

Pregnancy or Maternity Discrimination

In the workplace: your legal rights

Overview

Women are protected from pregnancy or maternity related discrimination. The main legislative framework is contained in the Equality Act 2010 ("the Act").

When is discrimination unlawful?

Who is protected?

In the employment sphere, the Act applies to recruitment, employment and vocational training. It is unlawful to discriminate against someone because of pregnancy or maternity from the initial job application process through to dismissal.

It is important to note that pregnancy or maternity discrimination claims are now separate claims from sex discrimination claims unless the pregnancy or maternity provisions do not apply.

What is prohibited?

The Act sets out specific protection against discrimination because of pregnancy or maternity. There is no prohibition of harassment related to pregnancy or maternity nor is it possible to bring a claim in respect of indirect discrimination because of pregnancy or maternity. These claims would have to be brought as direct discrimination claims or alternatively as sex discrimination claims.

Discrimination

Under Section 18 of the Act, direct discrimination occurs where:

A person, during the protected period, treats a woman unfavourably in relation to:

- A pregnancy of hers
- Because of illness suffered because of it.

or

A person treats the woman unfavourably because:

- She is on compulsory maternity leave (which is the first 2 weeks after the birth, or first 4 weeks if the woman is a factory worker)
- She is exercising or seeking to exercise, or has exercised or sought to exercise the right to maternity leave.

Who is covered?

It is important to note that a person is only afforded protection under this section of the Act in relation to her own pregnancy.

Therefore, if a pregnant woman's partner is being discriminated against at work by their employer they cannot seek protection against the discrimination under Section 18 of the Act. However, they may be able to bring a sex discrimination claim. This issue is the subject of a reference to the European Court of Justice. For more information about sex discrimination please refer to the 'Sex Discrimination' factsheet.

What is the Protected Period?

The Protected Period begins from the start of the pregnancy and continues to the end of the woman's maternity leave. However, in some instances this period can be extended i.e. where a decision was made during the Protected Period, but acted upon after the period had come to an end. For example, where an employer decides to make a woman redundant because of her pregnancy but does not communicate the decision to make her redundant until after she returns back to work following maternity leave, then it is arguable that the act took place in the Protected Period as that is when the decision was taken.

In respect of maternity leave, the treatment complained of is not limited to such treatment occurring in the Protected Period. This means that it may be possible to bring complaints about discrimination in respect of maternity leave which occurs after the maternity leave has ended. For example, if a woman is advised that she will not be promoted because she missed important training sessions for the role when she was on maternity leave, this may give rise to a claim.

A woman may be required to demonstrate that her employer knew of her pregnancy or suspected that she was pregnant if she is to successfully claim that she was discriminated against during the Protected Period.

Unfavourable treatment

As the treatment that is unlawful is unfavourable treatment, the Act does not require a woman to point to a comparator to show that she has been treated unfavourably.

Continue overleaf >

Although it has been long since accepted that a woman does not need to rely on a comparator in pregnancy or maternity related claims, the Act now makes this clear.

Victimisation

It is unlawful to treat a person unfavourably because they have been involved in a complaint of discrimination under the Act. Discrimination by way of victimisation occurs when you are treated unfavourably because you have done, you are about to do, or you are suspected of doing a 'protected act'. A protected act includes:

- Bringing proceedings against the discriminator or any other person under the Act; or
- Giving evidence or information in connection with proceedings against the discriminator or any other person under the Act; or
- Doing anything in relation to the discriminator or any other person under or by reference to the Act; or
- Making allegations that the discriminator or any other person has committed an act which contravenes the Act. This would include raising a grievance of maternity or pregnancy discrimination.

So for example, if you have made a complaint about maternity or pregnancy discrimination and are later treated unfavourably for doing so, you should be covered by the Act. A protected act must be done in good faith.

Burden of proof

It has long been recognised as difficult for those bringing discrimination claims to find evidence to support their case. To combat this, the Act provides that the claimant is required to establish clear facts which could enable the Tribunal to conclude that discrimination has occurred. It is then for the respondent to provide evidence for the reason why the claimant was treated in that way. In the absence of an adequate non discriminatory based explanation from the respondent, the Tribunal must draw an inference of discrimination.

Where an employer has failed to comply with relevant statutory Codes of Practice, the Tribunal may also draw inferences from this failure. For example, an employer may have failed to follow the Codes of Practice in relation to the way in which they have investigated the employee's grievance or recruited an individual to a post.

Questionnaires: getting the facts together

You can serve a questionnaire on your employer any time before lodging a claim at the Employment Tribunal or within 28 days from the date proceedings were lodged.

The questionnaire can be used to ask your employer useful questions relating to the complaint.

If your employer fails to reply to the questionnaire, or makes evasive replies, the Tribunal may draw an inference of unlawful discrimination.

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Time Limits

A claim for pregnancy or maternity discrimination must be brought in the Employment Tribunal within three months less one day of the treatment you are complaining about. Where a series of acts amounts to a continuing course of conduct by your employer, the claim may be brought within three months less one day from the end of the conduct. In some instances, if a claim is lodged out of time, the Employment Tribunal has the power to extend the time limits if it is just and equitable to do so. However, this power should not be relied on.

The time limit will not automatically be extended where an internal grievance is being pursued.

Remedies

If the Tribunal finds that you have been unlawfully discriminated against, the Tribunal may grant whichever of the following remedies it considers just and equitable:

- A declaration on the rights of the parties
- A recommendation that the employer take a particular course of action
- Re-engagement or reinstatement if the individual has succeeded in her claim for (automatic) unfair dismissal; and
- Compensation (plus interest) for loss of past and future earnings (if any), loss of congenial employment, injury to feelings and in some cases injury to health. There is no limit on the amount of compensation that can be awarded, but you can only be compensated for the damage which was directly caused by your employer's discrimination.

If you need further assistance, in the first instance please contact your local Joint Branch Board.

W: www.slatergordon.co.uk/policelaw

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