Pregnancy & Maternity Discrimination in Employment

The London Advice Conference

10 February 2016

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Pregnancy & Maternity rights?

- EHRC – estimates half of all pregnant women discriminated at work
- Suggests 60,000 women a year forced out of jobs for being pregnant/taking maternity leave
- 9,000 pregnancy discrimination claims since 2007
- Tribunals do not award successful claims compensation in full
- Rogue employers fail to pay up
Discrimination

- Pregnancy and maternity is a Protected Characteristic under Equality Act 2010
- Protection applies from day 1 of employment
- Also covers recruitment
- A dismissal related to pregnancy or maternity is automatically unfair
- Cannot select employee for redundancy or reduced hours on basis of pregnancy
Discrimination

- It is unlawful discrimination to treat a woman unfavourably because of her pregnancy or a related illness, or because she is exercising, has exercised or is seeking or has sought to exercise her right to maternity leave. [EqA 2010 s.18(1)-(4)]
- The protected period – conception to end of statutory maternity leave.
- Triggered when employer informed
Is there intent?

- Employer’s motive or intention is irrelevant so is effect of the pregnancy/maternity leave
- No need for a comparator but must show detriment
Main Types of Discrimination

- **Direct Discrimination**
  - Direct discrimination by perception does not apply
  - Cannot claim discrimination by association but may be able to claim sex discrimination

- **Victimisation**
Unfavourable Treatment

- Cannot demote, dismiss or deny training or promotion opportunities

**Cannot treat less favourably because:**
- She cannot do the job temporarily
- Costs of covering her absence
- Absence due to pregnancy related illness
- Performance issues due to morning sickness
Examples of discrimination

- Failure to consult on changes at work or possible redundancy as on maternity leave
- Giving less responsibility after childbirth
- Depriving woman of appraisal as on maternity leave
- Exclusion from business trips or meetings
- Disciplining for refusal to carry out tasks due to pregnancy related risks
Recruitment

- Applicants do not have to declare their pregnancy.
- Cannot treat or rate an applicant less favourably if she is pregnant or on maternity leave.
- Questions about pregnancy or family plans can lead to discrimination claims if the applicant is unsuccessful.
Health & Safety

- Duty to carry out risk assessments
- Adjustments to work where necessary
  - e.g. extra breaks, seating, no lifting, adjusted start/finish times
- Move to alternative work to avoid risk
- Suspension on full pay if risks cannot be mitigated
Sickness & Ante-natal appointments

- Reasonable time off to attend classes
- Includes relaxation classes
- Can be taken during work time
- Cannot dismiss for pregnancy related illness
- Cannot count pregnancy related illness for redundancy selection or disciplinary matters
Maternity leave

- A woman on ordinary maternity leave has the right to return to the same job before she left; an interim employee cannot be given her job even if you think the person is a better employee.

- Return after additional maternity leave should be to the same job unless this is not reasonably practicable.
Pay and benefits

- All contractual benefits (e.g. gym, company car etc.) accrue during maternity leave except pay (unless contract says otherwise)
- If pay rise during maternity leave SMP should be recalculated
- Pay rises must be reflected in salary upon return to work
Redundancy

- Cannot select a woman for redundancy because of her pregnancy, maternity leave or a related reason
- Have to consult a woman on maternity leave about a possible redundancy
- A woman made redundant while on maternity leave must be offered any suitable alternative vacancy. She doesn’t have to apply for it