

Pregnancy Discrimination at work

October 2017



Introduction by Alan Bruzon, CEO



Citizens Advice Eastbourne continues to see women dismissed when they become pregnant. Typically a woman would have been working for an employer for some time and then she informs them she is pregnant. Soon after, sometimes immediately, she is told she is no longer needed and is dismissed. If a zero hours contract is involved, suddenly there is no more work available for that person.

This is the kind of thing I associate with the 1970s, an old fashioned form of sex discrimination which most of us would think no longer occurs. Yet we see cases too often. Let's be clear, dismissal of a woman for becoming pregnant would be unfair and an Employment Tribunal may find against the employer and apply a hefty penalty.

So why is this still happening?

Here's my theory: Some employers are worried about the cost of maternity pay and are concerned about paying this as well as the salary of a replacement member of staff to cover the maternity period. This is understandable if a small employer or a new employer, for example, has never dealt with pregnancy before but what they may be unaware of is they can reclaim maternity pay from HMRC.

There is information about this on the gov.uk website:

<https://www.gov.uk/recover-statutory-payments>

which says: "As an employer, you can usually reclaim 92% of employees' Statutory Maternity (SMP), Paternity, Adoption and Shared Parental Pay.

You can reclaim 103% if your business qualifies for Small Employers' Relief. You get this if you paid £45,000 or less in Class 1 National Insurance in the last complete tax year...."

So in many cases the employer will not be worse off as a result of maternity pay (and in some cases they'll get a little more back from the government).

The alternative is potentially more costly to the employer. When a tribunal looks at a claim for dismissal, there are certain legal tests that they will apply. One of these tests is how long the employer has been working for the employer. Generally, you must have been in your job for a certain length of time before you can claim unfair dismissal.

However, there are certain reasons for dismissal which a tribunal will decide are automatically unfair. If you're dismissed for any of these reasons, you will be able to claim, regardless of how long you've worked for your employer. Dismissal for pregnancy is an automatic unfair reason for dismissal. Dismissal for pregnancy is also considered to be discrimination and you can make a separate claim for this in addition to a claim for unfair dismissal.

There have been examples where the Tribunal has awarded £30,000 compensation for a woman who was unfairly dismissed as a result of her pregnancy.

If in doubt, an employer should seek advice from HMRC, whoever does their payroll or an HR expert. Not doing so could prove more costly for them in the long run.

Pregnancy Discrimination Survey Results

September 2017

By Karen Costello-Mcfeat



Overview

Following numerous pregnancy discrimination cases arising in Eastbourne, the Citizens Advice Research and Campaigns team created an online survey to assess the extent of the problem county-wide. The survey was based on the government guidelines and covered all pregnancy rights.

It resulted in 18 responses – 15 complete. Respondents came from Eastbourne (11), Hailsham (3) and Crowborough (1). Although the number of respondents was lower than hoped, they were sufficient to identify areas of concern.

Our findings

While many of the findings were encouraging, an equal number were not.

Most respondents (88%) were aware of the rules surrounding notifying their employer. Upon doing so, 94% said that their terms and contracts did not change, though only 73% resumed the same or equivalent job. Flexibility on return to work was very mixed. Though most were happy, four were not granted any flexibility at all and two resigned as a consequence.

While paid time off for antenatal care and maternity leave were almost universally provided for those in regular employment, those who were self-employed or on lower incomes fared rather worse with only 33% of this group offered maternity allowance.

Regarding health, most employers (69%) did assess health risks, though a worrying 31% did not. Further, 42% said their employers did not follow guidelines from health professionals and 57% were not offered suitable alternative work.

The most disturbing finding of all was that almost half the respondents said they had faced unfair treatment or discrimination. While the removal of tribunal fees should help, the challenges of a court appearance and the paperwork involved is likely to put off many mothers with infant children.

Recommendations

It is imperative that workers are aware of their rights, yet our survey indicated that very few were given sufficient information and support from their employers. The government site (Gov.uk) is clear and comprehensive and we believe that greater publicity of this via media and health centres would be beneficial. For a low-cost solution, details of the site could be given with the certificate of pregnancy.

Knowledge of this site would also enable employees of small businesses to signpost guidance to their employers - especially regarding Statutory Maternity Pay and the Small Employers' Relief Fund.

It would also be helpful to include information about the excellent www.maternityaction.org.uk site which can refer women to other organisations that can help with discrimination claims.

The difficulty of obtaining legal aid and the scarcity of Law Advice Centres should also be addressed to ensure that access to justice is available to all.

Pregnancy Discrimination Case Studies 2017

by Sarah Rose and Geoff Ferguson

Client is due to return from Maternity leave on 14th March. Before she left to go on maternity leave she was working 28.5 hrs pw. Client would like to reduce her hours to 16 mostly being worked on Monday & Tuesday to fit in with child care. Client contacted employer who initially seemed agreeable but now have contacted her saying that if she is unable to return to original hours they would like her to resign. She does not want to do this and she is aware other employees have been allowed to return on flexible arrangements. In the past she has worked in different branches to accommodate the employer.

Client started working as an Apprentice Care Assistant for Rest Home in Eastbourne on 05/12/15. She was employed for 30 hrs pw at £5.50ph, often in sole charge of night shift after only one days training. On 25/03/16 she informed the owner that she was pregnant with a due date in November and from then the attitude changed. She received text messages critical of her performance. She was called to a meeting on 06/04/16 offering her a 12 hour post as a cleaner and then told that her hours had been changed at her consent because of her pregnancy (not true). In addition she has no payslip and hours are computed by owner so hard to check. She was told not to contact ACAS or CAB. Client's partner is unemployed so client needs job.

Client had no issues until told employer that she was pregnant. Owner now seeking to remove her and clearly is discriminating against because she is pregnant. She is faced with taking an ET case against her employer that could cost her and may also need representation as legal aid not available.

Client worked for a pub for 3 years. She went on maternity leave 5 weeks before confinement when employer told her that it was her last shift. She had difficulty getting benefit as employer failed to issue SM1. Client never had a contract and only received payslips on demand. In addition client was having a speeding fine deducted from her wages following a court case in Scotland and this information had been spread around the existing staff.

Client feels that she has not been treated properly by her ex employer and wants to stop her spreading her personal information round the rest of the staff. Any legal action is likely to cost more than the value of any claim as legal advice is not readily available. Poor employment practice coupled with limited access to justice.

Client worked at Residential Home for over 1 year. She is paid £7.05ph for 30 hours pw. Her boss has been bullying her and making inappropriate comments which has escalated over the last 3 weeks since she told him she is pregnant. The rest of the staff seem to know that she is expecting and she suspects that he is behind the spreading of this information. She had to leave a recent meeting because of his attitude/comments and complained to the Owner who has simply told her not to talk to the Manager. His behaviour has been witnessed by other members of staff including her NVQ Assessor.

Client is anxious about working at the Care Home and feels that the Manager wants her to leave as she is pregnant. She would have hoped that the Owner would have given her some support but this has not been forthcoming. She is faced with taking case further which may include an ET application which may cost unless she can get the fee remitted .

Client is 21 weeks pregnant. She is self-employed. An agent finds her work but has not found any work for her recently. This has coincided with her becoming pregnant. Apparently, there is less work around (although she lives in Eastbourne (a seaside resort and it is summer holidays). It may well be that this could be construed as discrimination.

Client worried that she has no income and will not be eligible for maternity allowance. She is upset that the agent is discriminating against her though she does not want to take any action against him.

Client is from India and has been in UK since start of 2014. She was employed at Residential Care Home until called into the office and dismissed for allegedly having an invalid visa. She was also told that her employment has been terminated with immediate effect. The client is on maternity leave, was told that they needed to lose 3 workers. 2 others have been dismissed for the same reason however client has a valid visa to stay in UK until March 2016. Client believes this reason is a fabrication especially as she is on maternity leave.

Client has worked for a florist for almost 2 years. She is 15 weeks pregnant and has been advised by her Doctor that she needs to work regular hours and has had a note to that effect. The employer has refused to accept this and has carried out his own assessment and believes the job dictates what she should do and she has been told that she should work overtime over Xmas. The client is unhappy about this as she has had a miscarriage in the past. Until now she has had no problems with her employer.

Client has worked as a Housekeeper at a hotel for 15 months. Although she is on a zero hours contract she has worked an average of 40 hours pw. The client is pregnant and when she told her Manager she was expecting she was asked repeatedly whether she was going to keep it. Last month she was told that she would not be required to work after the end of October though she has now been offered some hours for later this month. It was announced in a staff meeting she would be leaving but client wants to make clear she does not wish to resign. Her Manager's attitude is clearly wrong and possibly unlawful but client is faced with a dilemma. If she takes it further she will have no money and possibly problems getting a reference, in addition the cost of taking to a tribunal is costly and worrisome.

No more contact since client was sent a draft grievance letter to amend and send to employer.

Female client with Polish citizenship has worked for a bakery for 3 years. Since telling her employer she was pregnant her hours have been reduced, going from 20 to 4 hrs/wk. She has been off sick for 4 weeks and the week before she was due back her employer sent a text saying there were no hours for the following week and then a week later, she was told there would be no work for 4 weeks. A new owner took over in February and hours started to vary after that but there was significant change once she said she pregnant. She has no written contract and is paid minimum wage. She received £12.77 p/wk for 2 weeks sick pay then a payment of £38. Client has contacted ACAS and been informed she has a case to claim discrimination via an ET.

Employment Tribunal Fees Update

In July 2017 the Supreme Court ruled that fees for Employment Tribunal fees were unlawful. This means that from that date no-one will have to pay a fee to take an employer to tribunal and some people who were put-off going to tribunal because of these costs would also be able to make a retrospective claim. Also people who paid fees since they were introduced in the past 4 years may be able to reclaim the fees.

<https://www.citizensadvice.org.uk/work/problems-at-work/employment-tribunals-from-29-july-2013/what-will-it-cost-to-make-a-claim-to-an-employment-tribunal/removal-of-employment-tribunal-fees/>

All the case studies shown above occurred prior to the abolition of tribunal fees. Before this judgement, pregnant women would have faced a charge of over £1,000, plus any legal costs, to take a pregnancy discrimination case to tribunal. This would have put off many women from asserting their rights when pregnant and many simply gave up taking action during the process of us advising them.

Although the abolition of tribunal fees is welcomed, their removal constitutes the elimination of just one barrier to justice. Pregnant women will always find it difficult to bring a case to tribunal when bringing a baby into the world. Their new arrival will certainly take a great deal of their attention and energy, leaving little left for legal battles.

While there are excellent organisations such as the Equality Advisory and Support Service offering on-line and telephone advice, there is nothing locally to provide the personal, face-to-face support needed to bring about a case.

See <https://www.equalityadvisoryservice.com/>

CABx have previously received funding from the Equality and Human Rights Commission to back employment discrimination case work and a renewal of this funding would enable Citizens Advice to help ensure that women's legal rights are not disregarded.

See <https://www.equalityhumanrights.com>

What needs to change?

- 1 Raise awareness amongst employers of their right to claim Statutory Maternity Pay costs back from HMRC.
- 2 Raise awareness of maternity rights amongst pregnant women by providing information through the health services.
- 3 Increase support for pregnant women to access their rights at work through employment tribunal by funding advice services.
4. Ensure that all employees must have a written contract of employment to protect their employment rights.

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