregnant workers are protected from harm in the workplace, but only employees and agency workers who have 12 weeks' service with the same hirer in the same role are entitled to suitable alternative work or to paid time off when it is not possible to make adjustments to reduce the risk of harm.

### Legal rights to protection from dismissal and discrimination

All pregnant employees and workers have the right not to suffer unfavourable treatment because of their pregnancy. For example, they should not be disciplined for taking time off for pregnancy-related sickness or for needing more toilet breaks than usual during the day.

Agency workers shouldn't be refused assignments because they are pregnant. If a pregnant employee is dismissed because of their pregnancy, this would be an automatically unfair dismissal.

### Agenda for change

Broadly speaking, the legal arrangements for antenatal care, health and safety protection, and protection from dismissal and discrimination are the same in Agenda for Change. For midwives and maternity support workers employed in the NHS under Agenda for Change terms and conditions, the full section on maternity leave and pay is outlined in section 15 of the NHS terms and conditions handbook.



## Rights to maternity leave and pay

The box below outlines the legal maternity leave and pay for women. This should help you understand, support and care for women who may be experiencing pregnancy discrimination at work. Women may receive better maternity leave and pay than the legal minimums. The box below also outlines the arrangements for midwives, maternity support workers and other NHS staff employed under Agenda for Change terms and conditions.

### Maternity leave and Statutory Maternity Pay

An employee is entitled to 52 weeks' maternity leave, regardless of how long they have worked for an employer. All women must take at least two weeks of maternity leave ('compulsory maternity leave') after the birth (or four weeks' leave if they work in a factory).

To qualify for Statutory Maternity Pay (SMP), a woman must have worked for their employer for at least 26 weeks by the end of the 15th week before the baby is due, and their average gross earnings must be equal to or more than the Lower Earnings Limit in the eight weeks before the 15th week before the baby is due.

The first six weeks of SMP is paid at 90% of a woman's normal weekly earnings and the remaining 33 weeks is paid at a flat rate (or 90% of her earnings if she earns less than the flat rate). See <https://www.gov.uk/maternity-pay-leave/pay> for the current flat rate. SMP is paid through the payroll and employers deduct any tax and National Insurance from it.

There is more information about maternity leave and Statutory Maternity Pay in the TUC document 'Leave and Pay for Mothers'.

### Agenda for Change maternity leave and pay

Midwives and maternity support workers who are employed in the NHS under Agenda for Change terms and conditions are entitled to the following maternity leave and pay.

- All employees will have the right to take 52 weeks of maternity leave.
- For the first eight weeks of maternity leave the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependants' allowances) she receives.
- For the next 18 weeks, the employee will receive half of her full pay, plus any Statutory Maternity Pay or Maternity Allowance (including any dependants' allowances) she receives, as long as the total amount she receives is not more than her full pay.
- For the next 13 weeks, the employee will receive any Statutory Maternity Pay or Maternity Allowance she is entitled to by law.

- If a woman agrees with her employer beforehand, she may receive her maternity pay in a different way, for example, a combination of full pay and half pay or a fixed amount spread equally over her maternity leave.

Full details of maternity leave and pay are given in section 15 of the NHS terms and conditions handbook.

## Rights during maternity leave

The box below outlines the legal rights to an employment contract, keeping-in-touch days and redundancy. This should help you understand, support and care for women who may be experiencing pregnancy discrimination at work. Women may have better rights than the legal minimums. The box below also outlines the arrangements for midwives, maternity support workers and other NHS staff employed under Agenda for Change terms and conditions.

### Legal rights – employment contract

While a woman is on maternity leave, her employment contract continues. This means she continues to build up annual leave and is entitled to routine pay rises, redundancy pay, childcare vouchers and, if relevant, a company car or mobile phone (unless these are for business use only).

The only thing that does not continue is her entitlement to normal pay. Instead, she will receive SMP for up to 39 weeks. She might also qualify for contractual maternity pay for some or all of her leave, so she should check her staff handbook or contract of employment.

Employers must also continue paying pension contributions for any paid period of maternity leave. If a woman cannot take all her annual leave in the relevant holiday year because of maternity leave, she can carry it forward to the following year. While a woman is on maternity leave, her employer must not discriminate against her because she is taking leave. For example, they must let her know about any promotion opportunities and they must make sure she is properly informed and fairly treated during any redundancy or restructuring exercise that affects her.

### Legal rights – ‘keeping in touch’ days

Women can work for up to 10 ‘keeping in touch’ (KIT) days during their maternity leave, without this affecting their maternity leave or SMP. KIT days could be used to attend a training day, staff meeting or do a full day’s work. Anything done on a KIT day will count as a full day’s work, even if a woman only attends a meeting for a couple of hours or does a half day’s work.

KIT days are entirely voluntary. Employers cannot make woman do any work during maternity leave. There is no legal entitlement to be paid normal pay during a KIT day. It is up to each woman to agree with her employer how much she will be paid.

### Legal rights – redundancy while on leave

If a woman is made redundant while on maternity leave, her employer must offer her any suitable alternative work that is available. The terms and conditions of the new job must not be substantially less favourable than those that applied to the woman’s old job.

### Agenda for Change

Broadly speaking, the legal arrangements for employment contracts, KIT days and redundancy are the same in Agenda for Change. For midwives and maternity support workers employed in the NHS under Agenda for Change terms and conditions, full details on maternity leave and pay are given in section 15 of the NHS terms and conditions handbook.

## Rights when returning to work

The box below outlines the legal rights relating to returning to work and breastfeeding. This should help you understand, support and care for women who may be experiencing pregnancy discrimination at work. Women may have better rights than the legal minimums. The box below also outlines the arrangements for midwives, maternity support workers and other NHS staff employed under Agenda for Change terms and conditions

### Legal rights – returning to work

If you want to return to work before the end of your full 52 weeks’ maternity leave, you must give your employer at least eight weeks’ notice of the date you want to return.

If you return after 26 weeks’ maternity leave or less (or a combination of maternity leave and shared parental leave), you have the right to return to the same job you had before you went on leave.

If you return to work after more than 26 weeks’ maternity leave (or a combination of maternity leave and shared parental leave), you have the right to return to the same job unless your employer can show that it was not reasonably possible to have kept the job open for you. In this case you are entitled to return to a suitable and appropriate job on terms and conditions that are not less favourable than your old job.



### Legal rights – breastfeeding

If you are still breastfeeding when you return to work, you should tell your employer. Under health and safety legislation, your employer must provide you with suitable rest facilities and make sure that you and your baby are not exposed to particular risks in the workplace.

There is no legal right to time off to express milk or breastfeed a baby in the workplace or to facilities for expressing and storing milk. However, if your employer refuses to meet your needs as a breastfeeding mother you should speak to your union representative or get legal advice as you may be able to claim sex discrimination.

### Agenda for Change

The NHS terms and conditions handbook states that an employee who intends to return to work at the end of her full maternity leave does not have to give any further notification to the employer, although if she wants to return early, she must give at least 28 days' notice. An employee has the right to return to her job under her original contract and on terms and conditions that are not less favourable than her previous terms and conditions. Also, the handbook states that employers must carry out a risk assessment and provide suitable private rest facilities for women who are still breastfeeding when they return to work. For midwives and maternity support workers employed in the NHS under Agenda for Change terms and conditions, full details on maternity leave and pay are given in section 15 of the NHS terms and conditions handbook.

## Rights to shared parental leave and pay

The box below outlines the legal rights relating to shared parental leave and pay. This should help you understand, support and care for women who may be experiencing pregnancy discrimination at work. Women may have better rights than the legal minimums. The box below also outlines the arrangements for midwives, maternity support workers and other NHS staff employed under Agenda for Change terms and conditions.

### Legal rights – shared parental leave and pay

Mothers of children who were due on or after 5 April 2015 can choose to convert some of their maternity leave and pay into shared parental leave and Shared Parental Pay (SPP). This would allow them to share some of the first year's leave and pay with their partner or the child's father, or they could use it to take leave on a more flexible basis (for example, splitting the period of leave into up to three separate periods, rather than taking the whole amount of leave at once).

The maximum amount of maternity leave that can be converted into shared parental leave is 50 weeks and the maximum amount of SMP that can be converted into SPP is 37 weeks.

This is because the two weeks of compulsory maternity leave cannot be converted.

You can find more information about shared parental leave in the TUC document, 'Leave and Pay for Mothers'.

### Agenda for Change

Broadly speaking, the legal arrangements for shared parental leave and pay are the same in Agenda for Change.

For midwives and maternity support workers employed in the NHS under Agenda for Change terms and conditions, full details on maternity leave and pay are given in section 15 of the NHS terms and conditions handbook.

## Rights to request flexible working

The box below outlines the legal rights relating to flexible working. This should help you understand, support and care for women who may be experiencing pregnancy discrimination at work. Women may have better rights than the legal minimums. The box below also outlines the arrangements for midwives, maternity support workers and other NHS staff employed under Agenda for Change terms and conditions.

### Legal rights – flexible working

Mothers may want to reduce or vary their working hours to help them meet their childcare responsibilities.

All employees with 26 weeks' or more service with their employer have the right to request flexible working. Employers have a duty to consider requests reasonably.

A request must be in writing and must include:

- the date of the application, the change the woman is requesting and when she'd like it to begin
- what effect the woman thinks the change would have on their employer and how that could be dealt with
- a statement that it is a formal request, and details, including the date, of any previous request the woman has made.

Women can only make one statutory request each year.

ACAS have a code of practice which explains what an employer should do when they receive a request for flexible working. It says they should:

- arrange to discuss the request with the employee as soon as possible
- allow the woman to have a colleague with her at the meeting
- give the woman their decision in writing
- if they reject the request, allow the woman to appeal that decision.

The employer must give women a final response within 12 weeks of receiving their initial request. If a woman wants to vary her hours when she returns to work after maternity leave or shared parental leave, she should make her request in good time as it could take 12 weeks to get a final decision.

If an employer agrees to a request for flexible working, it will result in a permanent change in the woman's contract. If a woman or her employer wants a trial period of flexible working or a woman only wants to vary her working arrangements for a temporary period, it is important that the woman and her employer agree this in writing.

Employers can say no to requests for flexible working for one of eight business reasons.

1. It would mean extra costs.
2. It is not possible to reorganise work.
3. It would mean they would need to take on extra staff, and they are not able to do this.
4. It would have a negative effect on quality.
5. It would have a negative effect on performance.
6. It would have a negative effect on customer service.
7. There is not enough work for the periods the employee wants to work.
8. A structural change is planned for the business.

If an employer rejects a request for flexible working but they have granted similar requests, the woman might be able to claim sex discrimination.

### Legal rights – time off for dependants

Working parents also have a legal right to time off work:

- if their child is ill
- to make arrangements to help care for their child if they are ill or injured
- to deal with an unexpected breakdown in childcare
- to deal with an unexpected incident at school involving their child.



The right is to a reasonable amount of time off to deal with the immediate crisis, for example to put alternative childcare arrangements in place if a parent's childminder is ill or their child can't go to nursery because they are ill.

Parents must tell their employer why they are off work as soon as possible.

The time off doesn't have to be paid. However, employers may agree to pay their employees in these situations, or they may provide a certain amount of paid carer's leave or compassionate leave that can be used in these circumstances.

### **Agenda for Change**

The NHS terms and conditions handbook states that if, at the end of maternity leave, the employee wants to return to work on different hours, the NHS employer has a duty to allow this wherever possible.

The employee will return to work on different hours, in the same job. If this is not possible, the employer must provide written, justifiable reasons for this and the employee should return to a similar job with the same pay band as the job they were doing before their maternity absence. For midwives and maternity support workers employed in the NHS under Agenda for Change terms and conditions, full details on maternity leave and pay are given in section 15 of the NHS terms and conditions handbook.



## Further information

**Pregnancy and Maternity Related Discrimination and Disadvantage First Findings - Surveys of Employers and Mothers** (2015) The Equality and Human Rights Commission and the Department for Business, Innovation and Skills (<https://www.gov.uk/government/publications/pregnancy-and-maternity-discrimination-and-disadvantage-in-the-workplace>)

**The Pregnancy Test: Ending Discrimination at Work for New Mothers** (2014) The TUC (<https://www.tuc.org.uk/sites/default/files/pregnancytestreport.pdf>)

**Leave and Pay for Mothers** (2014) The TUC ([https://www.tuc.org.uk/sites/default/files/TUC%20KYR\\_Maternity\\_LO%20spreads.pdf](https://www.tuc.org.uk/sites/default/files/TUC%20KYR_Maternity_LO%20spreads.pdf))

**Leave and Pay for Fathers and Partners** (2014) The TUC ([https://www.tuc.org.uk/sites/default/files/TUC%20KYR\\_Paternity\\_LO%20%28spreads%29.pdf](https://www.tuc.org.uk/sites/default/files/TUC%20KYR_Paternity_LO%20%28spreads%29.pdf))

**Time off and pay for parents having a child through surrogacy** (2015) The TUC ([https://www.tuc.org.uk/sites/default/files/KYR\\_Surrogacy.pdf](https://www.tuc.org.uk/sites/default/files/KYR_Surrogacy.pdf))

**Time off and Pay for Adoptive Parents** (2015) The TUC ([https://www.tuc.org.uk/sites/default/files/KYR\\_AdoptiveParents.pdf](https://www.tuc.org.uk/sites/default/files/KYR_AdoptiveParents.pdf))

**The RCOG/RCM Joint Statement on Undermining and Bullying in the Workplace** (2015) ([www.rcm.org.uk](http://www.rcm.org.uk))

**Maternity Action** (<http://www.maternityaction.org.uk/wp/>)

**The Equality and Human Rights Commission** (<http://www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace>)

**ACAS** (<http://www.acas.org.uk/index.aspx?articleid=5271>)

**NHS Terms and Conditions of Service Handbook** (2015) ([http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/AfC\\_tc\\_of\\_service\\_handbook\\_fb.pdf](http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/AfC_tc_of_service_handbook_fb.pdf))

