



Spotlight On: New and Expectant Mothers

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- Lloyds specialises in providing employment law advice to employers nationwide

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The issue of new and expectant mothers being discriminated against has been hitting the headlines. While many employers manage pregnancy and maternity rights appropriately and legally recent statistics show that mothers being forced from the workplace is a growing problem. For guidance on how to manage pregnancy and maternity in your organisation, read on.

Recent statistics reveal that the number of expectant and new mothers forced to leave their jobs has almost doubled to 54,000 since 2005. This research also shows that 11% of mothers felt they had been forced out of their jobs, mostly by bad treatment by their employers rather than through direct dismissal or redundancy. ¹

It is important for employers to be aware that employees in such a situation can bring a claim in an Employment Tribunal for constructive dismissal or discrimination (or both). Not only can such claims have financial repercussions but they can also impact the employer's reputation in terms of the bad press they can bring.

Case study

A cautionary tale is one of an employer carrying out a redundancy procedure and had one employee claim she had been unfairly dismissed. She asserted she was selected for redundancy because of her manager's general attitude to females. It was found the manager had expressed hope one pregnant employee may fall down the stairs and suggested dismissing another before she got pregnant. The Tribunal considered it a 'remarkable coincidence' that the manager learnt of the pregnancy two weeks before the redundancy decision.

The tribunal looked at all the circumstances: based on the unpleasant circumstances in which the Claimant worked and the subsequent decision of dismissal it made an award of £11,000.

¹ www.bbc.co.uk/news/business-38746498

What to expect when she's expecting?

Pregnant employees have a number of rights which include:

- Paid time off for antenatal care
- Maternity leave
- Statutory maternity pay or maternity allowance (if she qualifies)
- Protection against unfair treatment, discrimination and dismissal

When an employee tells you she's pregnant what should you do?

Employees should tell their employer about the pregnancy at least 15 weeks before the beginning of the week the baby is due. When an employee initially tells you she is pregnant the first step is to congratulate her. The next step is to ensure you comply with your health and safety obligations. You should seek advice regarding this from whoever is responsible for your organisation's health and safety, LELC has a health and safety division if you require external support with health and safety matters.

Your employee will be entitled to maternity leave and should let you know when she wants to take this at least 15 weeks before the beginning of the week the baby is due. She should also provide you with a MATB1 certificate to confirm the expected week of childbirth if you request this. She will be entitled to take a maximum of 52 weeks' maternity leave (the first 26 weeks is known as ordinary maternity leave and the last 26 weeks is known as additional maternity leave). Your employee doesn't have to take the full amount of maternity leave if she doesn't wish to do so but she must take two weeks' leave after the baby is born (or four weeks if she is a factory worker).

Once your employee has notified you of when she wishes her maternity leave to start you should confirm her return to work date and whether she is entitled to statutory maternity pay (SMP) in writing within 28 days.

Employer's Checklist:

When an employee announces her pregnancy make sure you:

- Comply with Health and Safety
- Ask for the MATB1 form
- Ensure you have sent the correct confirmation letter
- Confirm SMP and whether they are entitled to it
- Remember do not discriminate!

THE EMPLOYMENT LAW SERVICE PHILOSOPHY: GETTING TO KNOW OUR CLIENTS

We believe the best way to help our clients achieve their goals is to get to know them and their organisation. That's why all our employment law clients have a named Employment Law Specialist who will work with them, providing consistent, high quality, practical support.

LELC SERVICES

- **Bespoke Training**

Mistakes with employment issues can prove costly. LELC can help you to protect your organisation by providing cost-effective, bespoke in-house training on all employment matters.

- **Additional Consultancy Services**

Qualified advisors can attend your premises to carry out hearings, appeals and consultation meetings on your behalf saving you time and money and providing peace of mind.

- Contact LELC to find out how we can help you.

You should check your contracts to see if you have given your employees a contractual right to enhanced maternity pay. The first six weeks of SMP is paid at 90% of normal weekly earnings then 33 weeks at £139.58 (increasing to £140.98 on 2nd April 2017) or 90% of normal weekly earnings if this is lower.

You can ask your employee to let you know when her antenatal appointments are as she has the right to paid time off for these. It is important to be understanding as no two pregnancies are alike, some employees may need more time off or have a more difficult time than others. Whilst you cannot ask for evidence of the first antenatal appointment, you can do for any subsequent appointments.

It is important to remember that while your employee is on maternity leave she is entitled to the benefit of the terms and conditions of employment which would have applied if she had not been absent, except for the terms as to remuneration. Your employee should also not be placed at a disadvantage because they're on maternity leave.

What happens when she comes back?

Generally speaking, if an employee takes maternity leave they are entitled to return to the same role on the same terms and conditions. If she takes additional maternity leave and the employer has certain circumstances which mean this is not possible, she has the right to return to a 'suitable alternative job'. Employer's should not take such a step lightly as if they make a mistake here it can prove costly. As such appropriate advice should be sought on the facts of the case. This is the type of employment law matter LELC would be happy to help with.

THE EMPLOYMENT LAW SERVICE PHILOSOPHY: HELP WHEN YOU NEED IT MOST

We know how important it is to organisations to get timely help. That's why we offer immediate telephone support as well as email support, with the majority of our email queries being answered within the hour.

Finally, don't forget the other parent!

They have rights too! If you employ a father-to-be or partner, civil partner or spouse they may be entitled to:

- One or two weeks paid paternity leave, if they qualify for this
- Shared parental leave if they meet the eligibility criteria
- Time off to accompany the mother to two antenatal appointments unpaid

Watch this space

The Government states that a consultation will be launched "in due course" on strengthening the existing law against such discrimination. The move is in response recommendations made by MPs on the Women and Equalities Committee who met last August. Post-Brexit: The government has also re-stated its commitment that leaving the European Union will not lead to a dilution of workers' rights in the UK.

For advice on this and other issues, call 01476 583279 or email
employmentlaw@lelc.co.uk

Disclaimer: The general information in this article does not constitute legal advice and should not be treated as such. Eglise Law t/a Lloyds Employment Law Consultancy will not be held responsible for any errors or any consequences arising from the use of this material. You should obtain detailed legal advice before taking action in any individual case.

SETTLEMENT AGREEMENT SERVICE

- If you wish to exit an employee from your organisation on agreed terms whilst protecting your business from tribunal claims, a settlement agreement may be the route for you.
- LELC can provide your organisation with a settlement agreement and advice on your case for a cost effective fixed fee.
- Contact Lloyds for details at employmentlaw@lelc.co.uk

THE EMPLOYMENT LAW SERVICE PHILOSOPHY: PROVIDING PEACE OF MIND

We understand the value of peace of mind when dealing with employment issues - so much so that we offer the Lloyds Guarantee. If a client follows our advice and receives a tribunal claim that is covered by the terms of the Guarantee we will defend the claim on their behalf, at no extra cost.