

*Ending
discrimination
at work for
new mothers*

The Pregnancy Test





The good news

You're pregnant

The bad news

You could have a worse time at work

The first legislation protecting women from unfair dismissal because of pregnancy was introduced 40 years ago. Since then, successive legislation has strengthened maternity rights. Women are now protected from any unfavourable treatment at work because of pregnancy or maternity leave. They can take up to 52 weeks' leave and 39 weeks' statutory maternity pay and have the right to return to the same or similar job when they return.

Despite these legal rights, pregnancy and maternity leave is still a time when everything changes for many women at work. A recent survey found that six in ten mothers felt sidelined at work as soon as they announced their pregnancy and four in ten managers admitted that they were wary of hiring a woman of childbearing age.¹ Another survey of 1,000 low-paid women found that one in ten were given a more junior role when they came back to work.²

Where's the justice?

During the recent recession, the number of tribunal claims for unfair dismissal and suffering a detriment because of pregnancy rose by a fifth. In the five years from 2008 to 2013, more than 9,000 women brought tribunal claims on these grounds.³



We know this is just the tip of the iceberg as very few mothers with a newborn baby are willing to embark on a legal battle to enforce their workplace rights (less than three in a 100, according to earlier research).⁴

Since July 2013, following the introduction of employment tribunal fees, women have had to pay an issue fee of £250 and a hearing fee of £950 to bring a claim of unfair dismissal or pregnancy or maternity discrimination. If you are on maternity leave receiving just £138 a week, with the expense of a new baby and upcoming childcare costs, £1,200 is likely to be a major deterrent to seeking justice. Pregnancy and maternity claims fell by a quarter following the introduction of fees.⁵

- *"I could not have afforded the fee for an employment tribunal. This is particularly a problem for pregnant women facing a period of significantly reduced income during maternity leave. I would imagine most women would not take action."*⁶

There is also no guarantee that the tribunal fee would ever be recouped. Only half of claimants who were awarded compensation by a tribunal received full payment from the employer.⁷

Having a baby could seriously affect your career

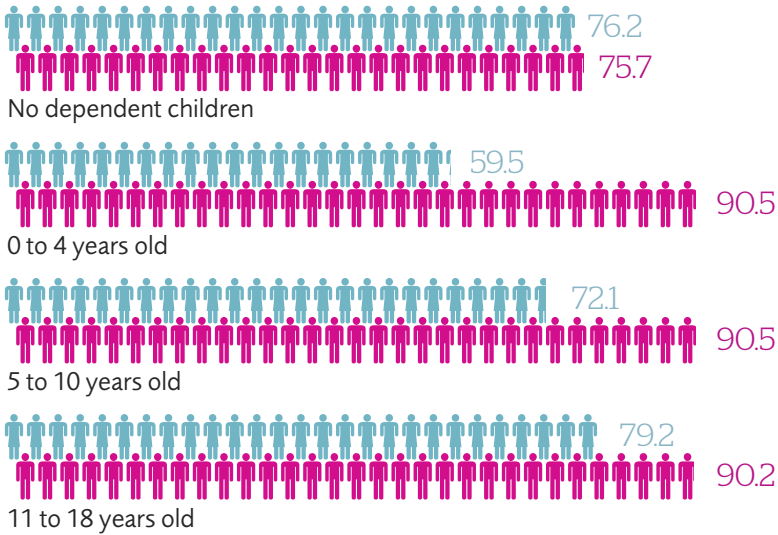
Poor treatment at the time of pregnancy or maternity leave can have long-lasting consequences for a woman's future employment and pay prospects.

About a quarter of women do not return to the labour market after maternity leave and only a minority (17 per cent) of these women have made an unconstrained personal choice to become stay-at-home mothers.⁸ Women are more likely to consider stopping work altogether if they experience ill treatment during pregnancy or maternity leave.⁹

Women are also far less likely to return to their pre-birth employment if there are no family-friendly arrangements such as flexible working, family leave or help with childcare in their workplace.¹⁰ One in six change jobs. For the majority of those, this is because they could not access part-time work or hours to suit their needs in their previous job.

As the chart on the next page shows, employment rates for working age men and women without dependent children are almost the same but the employment rate for women drops significantly after having children. By contrast, being a father increases the likelihood of a man being in employment.

Employment rates for men (16–64) and women (16–59) by age of youngest dependent child (%)



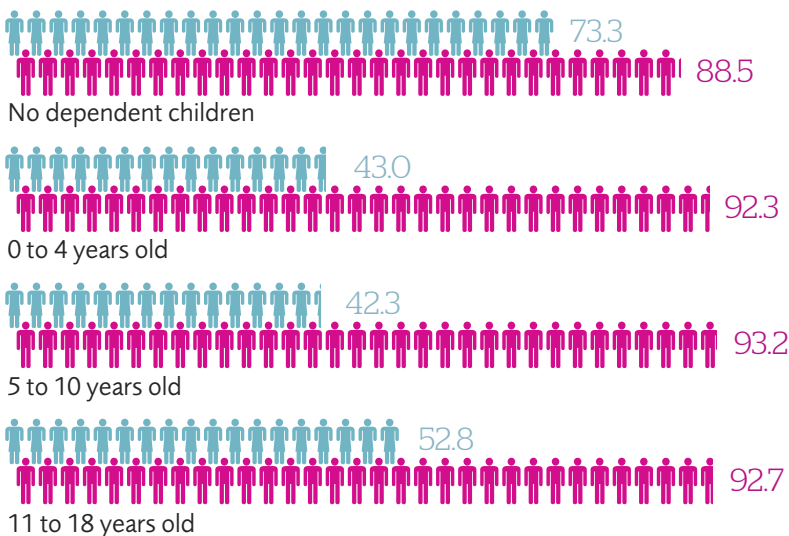
Source: Labour Force Survey, Household Dataset, Oct-Dec 2013

The majority of mothers in employment work part-time – six in ten with children who are pre-school or primary school age and half with children at secondary school. This compares to less than 10 per cent of working fathers.



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Proportion of men (16–64) and women (16–59) in employment who are working full-time by age of youngest dependent child (%)



Source: Labour Force Survey, Household Dataset, Oct-Dec 2013

The pay gap widens when women become mothers

The gender pay gap widens through the main childrearing years. There is a gap of 2.6 per cent in hourly pay, excluding overtime, between full-time men and women in their 20s; this widens to 5.3 per cent for women in their 30s and reaches 17.5 per cent for women in their 40s.¹¹ Part-time women workers earn an average 33.3 per cent less per hour than the average hourly rate for full-time men.¹² Two in five part-time women earn less than the living wage.

One in twelve women took a cut in pay when returning to work straight after maternity leave.¹³ If women do not return from maternity leave to the same job with the same employer they are more likely to suffer a pay penalty, especially if they are looking for part-time work. One study found that 43 per cent of women who were in high-skilled jobs but changed employer when switching to part-time work experienced downward occupational mobility. This compared to one quarter who stayed with their employer when they went part-time. Changing employer and switching to part-time work led to an immediate drop in income of a third and a permanently reduced earnings path.¹⁴

Rights not wrongs

Ten ways pregnant women and new mothers are mistreated at work

In summer 2014, the TUC carried out a short online survey of working women, which asked those who had been mistreated while pregnant at work or during or after maternity leave to describe their experiences. Most of these experiences fell under ten headings.¹⁵

1) **I lost my job**

Women are still sacked for being pregnant – 40 years after laws were passed to protect women from this most blatant form of discrimination. The news that they no longer have a job is sometimes delivered shortly after they have told their employer their 'happy news'.

- *"My previous employer, when I was an agency worker, ... ended my contract two weeks after I disclosed my pregnancy."*
- *"The manager told me 'it wasn't working' and they were terminating my employment. After I asked why, he said that because I was only on probation they didn't have to give me a reason. I was escorted off the premises after I had collected my belongings."*

- + **Dismissing a woman for a reason related to pregnancy, childbirth or maternity is automatically unfair and this applies from day one of employment. Terminating an agency worker's contract, not renewing a contract or not offering her similar assignments to other workers because of her pregnancy is unlawful discrimination.**

Other women find there is no job for them when they are looking to return to work. This may be because their maternity cover has been kept on or because their work has been re-organised while they were away and the employer is reluctant to take them back.

- *"I was told when I got pregnant that I could no longer do my job as a mother. I was effectively demoted."*
- + **A woman has a right to return to the same job if she takes 26 weeks or less leave. If she takes longer than that, she has the right to return to the same job, unless not reasonably practicable, in which case the employer must offer her a suitable and appropriate alternative on terms and conditions that are no less favourable than her previous job.**



2) I got unpleasant comments and was bullied

Negative reactions to a woman's pregnancy at work can sometimes manifest itself in unpleasant comments or a manager questioning a woman's performance or capability when previously there was no issue with their work.

- *"I suffered from a huge amount of harassment and bullying and had to plead to get time off for ante-natal appointments. I ended up having to keep a diary of the work I was doing, how long it had taken me and any issues I had had with it. This was due to my manager and supervisor continuously taking me into a meeting room to tell me that I wasn't good enough and that if I didn't improve they would sack me."*

Some managers express personal disappointment when they hear of a woman's pregnancy, indicating that, in their minds, pregnancy and motherhood mark the end of her career.

- *"My [manager] at the time literally said when I advised her of pregnancy 'what a shame as you were my shining star', suggesting this would all stop."*
- + **Such treatment may amount to pregnancy discrimination or a detriment linked to pregnancy.**



3) I wasn't allowed paid time off to go to ante-natal appointments

Ante-natal appointments are vital. They are an opportunity for midwives, and sometimes obstetricians, to advise women on what they should be doing to ensure a healthy pregnancy. Sometimes they detect problems that may have serious consequences for the woman or her unborn child and they enable steps to be taken to minimise those risks.

- *"I was made to feel bad about time off for maternity appointments and my line manager seemed to think I should do additional tasks to compensate."*
- *"I was asked to make my maternity appointments on a Saturday."*
- + **Because of the importance of ante-natal appointments, women have a right to paid time off work to attend them. However, pregnant agency workers are only entitled to this right once they have 12 weeks' service with the same hirer in the same job.**

4) **They still gave me dangerous and risky work to do**

There are particular health and safety risks for pregnant women and breastfeeding mothers at work. These may be physical such as from manual lifting or prolonged standing; they may arise from exposure to infectious diseases or certain chemicals; or they could be related to working conditions, for example working hours or exposure to violence at work. Employers who don't comply with health and safety legislation are putting two lives at risk.

- *"I was not given a risk assessment and had to request one, which I had to complete by myself (I work with some hazardous chemicals) and research which chemicals were hazardous to an unborn child."*
- *"I work with troubled teenagers (mainly male) and whilst heavily pregnant was still expected to be alone in a classroom with these students. Two other members of staff were attacked, one with scissors, by these students during this time."*
- + **Employers must assess the risks to new or expectant mothers and their babies in the workplace if they employ women of childbearing age and the work is of a kind which could harm a pregnant or breastfeeding woman or her baby. They must keep the risks under review as individual women notify them of their pregnancies and as those pregnancies progress. There may be different risks depending on the stage of pregnancy.**

If a significant risk is identified the employer must adjust the woman's working conditions. If that is not possible then they must offer her suitable alternative work at the same rate of pay and, if that is not possible, suspend her from work on her normal pay for as long as necessary to protect her health and safety, and that of her child. A pregnant agency worker is also entitled to alternative work or a paid suspension but only if she has been in the same job with the same hirer for more than 12 weeks.

5) I was overlooked for promotion and training

When employees are pregnant or on maternity leave, they may find they are overlooked when it comes to promotion or they have development opportunities taken away from them.

- *“They did not inform me of a promotion that I was next in line for during the first week of my maternity leave.”*

“Suddenly I was getting projects taken away from me because they thought I ‘shouldn’t be taking on undue stress while pregnant’. I had to inform them that being pregnant was not a disability!”

- + **Employers who don't notify a woman of a suitable promotion or consider them for new development opportunities because of their pregnancy or maternity leave may be liable to claims of pregnancy or maternity discrimination or suffering a detriment related to pregnancy or maternity.**

6) I was disciplined for feeling ill at work

Half of pregnant women suffer vomiting in pregnancy and three in ten experience nausea without vomiting. The likelihood of women suffering from other conditions such as backache, pelvic pain, hypertension, diabetes, or blood clots is also increased in pregnancy.

- *“I was shouted at and sworn at for being in the toilet with morning sickness. I was told I was using my pregnancy to get away with doing things despite my caseload being unchanged.”*
- *“I was threatened with formal action over my sickness by my line manager until I provided him with some evidence from our own policies that this would be discriminatory.”*

- + **An employer who disciplines a woman for pregnancy-related sickness absence is acting unlawfully. To prevent this happening employers should record any pregnancy-related illness separately from other sickness absence.**



Jacky Fleming

7) They wanted to make me redundant

Redundancies and reorganisations going on at work can place women who are pregnant or on maternity leave in a vulnerable position. They have a new child to support and will find it hard to search for alternative work if pregnant, caring for a new baby or after a period of extended absence from work.

For these reasons, the law has given women who are pregnant or on maternity leave some extra protection in redundancy situations.

- *“I was handed my notice at six months’ pregnant. I had to fight redundancy hard with the aid of my union. I was eventually offered a job two grades lower than the one I was then on (£10k less)... After a long difficult pregnancy, then a very difficult labour, I eventually accepted a post a grade below my original post.”*
- *“I was advised that I would not have to go through redundancy process... formally by a letter. Five days later I was advised that this was incorrect and that I would be expected to attend for an interview in two weeks’ time - despite having been off work for 10 months and having no access to resources. I had to fight to get more time to prepare and to be given the resources and support to be able to compete on a level playing field. It was extremely distressing and damaging to how I felt about the organisation.”*
- + **Selecting a woman for redundancy because of her pregnancy, maternity leave or a related reason would be an automatically unfair dismissal as well as being unlawful discrimination. Failure to properly consult a woman on maternity leave is likely to be unlawful discrimination. If a woman on maternity leave is identified as one of those at risk of redundancy, the selection criteria or procedure should be adjusted to ensure that she is not put at a disadvantage.**
- + **A woman who is made redundant while on maternity leave must be offered a suitable alternative vacancy on terms and conditions that are not substantially less favourable than her previous post. This includes women on fixed-term contracts that come to an end during their maternity leave.**



8) I wasn't allowed to come back on different hours

Many women may be treated fairly throughout their pregnancy and maternity leave but it is when they start negotiating their return to work that problems arise, especially in relation to working hours.

- *“When I returned after giving birth, my employer refused to help and allow me to change my working hours to normal day patterns instead of 24-hour shift patterns even though they knew I was struggling to find childcare and was recently a single parent.”*
- *“They stated I had to return full-time or relinquish my management position... They even tried stating I also had to work two Saturdays per month when the branch manager never worked any and the person who had covered my maternity leave hadn't worked a single one.”*
- + **All employees with 26 weeks' service have a right to request flexible working. It is frequently women returning from maternity leave who exercise this right. An employer can say 'no' to a request for flexible working but they must think carefully before doing so. The employer must consider the needs of the woman and whether the work can be organised in a different way that would still allow the business to meet its goals. If they don't give the request proper, objective consideration, they could face an indirect sex discrimination claim.**

9) I was made to feel bad for wanting to breastfeed at work

Breastfeeding is recommended by the World Health Organisation and Department of Health for the health benefits it brings for mother and baby. Breastfeeding mothers may have an added level of anxiety about returning to work. They will have the worry of how their baby will feed in their absence and will have to raise important practicalities with their employer, such as facilities for expressing and storing breast milk or a temporary adjustment in working hours to allow them to express or to fit in feeds with their baby. If the employer lacks understanding and refuses to discuss or accommodate these requests it will create additional stress and may even delay or prevent her return.

- *"When I returned, I asked my employer for a room where I could express milk, so that I could continue with breastfeeding and I was allowed to do this in the disabled toilet!"*

"When I returned to work (after six months' maternity leave) I have encountered problems with HR over breastfeeding and expressing at work. Despite our best efforts, my little girl would not/ could not feed from a bottle, so I had enquired whether my husband could bring our baby to me at lunchtime for a feed. HR informed me that I could not feed on the premises and any time spent feeding would need to be deducted from my annual leave."

- + **The Equality Act 2010 states that it would be unlawful maternity discrimination for a service provider, like a café or restaurant, to treat a woman unfavourably because she is breastfeeding. There is no similar provision that applies to the workplace. However, a woman might be able to argue that it is sex discrimination for an employer to refuse to allow her to express milk or refuse breaks as only women breastfeed. Health and safety legislation requires employers to provide rest facilities for breastfeeding mothers but there are no specific rights for facilities to express or store milk. The Health and Safety Executive does advise that "it is not suitable for new mothers to use toilets for expressing milk".¹⁶**



10) **I lost pay and benefits because I'd been on leave**

Women should return to work with the pay and benefits they would have been entitled to had they not been absent on maternity leave.

- *"I was given the lowest box mark on my return to work. My manager actually stated this was because I didn't have enough evidence to receive a higher one because I'd been on maternity leave."*
- *"My employer tried to prevent me from taking annual leave that I accrued whilst on maternity leave."*
- + **A woman is entitled to any routine pay increase awarded during her absence and her annual leave continues to accrue while she is on leave. Contractual benefits such as gym membership, childcare vouchers, the use of a company car or a mobile phone (unless for business use only) also continue throughout maternity leave. Employers must continue to pay pension contributions during any period of paid maternity leave.**

Expecting better

Five things that need to change

1) Remove barriers to justice

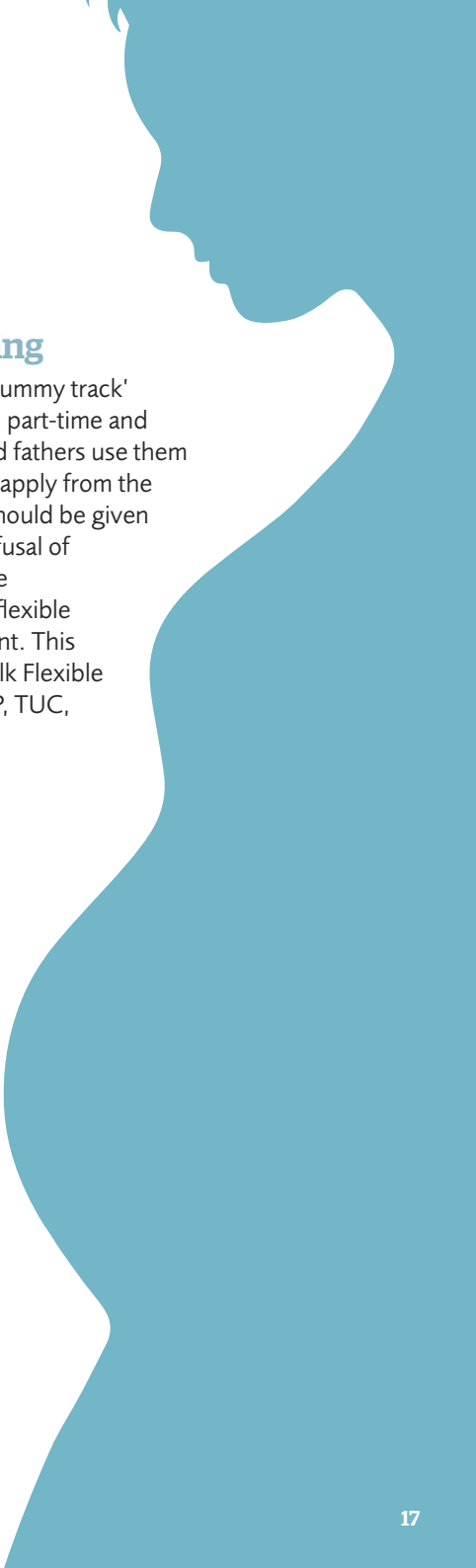
- + Employment tribunal fees must be abolished. Statutory maternity rights will be worth little if most women cannot afford to enforce them. Good practice will be undermined if bad managers know they can get away with discrimination.

2) Publish return-to-work rates

- + Employers should analyse and publish information on how many of their female employees return to work after having children and how many are still in post a year later. They should carry out exit interviews for those new mothers who drop out of employment and act on their findings.

3) Better paid leave for fathers

- + Better paid leave for fathers is needed to open up more opportunities for women to progress at work and for men to care for their children. Couples have had more flexibility to share leave in the first year of a child's life since the introduction of Additional Paternity Leave in 2011. This will soon be replaced by Shared Parental Leave in 2015. However, few fathers are expected to take such leave.¹⁷ This is unsurprising given the very low statutory rates of pay for such leave (£138 a week, which is about 40 per cent lower than the national minimum wage for a full-time worker). International evidence also shows that fathers are more likely to use leave that is designated as fathers' leave rather than transferable or shared leave.¹⁸



4) Stronger rights to flexible working

- Women will continue to get stuck in low-paid, 'mummy track' jobs until flexible working options like job shares, part-time and compressed hours become more widespread and fathers use them too. The right to request flexible working should apply from the first day of employment. All parents and carers should be given a stronger basis for challenging an employer's refusal of a flexible working request.¹⁹ Employers should be encouraged to design flexible jobs and consider flexible work options for all jobs at the point of recruitment. This could be signified by promoting the 'Happy to Talk Flexible Work' strapline. This was developed by the DWP, TUC, Working Families and employer representatives (see the Working Families website).

5) Learn lessons from complaints

- Employers must learn lessons from pregnancy and maternity discrimination cases brought against them. At the moment, about half of employers fail to implement any changes following a finding of discrimination.²⁰ Therefore, tribunals must have the power to make recommendations that an employer change their practice to protect other women from similar treatment. These recommendations must be enforceable against the employer.²¹



References

- ¹ 2,000 mothers and 500 managers were surveyed. Results at www.slatergordon.co.uk/media-centre/news/2014/08/slater-gordon-highlights-maternity-discrimination/
- ² www.fawcettsociety.org.uk/latest/press-releases/new-research-1-10-low-paid-women-returning-maternity-leave-drop-junior-role/
- ³ Calculated from annual Employment Tribunal and EAT statistics published by Ministry of Justice
- ⁴ Earlier research found just three per cent of women who lost their jobs because of pregnancy or maternity made a complaint to tribunal. *Pregnancy Discrimination at Work: a survey of women* (Equal Opportunities Commission 2004/5)
- ⁵ www.tuc.org.uk/sites/default/files/TUC_Report_At_what_price_justice.pdf
- ⁶ Quote from respondent to TUC online survey of women's experiences of pregnancy and maternity leave
- ⁷ IFF Research, *Payment of Tribunal Awards – 2013 Survey*, BIS (2013)
- ⁸ Maternity and Paternity Rights and Women Returner Survey (BIS, DWP 2009/10)
- ⁹ The EOC survey 2004/5 found one in eight mothers considered stopping work because of the poor treatment they experienced. The Australian Human Rights Commission survey in 2014 found one in four women who reported discrimination did not return.
- ¹⁰ Maternity and Paternity Rights and Women Returner Survey (BIS, DWP 2009/10)
- ¹¹ Annual Survey of Hours and Earnings 2014
- ¹² Annual Survey of Hours and Earnings 2014
- ¹³ Maternity and Paternity Rights and Women Returner Survey (BIS, DWP 2009/10)
- ¹⁴ Connelly and Gregory, "The part-time pay penalty: earnings trajectories of British Women" (Oxford Economic Papers 2009)
- ¹⁵ More examples of poor treatment can be found on the 'When I had my baby' photo wall of the Valuing Maternity campaign which the TUC supports: www.valuingmaternity.org/whenihadmybaby/
- ¹⁶ www.hse.gov.uk/mothers/faqs.htm
- ¹⁷ Less than one per cent of eligible fathers took any of the paid portion of Additional Paternity Leave in the year after it was introduced. See www.tuc.org.uk/workplace-issues/just-one-172-fathers-taking-additional-paternity-leave
- ¹⁸ Moss, P. (ed), *International Review of Leave Policies and Related Research 2013*
- ¹⁹ Under the 'right to request' legislation, an employee can only challenge a refusal if their request has been dealt with in an unreasonable manner, eg. they did not receive a timely response. A woman may be able to bring indirect sex discrimination to challenge the reasons for refusal but a man would find it harder to challenge.
- ²⁰ Survey of Employment Tribunal Applications 2008 cited in the government's impact assessment on repealing ET powers to make wider recommendations.
- ²¹ Tribunals were given extended powers in the Equality Act 2010 to make recommendations but they were not enforceable and this government is currently repealing them.



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