



## DEBATE PACK

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# Maternity Discrimination: Westminster Hall debate

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## Summary

Gareth Thomas MP, Kevin Hollinrake MP and Ruth Cadbury MP secured a Westminster Hall debate at **3pm on Thursday 14 July 2016**

The subject of the debate is maternity discrimination. This briefing provides an overview of the issue, together with references to recent research and parliamentary debate.

# 1. The issue for debate

Despite legal protections, pregnancy and maternity discrimination in the workplace is widespread. Research published in March 2016 by the Department for Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission (EHRC) found, among other things:

Overall, three in four mothers (77%) said they had a negative or possibly discriminatory experience during pregnancy, maternity leave, and/or on return from maternity leave. If scaled up to the general population this could mean as many as 390,000 mothers a year.

Around one in nine mothers (11%) reported they felt forced to leave their job. This included those being dismissed (1%); made compulsorily redundant, where others in their workplace were not (1%); or feeling treated so poorly they felt they had to leave their job (9%). If scaled up to the general population this could mean as many as 54,000 mothers a year.

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One in 25 mothers (4%) left their jobs because of risks not being tackled. One in 25 mothers (4%) left their jobs because of risks not being tackled.

One in ten (10%) mothers were discouraged from attending antenatal appointments. This could mean as many as 53,000 mothers a year.

Over two thirds of mothers (68%) submitted a flexible working request and around three in four of these mothers reported that their flexible working request was approved. Around half of mothers (51%) who had their flexible working request approved said they felt it resulted in negative consequences. This could mean as many as 150,000 mothers a year.<sup>1</sup>

The research findings are based on interviews with 3,254 mothers and 3,034 employers. The findings relating specifically to employers were summarised as follows:

The majority of employers (84%) reported that it was in their interests to support pregnant women and those on maternity leave. The main reasons for this were because it increased staff retention (58%) and created better morale among employees (20%).

The majority of employers were positive about managing most of the statutory rights relating to pregnancy and maternity (for each statutory right, more than half of employers felt it was reasonable and easy to facilitate). However:

- Some employers thought particular statutory rights were unreasonable or difficult to manage: 28% said that enhanced protection from redundancy during Ordinary Maternity Leave (the first 26 weeks of Maternity Leave) was unreasonable and 13% of those this was applicable to, said it was difficult to facilitate.

<sup>1</sup> HM Government and EHRC, [Pregnancy and maternity related discrimination and disadvantage: summary of key findings](#), 22 March 2016, p6

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- Most employers (70%) said they felt women should declare upfront during recruitment if they are pregnant. A quarter of employers felt it was reasonable during recruitment to ask women about their plans to have children.
- The majority of employers felt that pregnant women (80%) and mothers returning from maternity leave (78%) were as committed to work as other employees; however some employers had negative attitudes:
  - 27% felt pregnancy put an unreasonable cost burden on the workplace;
  - 17% believed that pregnant women and mothers were less interested in career progression and promotion than other employees; and
  - 7% did not think mothers returning from maternity leave were as committed as other members of their team.<sup>2</sup>

The research was published as two separate reports; one on experiences of mothers and one on experiences of employers. Both those reports together with a summary of findings are accessible [here](#).<sup>3</sup> The final reports were preceded by an [initial findings report](#), published in July 2015.

The reports make a number of recommendations, to which the Government [responded](#) in March 2016.<sup>4</sup> The Government either accepted, or accepted in principle, all the recommendations bar two. The two rejected recommendations relate to employment tribunal fees (introduced in 2013) and tribunal time limits vis-à-vis access to justice in maternity discrimination claims. The recommendations, together with the Government responses to them (in bold italics), are summarised below:

### **Recommendation 1a**

The EHRC recommends that UK Government, Scottish Government and Welsh Government:

- works in partnership with the Commission and business leaders to :
- develop a joint communications campaign aimed at employers, underlining the economic benefits of unlocking and retaining the talent and experience of pregnant women and new mothers, and
- demonstrate creative approaches to attracting, developing and retaining women in the workforce before, during and after pregnancy

***[Accept in principle]***

...

### **Recommendation 1b**

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<sup>2</sup> Ibid., p7

<sup>3</sup> Pregnancy and maternity-related discrimination and disadvantage: final reports, Gov.uk

<sup>4</sup> HMG, [Government response to recommendations made by the Equality and Human Rights Commission on pregnancy and maternity-related discrimination and disadvantage in the workplace](#), March 2016.

The EHRC recommends that UK Government:

- explores the feasibility of a collective insurance scheme to support small and medium-sized employers to spread the cost of providing enhanced maternity pay (where they wish to do so) and cover for maternity leave.

***[Accept]***

...

**Recommendation 1b**

The EHRC recommends that UK Government:

- explores the feasibility of a collective insurance scheme to support small and medium-sized employers to spread the cost of providing enhanced maternity pay (where they wish to do so) and cover for maternity leave.

***[Accept in principle]***

...

**Recommendation 2b**

The EHRC recommends that UK Government, Scottish Government and Welsh Government:

- work in partnership with the Commission to identify effective interventions that enable employers to manage and make best use of the talent and experience of pregnant women and new mothers and to ensure that employers are aware of and comply with their legal obligations.

***[Accept]***

...

**Recommendation 2c**

The EHRC recommends that Acas:

- works with the Commission to raise the awareness of employers across England, Scotland and Wales of existing guidance on recruiting and managing pregnant women and maternity-related issues and absence, and produces training for line managers.

***[Accept]***

...

**Recommendation 3a**

The EHRC recommends that UK Government:

- reviews the availability of and women's ease of access to employment advice services and address any barriers identified

***[Accept]***

...

**Recommendation 3b**

The EHRC recommends that UK Government:

- use existing information channels, such as health professionals, and existing mechanisms, such as MAT B1 Forms, to deliver timely and relevant information on employment rights and obligations to pregnant women and employers

***[Accept in principle]***

...

### **Recommendation 3c**

The EHRC recommends that UK Government:

- create a single comprehensive on-line site, drawing on appropriate advice sector expertise, so that employers and individuals can easily find out about their rights, responsibilities and good practice in relation to pregnancy and maternity in the workplace.

***[Accept in principle]***

...

### **Recommendation 4**

The EHRC recommends that the Health and Safety Executive:

- review their guidance to employees and employers to ensure it emphasises the importance of ongoing and open communication between employers and new and expectant mothers in enabling employers to comply with their obligations to:
  - ensure the general risk assessment includes an assessment of the risk to new and expectant mothers, where applicable
  - inform the employee of any risks identified to her health and safety and the relevant preventive and protective measures, and
  - and review the general risk assessment where there is reason to suspect it is no longer valid;
  - address the issues raised in the research findings about health and safety in particular industry sectors and occupational groups by working with stakeholders in these areas to improve practice; and
  - raise employers' awareness of their health and safety obligations to pregnant women and new mothers, and awareness of existing guidance on breastfeeding.

***[Accept]***

...

### **Recommendation 5a**

The EHRC recommends that UK Government:

- in light of the findings of its review, makes changes to the employment tribunal fee system to ensure that fees are not a barrier to accessing justice for women experiencing pregnancy and maternity discrimination.

***[Reject]***

...

### **Recommendation 5b**

The EHRC recommends that UK Government:

- considers increasing the time limit for a woman to bring an Employment Tribunal claim in cases involving pregnancy and maternity discrimination from three to six months, in line with other employment claims such as redundancy and equal pay. Further research may be needed to examine whether other types of discrimination claims may also benefit from a similar extension.

**[Reject]**

...

**Recommendation 6a**

The EHRC recommends that UK Government, Scottish Government and Welsh Government:

- take action to include relevant questions about pregnancy and maternity discrimination and disadvantage in planned surveys of employers and mothers, report on the outcomes and keep under consideration what further research or action may be needed to address enduring areas of discrimination and disadvantage.

**[Accept]**

...

**Recommendation 6b**

The EHRC recommends that Acas:

- considers monitoring and publishing the number and outcome of Early Conciliation cases in England, Scotland and Wales that involve pregnancy or maternity discrimination or a breach of other rights related to pregnancy or maternity

**[Accept]**

The Government [response document](#) provides further details on proposals for taking forward the recommendations.

Although the EHRC/BIS 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.<sup>5</sup>

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);
- 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;

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<sup>5</sup> Maternity Action, [Overdue: a plan of action to address pregnancy discrimination now](#), December 2013, p3



- 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.<sup>6</sup>

### 1.1 Women and Equalities Committee inquiry

On 22 March 2016 the Women and Equalities Committee announced an inquiry into pregnancy and maternity discrimination. The Committee has taken oral evidence as in the process of preparing its report. Further information is available on the inquiry landing page on the Parliament website, [here](#).

### 1.2 Westminster Hall debate – November 2015

Members debated the issue of maternity discrimination on 3 November 2015.<sup>7</sup> At that point, the final EHRC and BIS research had yet to be published, although the interim findings were available. The Parliamentary Under-Secretary of State for Women and Equalities and Family Justice, Caroline Dinenage, set out the Government view on those findings:

We have all been shocked by some of the experiences highlighted in the joint Government and EHRC interim research report on this problem in the workplace and by the stories we have heard via the blog and, indeed, today such as the story of Aisha, which was raised by the hon. Member for Lancaster and Fleetwood (Cat Smith). Those stories reflect badly on the employers concerned.

When the interim report was published in July, I was horrified that one in eight women reported that they felt that they had to leave work as a result of their pregnancy or maternity leave. It is clear that far too many women feel that they face unacceptable treatment in the workplace, causing additional stress and difficulties at what, as the hon. Member for Glasgow Central (Alison Thewliss) quite rightly said, should be an exciting and happy time for their family.

The Chairman of the Women and Equalities Committee, my right hon. Friend the Member for Basingstoke (Mrs Miller), rightly said that it is not difficult for employers to understand, implement or comply with the legislation. The report shows that most mothers feel supported by their employer—four in five mothers said that their employer supported them during pregnancy, and three in four of those returning to work said that their needs as a new mother were met. It is encouraging that, despite the bad stories, most employers, such as the hon. Member for Strangford (Jim Shannon), embrace their legal and moral duties to their employees. It is good news that most women have a positive experience during and after pregnancy.

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<sup>6</sup> Alliance Against Pregnancy Discrimination in the Workplace, *A manifesto for the May 2015 general election*, October 2014

<sup>7</sup> [HC Deb 3 November 2015 cc308WH-325WH](#)

It is also important to recognise that the vast majority of employers believe it is important to support pregnant women and those on maternity leave. More than four in five employers feel it is in the interest of their business to do so, and of course it is. Although it is reassuring that the vast majority of employers recognise the important contribution made to their organisation both by pregnant women and by mothers returning from maternity leave, it is still nowhere near the 100% that we want. So many mothers do not have a good experience, and we must do all we can to ensure that all employers see the benefits to their organisation of having a diverse workforce.

To address the problem effectively, we need to understand the causes and extent of pregnancy discrimination in our workplaces, which is why in 2014 the coalition Government commissioned an extensive research project into perceived pregnancy and maternity discrimination. It is the largest research project of its kind undertaken in Great Britain, and it is interviewing more than 3,000 employers and 3,000 employees. The final report, which will come out later this year, will tell us what issues women face, who is most at risk and which types of employers are most likely to receive complaints about discrimination. We will use that information to decide our next steps to ensure that both employers and mothers are aware of, and act on, their legal obligations and rights.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East is right to say that access to the correct advice is a key priority. In the meantime, the Government have ensured that support is available both to mothers and employers on their rights and responsibilities. The EHRC has produced guidance in the form of frequently asked questions to help employers to understand their legal obligations and to provide suggestions for good practice in managing pregnancy, maternity leave and return to work. The EHRC has also produced a toolkit for employers, with a stock of pre-prepared letters, checklists and ready-made policy templates to make administration as simple as possible.

More generally, some £49 million has been provided to the EHRC, ACAS and the Equality Advisory and Support Service as part of the Government's commitment to support both employers and employees. The EASS helpline is available for those who may have a discrimination issue, often outside the workplace, such as women who feel that they have faced unlawful restrictions on breastfeeding in public. The helpline provides in-depth free advice and support, helping individuals to solve their problems informally, and covers England, Scotland and Wales. More than 80,000 individuals have been helped to date.

ACAS provides advice both to employers and employees on pregnancy and maternity discrimination, including specific guidance on breastfeeding at work. ACAS is also developing guidance and products in relation to gender pay reporting and the menopause. It has also published new guidance on equality and discrimination, equipping people with the knowledge and ability to take action to avoid discrimination and to respond to it if it occurs. Of course, we must not forget the excellent work of organisations such as Maternity Action and Working Families to support employers and women while pregnant and on maternity leave.

Employment tribunal fees were introduced to cut the burden on taxpayers and encourage parties to seek alternative ways to

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resolve their dispute. It is not right that hard-working taxpayers should pick up the entire bill of some £71 million for employment disputes and tribunals, but to protect the lowest paid workers, there is a system of fee remissions under which fees may be waived in part or in full for those who qualify.

We have also taken steps to divert people away from potentially acrimonious tribunal hearings where possible, which is important. Under the new early conciliation scheme, people must notify ACAS of their intention to lodge an employment tribunal claim, and they are then offered an opportunity to settle their workplace dispute without going to court. The scheme has already been used by more than 80,000 people in its first year, and 56% of complaints in the “suffered a detriment or unfair dismissal—pregnancy” category were settled through the ACAS early conciliation process. ACAS services are free of charge, making it a cheaper, quicker and less stressful option for all concerned.

On 11 June 2015, the Government announced the start of the post-implementation review of employment tribunal fees. The review is well under way and will be completed in due course. Among other things, the review will consider the impact of fees on particular groups, including women. The EHRC report will be taken into consideration. The review will broadly consider how successful the policy has been in achieving its original objectives, which will include, so far as possible, whether the fees have had any differential impact on people with protected characteristics and the types of cases they bring.

The hon. Gentleman also mentioned compliance and tribunal award payments, which are clearly unacceptable and are something that the Department for Business, Innovation and Skills is currently evaluating. We want everyone in our society to fulfil their potential, and we cannot afford to waste the talents of half our population. Addressing discrimination is only part of what we are doing to ensure that women are able to make the most of the opportunities available to them. Our ambition is to end the gender pay gap within a generation. There are now more women-led businesses than ever before, a record number of women in work, and the gender pay gap is at an all-time low. Do not take that as complacency; there is more to be done. That is why we will require large employers to publish information on the difference between men and women’s pay, and last week the Prime Minister announced that we will ensure that large employers regularly report on bonuses as part of that gender pay reporting.

...

The measures build on our support for working families. From September 2017, we will double the amount of free childcare to 30 hours a week for working parents of three and four-year-olds, which will be worth around £2,500 a year. Some 1.8 million families could also benefit from the new tax-free childcare scheme from 2017, which will be worth up to £2,000 a child. We will extend shared parental leave and pay to working grandparents. The policy, when implemented in 2018, will support working parents with the cost of childcare and help the 2 million grandparents who have given up work, reduced their hours or taken time off to help with childcare. That is in addition to the families who are already benefiting from shared parental leave, which was introduced earlier this year. We need time to assess the impact of shared parental leave, which will of course be reviewed

in due course. We need a cultural change so that the chaps understand that they have an equal responsibility for childcare. We will also introduce a national living wage.

The Government are committed to ensuring that everyone, regardless of their gender, ethnicity, age or background, is able to fulfil their potential, which is why we are determined to address pregnancy and maternity discrimination, wherever it may arise. This issue affects us all. It is not only utterly reprehensible that women feel they have experienced discrimination in the workplace, but it represents an unacceptable loss to our country's productivity. Valuable employees are being misused. I was interested to see the digital debate on Twitter yesterday, using #MothersWork. Many useful points were raised in that debate, as well as in today's debate, and they will all be taken into consideration. I am more than happy to meet Maternity Action, and I am pleased to see so many colleagues from both sides of the House agree that maternity discrimination is an important issue. I look forward to reading the final report.<sup>8</sup>

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<sup>8</sup> Ibid., cc321WH-325WH

## 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

- [Pregnancy and maternity-related discrimination and disadvantage: final reports](#), Gov.uk
- [Pregnancy and maternity-related discrimination and disadvantage: government response](#), Gov.uk
- 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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