



DEBATE PACK

Number CDP 2015/0089, 30 October 2015

Maternity Discrimination: Westminster Hall debate

By Doug Pyper

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Summary

Stuart C. McDonald MP (SNP, Cumbernauld, Kilsyth and Kirkintilloch East) secured a Westminster Hall debate at **4.30pm on Tuesday 3 November 2015**.

The subject of the debate is maternity discrimination, particularly in relation to the workplace.

Digital debate

The House of Commons Digital Outreach Team, in partnership with Maternity Action, have organised a digital debate on maternity discrimination.

The debate will provide a chance for the public to share their experiences and raise issues that they would like to see discussed during the Westminster Hall debate.

The maternity discrimination digital debate will take place on **Monday 2 November 2015 from 10-11am**.

You can join in or follow the discussion on Twitter using [#MothersWork](https://twitter.com/MothersWork).

1. The issue for debate

Despite legal protections, pregnancy and maternity discrimination in the workplace is widespread. Research published in July this year by the Department for Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission (EHRC) found, among other things:

- Around one in nine mothers (11%) reported that they were either dismissed; made compulsorily redundant, where others in their workplace were not; or treated so poorly they felt they had to leave their job; if scaled up to the general population this could mean 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 and / or colleagues; if scaled up to the general population this could mean as many as 100,000 mothers a year
- 10% of mothers said their employer discouraged them from attending antenatal appointments; if scaled up to the general population this could mean as many as 53,000 mothers a year.¹

The BIS & EHRC report contained the first findings from research based on interviews with 3,034 employers and 3,254 mothers. It is expected that two further final reports will be published in November, making policy recommendations for government.

Although the research is relatively new, the findings come as no surprise to commentators. A report published by Maternity Action in 2013 noted:

In 2005, three years before the global financial crisis of late 2008 and subsequent recession, a landmark study by the Equal Opportunities Commission found that half of all pregnant women suffered a related disadvantage at work, and that each year 30,000 were forced out of their job. Eight years on, all the available evidence suggests that such pregnancy and maternity discrimination is now more common than ever before, and that as many as 60,000 women are pushed out of work each year.²

Following that report, the Alliance Against Pregnancy Discrimination (made up of the Chartered Society of Physiotherapy; the Fawcett Society; Maternity Action; NCT; the Royal College of Midwives; the TUC; UNISON; Unite; Working Families; and YESS) published a [manifesto](#) prior to the 2015 General Election, calling for:

- a high profile government information campaign;
- a cross-departmental plan for implementing EHRC recommendations;
- abolition of employment tribunal fees (associated with a decline in discrimination claims);

¹ BIS & EHRC, *Pregnancy and Maternity Related Discrimination and Disadvantage First findings: Surveys of Employers and Mothers*, BIS Research Paper No. 235, July 2015, p9

² Maternity Action, [Overdue: a plan of action to address pregnancy discrimination now](#), December 2013, p3

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- implementation of measures to improve compliance with employment tribunal awards (currently, about half go unpaid);
- funding for specialist rights advice for pregnant women and mothers;
- an increase in statutory maternity pay;
- an increase in the amount that small businesses recover when paying maternity pay – from the current 103% of the amount paid to a worker, to 110%; and
- a statutory right to time off and facilities at work for breast-feeding.³

Challenging discrimination

Campaigning organisations have highlighted the difficulty women face in challenging maternity discrimination, particularly in view of changes to legal aid and the introduction in 2013 of employment tribunal fees. A Maternity Action [briefing](#) prepared for the Westminster Hall debate noted:

... in recent years it has also become much harder for women to challenge such discrimination: the supply of free legal advice has been severely reduced by funding cuts and the abolition (from March 2013) of almost all civil legal aid. Maternity Action's free helpline receives 42 times more calls than it is able to answer. And, since July 2013, upfront fees of up to £1,200 to pursue an employment tribunal claim for pregnancy, maternity or other discrimination have had a devastating impact on women's access to justice.⁴

The Government's position

On 15 October 2015, the Minister for Women and Equalities, Nicky Morgan, set out the Government's position in response to [oral questions](#) on the steps the Government is taking to tackle pregnancy and maternity discrimination in the workplace:

Pregnancy and maternity discrimination is unlawful and completely unacceptable. The Government and the Equality and Human Rights Commission are working together on the largest independent research project of its kind in Great Britain to better understand the problem. The detail of the final report is due to be published later this year and will inform the Government's response.

...

It is true that when the interim report was published in July this year, we were all disappointed to see that around one in eight women reported that they felt they had to leave work as a result of their pregnancy or maternity leave, but it also shows that the vast majority of employers believe it is important to support pregnant women and women on maternity leave, so we have to build on that. That is why the report will be so helpful in working out exactly what our response should be to make sure that we change this....

³ Alliance Against Pregnancy Discrimination in the Workplace, *A manifesto for the May 2015 general election*, October 2014

⁴ Maternity Action, WH Debate 03 11 15 Briefing

In relation to the fees for employment tribunals, on 11 June this year we announced a post-implementation review of the introduction of fees for employment tribunals. The review is being led by the Ministry of Justice. It is well under way and is due to report later this year. I think we should await the outcome of that review to determine whether current fees or the remission scheme need to be adjusted.⁵

⁵ HC Deb 15 October 2015 cc480-482

2. Relevant law

Equality law

“Pregnancy and maternity” is a protected characteristic under section 4 of the *Equality Act 2010*. Broadly speaking, the Act prohibits unfavourable treatment at work due to pregnancy or pregnancy-related illness, during the period between the start of pregnancy and the end of statutory maternity leave.

Pregnancy and maternity discrimination is also prohibited in non-work cases. For example, a café owner must not ask a woman to leave the café because she is breast-feeding her baby.

Protection from dismissal

Alongside the Equality Act, under the *Employment Rights Act 1996*, an employee will be regarded as unfairly dismissed if the reason or principal reason for the dismissal relates to pregnancy, childbirth or maternity. Selection for redundancy due to pregnancy or maternity leave is automatically unfair.

Maternity leave and the right to return to one’s job

The right to maternity leave is set out in Part 8 of the *Employment Rights Act 1996* and Part 2 of the *Maternity and Parental Leave etc. Regulations 1999 (SI 1999/3312)*. There are three types: compulsory maternity leave, ordinary maternity leave and additional maternity leave:

- Compulsory maternity leave lasts for two weeks from the date of childbirth (four weeks in the case of factory workers), during which the employer must not permit the mother to work;
- Ordinary maternity leave lasts for 26 weeks, inclusive of the period of compulsory maternity leave;
- Additional maternity leave commences on the day after the last day of ordinary maternity leave, and lasts for 26 weeks.

The distinction between ordinary and additional maternity leave relates to the employee’s right to return to the same job. If the employee returns to work during ordinary maternity leave she is entitled to the same job, with the same terms and conditions. If she returns to work during additional maternity leave she is entitled to return to the same job or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is appropriate for her to do in the circumstances.

Time off for ante-natal care

The right to time off in respect of ante-natal care is provided in Part 6 of the *Employment Rights Act 1996*. A pregnant employee/agency worker is entitled to paid time off to attend an ante-natal care appointment made on the advice of a registered medical practitioner, midwife or registered nurse.

The *Children and Families Act 2014* amended the *Employment Rights Act 1996*, introducing a right to unpaid time off to accompany a

pregnant woman “when she attends by appointment at any place for the purpose of receiving ante-natal care”. Employees/agency workers with a “qualifying relationship” with the expectant mother or child are entitled to a maximum of two periods of time off, each limited to six and a half hours. The qualifying relationships include, for example, spouses, prospective fathers and persons in enduring family relationships with pregnant women.

3. Further reading

- BIS and EHRC, [*Pregnancy and Maternity Related Discrimination and Disadvantage First findings: Surveys of Employers and Mothers*](#), BIS Research Paper No. 235, July 2015
- [Maternity Action briefing](#), 30 October 2015
- [‘Pregnancy and maternity discrimination forces thousands of new mothers out of their jobs’](#), EHRC website, July 2015 (accessed 30 October 2015)
- [‘This is maternity discrimination, not maternity paranoia’](#), *The Telegraph*, 24 July 2015
- [‘Maternity leave discrimination means 54,000 women lose their jobs each year’](#), *The Guardian*, 24 July 2015
- Alliance Against Pregnancy Discrimination in the Workplace, [A manifesto for the May 2015 general election](#), October 2014
- Maternity Action, [Overdue: a plan of action to address pregnancy discrimination now](#), December 2013

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