

## Pregnancy and maternity discrimination: the reality

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In 2005 the former Equal Opportunities Commission (now the Equalities and Human Rights Commission) conducted a formal investigation into pregnancy discrimination. Their final report found that the main areas of unfair treatment during pregnancy were denial of a pay increase, refusal of promotion, having to take lower-paid work, being excluded from training and refusal of time-off for ante-natal care.

The Equality Act 2010 introduced protection from discrimination related to pregnancy and maternity leave. To show discrimination a woman does not have to compare herself to how a man might have been treated. She must show that 'but for' her pregnancy she would not have been dismissed or treated less favourably. All employees, casual workers, agency workers, freelancers and self-employed women are protected by sex discrimination law from day one of their employment. Employees are also protected from detriment or dismissal on the grounds of pregnancy or maternity leave in accordance with the Employment Rights Act 1996 and Maternity and Parental Leave etc Regulations 1999.

An employer must not treat a pregnant woman less favourably for a reason related to her pregnancy related absence or absence on maternity leave.

It is discrimination:

- to dismiss, make redundant or otherwise treat her less favourably in relation to a pay rise, promotion, training;

select a woman for redundancy for a reason related to her pregnancy, the consequences of her pregnancy or absence on maternity leave;

- select a woman for redundancy because she is working part-time or flexibly unless there are very good objective reasons;

- treat a pregnant woman less favourably because of pregnancy related absence

Women who are pregnant or on maternity leave also have the right to health and safety protection and the right to reasonable paid time off for ante natal care along with 52 weeks maternity leave and maternity benefits if the woman qualifies.

However, despite the steady stream of legislation to protect women's rights in this area, it seems things have not changed. According to a recent report conducted by Working Families, pregnant women continue to be discriminated against. With the economic downturn has come a rise in the number of calls to the organisation from women facing maternity or pregnancy discrimination such as:

- being singled out for redundancy

- not being offered suitable alternative employment as part of the redundancy procedure, being dismissed from employment on the day they inform their employer of their pregnancy, or very soon after,

- being selected for redundancy with the suggestion that pregnancy is the reason,

- wishing return to work part time but have to leave employment instead because their employer refuses to allow them to work part time

- finding their jobs have gone on returning from maternity leave

One woman contacted the organisation who was 28 weeks pregnant and was told she would be made redundant the next month. She was the only one of seven staff to be selected and was given no reasons why. When asked why she thought she had been selected she said “My employer doesn’t want to pay SMP” (Maternity pay).

Another organisation, Maternity Action, have reported that pregnant women or those on maternity leave have been given no reason why they have been selected for redundancy or were given reasons that were tantamount to discrimination such as preferring full time employees. Others were not offered health and safety protection during pregnancy or maternity leave.

A recent high profile employment tribunal case further highlights the issues. A female employee of the company that was the first employer of the Duchess of Cambridge alleged that when she told her male boss that she was pregnant for the third time in three years, she was told “it really isn’t ideal.” Furthermore she alleged she was “vetoed” for the position of chief financial officer on the same day she announced her pregnancy. She claimed sex discrimination, unfair dismissal and discrimination on the grounds of maternity.

Alan Sugar, the influential business leader, has publicly commented that he feels maternity laws have gone too far, which does not help matters.

However, protecting women who are pregnant or on maternity leave encourages women’s participation in the workplace and adds to diversity and the talent pool - it therefore makes good business sense. Discrimination exposes employers to the threat of legal action with unlimited compensation in an employment tribunal as well as the risk of a damaged reputation.

*\*Sandra Beale is one of Workingmums.co.uk's HR expert and can respond to questions on employment law from both employers and*

<http://www.workingmums.co.uk/working-mums-magazine/top-story/7117708/pregnancy-and-maternity-discrimination-the-reality.shtml>

*employees. If you need advice with a maternity or pregnancy issue call her on 07762 771290 or contact her via [www.sjbealehrconsult.co.uk](http://www.sjbealehrconsult.co.uk).*