

## 1. About Maternity Action

Maternity Action is the leading national charity working to protect and strengthen maternity rights and to promote the health and wellbeing of pregnant women, new mothers and their families. Maternity Action provides online information and telephone advice to pregnant women and new parents on maternity rights at work, maternity benefits, and entitlement to health and other services for women from abroad. Maternity Action convenes the Alliance for Maternity Rights, a network of parenting groups, advice agencies, unions and health organisations working to bring an end to pregnancy and maternity discrimination in the workplace.

## 2. Nature and incidence of pregnancy and maternity discrimination in the workplace

Equality and Human Rights Commission research into pregnancy and maternity-related discrimination found that this form of discrimination was widespread and affected women working in the public and private sector, in all industries and in large, medium and small businesses. Key statistics from the 2016 research, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of Mothers* (EHRC/BIS 2016), are:

- More than three-quarters (77%) of all pregnant women and new mothers in the workplace experience some form of pregnancy or maternity-related discrimination.
- One in every nine (11%) pregnant women and new mothers in the workplace are unfairly dismissed, unfairly made redundant or forced to leave their jobs because of discrimination.
- The incidence of maternity discrimination has increased significantly over the past decade. The EHRC research found that a total of 54,000 women each year lose their job as a result of pregnancy and maternity discrimination. This is 80% higher than comparable research undertaken ten years earlier by the Equal Opportunities Commission.
- One in every twenty-five (4%) women leave their jobs because of concerns about health and safety. Almost half of all women (48%)

report that their employer did not initiate a discussion about health and safety or that not all health and safety risks were tackled.

- Just over one in every ten women (11%) reported negative changes to their job on return to work.
- More than half (51%) of women who had their flexible working request approved reported negative consequences. Roughly one in every four women (38%) did not request the type of flexible working they wanted because they did not think it would be approved or they were worried about negative consequences.
- One in five women (19%) who stopped breastfeeding said that returning to work influenced their decision. Over half of these women (54%) would like to have breastfed longer (equating to 6% of all new mothers in the workplace).
- Four in ten women (41%) experienced some risk to or impact on their health and welfare. The incidence was higher amongst women on agency, casual or zero hours contracts (50%) and lowest amongst those earning more than £40,000 p.a. (35%).
- Only 28% of women who reported negative and possibly discriminatory experiences raise this with their employer. Only 3% pursue a grievance and fewer than 1% make a claim to the employment tribunal.

Pregnancy and maternity discrimination poses significant costs to women, the state and employers as documented in the EHRC research, *Estimating the financial cost of pregnancy and maternity related discrimination and disadvantage* (EHRC 2016). The cost to women of losing their jobs due to pregnancy and maternity discrimination is between £46.6 million and £113 million in the first twelve months alone. The cost to the state due to lost tax revenue and increased benefits payments is between £28.9 million and £34.2 million in the first twelve months. The cost to employers was £278.8 million per year.

By contrast, discrimination which falls short of women losing their job results in costs to women and the state but net savings to employers of between £7.1 million and £8 million in the twelve months following the event. Examples of savings include employers refusing to pay for time off for antenatal appointments and for holiday entitlements.

### 3. Women's experiences

Maternity Action's Maternity Rights Advice Line provides free telephone advice on maternity rights at work and maternity benefits to approximately 2,000 parents each year. Advice is delivered by lawyers and trained advisers. Callers are from across the UK, with 3% located in Wales. Three quarters (75%) earn below £30,000.

The most common topics raised by callers are: Statutory Maternity Pay, discrimination, Maternity Allowance, rights during maternity leave, redundancy, return to work, right to request flexible working, Tax Credits, maternity leave, health and safety, contractual maternity pay, resigning during maternity leave and sickness during pregnancy.

Examples of some recent calls:

- A pregnant woman employed in a hairdressing salon had experienced difficulties with her employer when she needed time off for sickness. She was then told that she would be made redundant. She felt that this was not a genuine redundancy as she was the only one being made redundant and there had been no change in demand for the service. The timing of the redundancy meant that she was not entitled to Statutory Maternity Pay. We advised her on how to challenge the decision and how to claim Maternity Allowance.
- A woman returning from maternity leave had her flexible working request refused. Her employer offered her either a more junior role on a part time basis or redundancy. She discovered that her employer had decided to keep her maternity cover on. We advised that this was not a genuine redundancy as her role was still available and that she could make a claim for discrimination.
- A woman working in a health centre was told that the time she had taken off for antenatal appointments would not be paid as she had not formally notified the employer of her pregnancy before taking leave. She had records of notifying the relevant manager however these were rejected by the head of the centre. We advised her on raising a grievance and, if this did not resolve the issue, pursuing a claim for discrimination.

Maternity Action is currently piloting a casework service for women experiencing pregnancy and maternity discrimination at work, in partnership with YESS law. The pilot, funded by the Equality and Human Rights Commission, consists of casework support up until litigation and provision of a peer supporter. The project aims to address the very low numbers of pregnant women and new mothers who take action to assert their rights (28% speak to their employers, 3% pursue a grievance and fewer than 1% make an employment tribunal claim). Preliminary findings are that this combination of support significantly increases the likelihood of women exercising their rights.

An example of a recent case for which we provided casework support:

- A woman had been extremely unwell during her pregnancy, requiring weekly visits to her doctor. She complied with the absence procedures and provided doctors certificates. Her employer called her in for a meeting to discuss disciplinary action for her absences.

Maternity Action's advice service is substantially oversubscribed. As the only specialist maternity rights advice service in the charity sector, the demand for advice has increased each year in response to the increasing incidence of maternity discrimination and cuts to other advice services, such as local Citizens Advice Bureaux and Law Centres. We are able to assist approximately one in five women who call the advice service, as we have been unable to secure funding to expand the service to meet need. We are concerned that the consequence of inadequate funding for this service is that women are not obtaining much-needed advice on their rights.

#### **4. Welsh Government action to address pregnancy and maternity-related discrimination**

In 2016, Maternity Action and the Alliance for Maternity Rights released an Action Plan: Putting an end to pregnancy discrimination in the workplace which included a detailed set of recommendations for Government action. The Action Plan influenced the UK Women and Equalities Select Committee's inquiry into pregnancy and maternity-related discrimination.

The responsibility for addressing pregnancy and maternity-related discrimination in Wales is shared between the UK Government and the National Assembly of Wales, with many of the levers to address this issue lying with Westminster. The UK Government has yet to take substantive action to address pregnancy and maternity-related discrimination. The key Government commitment in response to the Women and Equalities Select Committee report was to review redundancy protections for pregnant women and new mothers. This commitment was given in January 2017 and the Government has yet to provide a commencement date for the review. While the Taylor Review of Modern Workplace Practices was specifically tasked with investigating maternity and parental rights, it merely repeated the commitment to review redundancy protections.

Levers available to the Welsh Government to take action on pregnancy and maternity discrimination include the Fair Work Board, the Code of Practice for Ethical Employment in Supply Chains, the Sustainable Development Charter and policies and practices in devolved public services. The Welsh Government can also fund specific programmes, such as the new childcare offer.

Maternity Action is keen to see the Welsh Government invest in strategies both to reduce the incidence of pregnancy and maternity discrimination and to support women who have experienced unfair and unlawful treatment. We make the following recommendations.

*(i) Demonstrating leadership in addressing high rates of pregnancy and maternity discrimination*

There is an urgent need for Governments to show leadership in spearheading a change in culture. The Welsh Government should bring together employers, unions and voluntary organisations to run a campaign to communicate:

- The benefits to the wider community in addressing pregnancy and maternity-related discrimination and supporting women's participation in the workforce during their childbearing years, including promoting the health and wellbeing of women and their babies, protecting family incomes and reducing child poverty;

- The business case for attracting and retaining women of childbearing age especially in relation to small- and medium-sized enterprises;
- The legal framework for pregnancy and maternity issues;
- The penalties for failing to comply.

*(ii) Public reporting of maternity retention rates*

Public reporting of maternity retention rates will focus attention on employer practices towards pregnant women and new mothers, much as Gender Pay Gap reporting has shone a spotlight on pay inequality. Maternity retention rates are the proportion of women who were pregnant while working for the company and are still in post a year after return from maternity leave. The Welsh Government should explore ways to incorporate maternity retention rate reporting into the work of the Fair Work Board, the Code of Practice for Ethical Employment in Supply Chains, the Sustainable Development Charter and policies and practices in devolved public services.

*(iii) Health and safety and breastfeeding*

Health and safety protections are an area of particularly poor employer practice warranting attention from the Welsh Government. There is scope for significant gains to be made by supporting employers to undertake better general risk assessments and individual risk assessments, by training midwives and other health workers about health and safety rights at work, by developing good practice guides for specific industry sectors and by supporting good practice in breastfeeding on return to work.

*(iv) Advice services for women and their families*

Currently, few women who experience discrimination exercise their rights and advice services to support them are under enormous financial pressure. The Welsh Government should consider providing an injection of funding into women's charities providing specialist information and advice services that pregnant women and new mothers need to protect their rights and entitlements.

*(v) Information for employers*

Employers are more likely to comply with the law if the information on their legal obligations is readily accessible. The Welsh Government should explore options for delivering consolidated information on employers' responsibilities to pregnant women and new parents.

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