

# Health & Safety issues

## For pregnant women in the workplace



### Overview

Mothers-to-be, new mothers and breastfeeding women have important legal rights in the workplace. This factsheet gives an overview of this special protection and the considerable responsibilities it places on employers.

*For more information on maternity and paternity rights, please see our factsheets 'Maternity Rights' and 'Paternity Rights'.*

### General duty to assess risks

The Management of Health and Safety at Work Regulations 1999 oblige every employer to conduct a general risk assessment if their employees include women of childbearing age. This includes women from their teens to their forties, so in practice almost every employer is affected.

The assessment should consider if there are any potential workplace risks to pregnant women, new mothers (those returning to work up to six months following the birth) or women who are breastfeeding.

Employees must be made fully aware of any risks identified and the measures proposed to reduce, remove or control them.

### Special duty to new and expectant mothers

In addition to this general risk assessment, employers must make a more specific assessment when you tell them you are pregnant. This assessment relates solely to the individual employee. The Health and Safety Executive publish guidance on their website on this issue for new and expectant mothers who work: <http://www.hse.gov.uk/mothers/index.htm>.

You should notify your employer of your pregnancy as soon as possible. The employer is not legally bound to make this specific assessment until they receive this notification. The employer may also request written proof of pregnancy, which can be obtained from your GP or midwife.

Once this written notification is received, the employer must investigate whether your working conditions involve any potential risks to your health, to the health of your baby or to the breastfeeding process. The employer must also take into account any medical advice you have received.

For instance, if you are suffering from a pregnancy-related medical condition, such as pre-eclampsia, or have a history of miscarriages, you might be advised to take more frequent rest breaks or to avoid stress. Your employer will then be legally obliged to make adjustments to your working patterns or conditions to meet these needs.

In any event, if an employer employs any woman of child bearing age and the work is of a specific kind which could involve risk to the health and

safety of a new or expectant mother, or her baby. I.e. because of working conditions, the employer should not wait until the employee is pregnant before carrying out the risk assessment.

### Risk assessment

The assessment must specifically examine your workstation and other physical aspects of the workplace. Working hours and workload should also be taken into account. This comprehensive review of your work conditions will include:

- Mental and physical fatigue
- Hours and times of work
- Handling of heavy loads
- Movements and postures
- Shock and vibration
- Travelling requirements
- Noise
- Extremes of temperature (hot or cold).

### Outcome of risk assessment

When a risk is highlighted, the employer must advise you and take action to remove the risk or minimise its effects. If this is not possible, the employer must change your working conditions or hours of work so you can avoid the risk.

If a sufficiently serious risk cannot be removed, you must be offered either suitable alternative work (on equivalent or better terms and conditions), or suspension on full pay until the risk is eliminated.

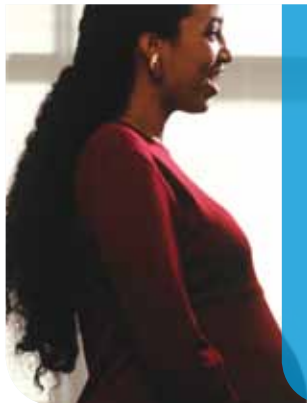
### Night work

Sometimes a GP or midwife will advise you that continuing to work at night puts your health - or that of your unborn child at risk. In this case, the employer is legally obliged to take you off night duties. Ideally, you should be given suitable daytime work instead, without any loss of status, pay or other benefits. If this is not possible, you will need to be suspended on full pay for as long as necessary to avoid the risks posed by night working.

### Antenatal appointments

As a pregnant woman, you have the right not to be unreasonably refused paid time off work to attend antenatal appointments. These include medical consultations with a GP, a midwife, a health visitor or at a hospital. The right also extends to antenatal, parenting and even relaxation classes, if a GP or midwife has advised you to attend them.

There is no set minimum or maximum time allowed. It is unlawful for an employer unreasonably to refuse time off to attend antenatal appointments. Employers may require proof of appointments, such as an appointment card or a health professional's letter.



*"On or before returning to work after maternity leave, if you provide your employer with written notification that you are breastfeeding, the employer must again arrange a specific individual risk assessment."*

## Breastfeeding

On or before returning to work after maternity leave, if you provide your employer with written notification that you are breastfeeding, the employer must again arrange a specific individual risk assessment as outlined overleaf.

The employer must also provide a rest place at work if you are pregnant or breastfeeding. It is also recommended that a private, clean and safe place with fridge facilities is made available if you wish to express milk.

## Employment Tribunal claims

The law relating to pregnant employees, new mothers returning from maternity leave and breastfeeding at work is complex. This factsheet can only highlight some of the possible issues you need to be aware of which may give rise to a claim. The best option is to get specific advice relating to your own circumstances. It is likely that a claim for maternity discrimination could be made because less favourable treatment due to pregnancy, childbirth or maternity leave is unlawful. Maternity discrimination is a specific form of sex discrimination and can occur in all of the below situations: Possible claims might include the following.

- Dismissing or subjecting a woman to detriment because of her pregnancy, childbirth or maternity leave is unlawful, and will also amount to unlawful maternity discrimination
- Failing to conduct a risk assessment, or failing to deal appropriately with the risks identified, can amount to a unlawful detriment
- Even when suspended on full pay on health and safety grounds due to pregnancy, a female employee may still be entitled to receive a bonus, a pay review or pay rise, along with all other contractual and accrued entitlements during the suspension
- If a woman is suspended without pay, she may claim her pay from an Employment Tribunal. If she is on paid suspension but her employer has failed to offer her suitable alternative work, she is entitled to compensation assessed by the Employment Tribunal
- Dismissing a woman because she is entitled to paid suspension on medical grounds is automatically unfair
- Women who have been unjustly prevented from attending antenatal appointments will be awarded pay by the tribunal to cover the time off they should have been given. Similarly, those who were forced to take unpaid time off will be awarded this 'missing' pay.

Please note that in most cases, any claim would need to be lodged no later than three months less one day from the act of discrimination.

*For more information on sex discrimination, see our factsheet 'Sex Discrimination', part of the Employment Law series.*

## Contact Us

*Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:*



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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This information was correct at time of going to press August 2011.