

Birmingham City Council Equality Act 2010 Fact sheet

PREGNANCY AND MATERNITY

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. Although there are similarities, there are also significant differences concerning the types of protection afforded to the different protected groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This fact sheet is concerned with the **PREGNANCY AND MATERNITY** provisions in the Equality Act – as they relate to protection from discrimination because of pregnancy and maternity.

For more information about the pregnancy and maternity provisions, including those outside of the Equality Act, please refer to Chapter 8 of the [Equality Act 2010 Statutory Code of Practice Employment](#) and the relevant sections of the Equality Act 2010 [Statutory Code of Practice \(Services, public functions and associations\)](#)

WHAT IS THE PROTECTED CHARACTERISTIC OF PREGNANCY AND MATERNITY?

The Act makes it unlawful to treat a woman “unfavourably”¹ because of her pregnancy and maternity. Women are protected by the Equality Act where they are: a job applicant; and employee/a worker.

The characteristic is defined with reference to a woman’s pregnancy status and the period of time in which ‘pregnancy and maternity’ discrimination might occur. As stated in the Statutory Code of Practice.²

It is discriminatory to treat a woman unfavourably because:

- she is, or has been, pregnant
- she has given birth, and the unfavourable treatment occurs within a period of 26 weeks beginning with the day on which she gave birth; or
- she is breastfeeding, and the unfavourable treatment occurs within the period of 26 weeks beginning with the day on which she gave birth”

Women who have experienced a stillbirth qualify for protection under the pregnancy and maternity provisions, providing the pregnancy lasted for at least 24 weeks.

¹ Note the term “unfavourably” rather than “less favourably.” In the case of the former, the courts do not require a comparator in deciding whether discrimination has taken place. For further information refer to Equality Act 2010 Statutory Code of Practice – Services, public functions and associations

² Equality Act 2010 Statutory Code of Practice – Services, public functions and associations

As indicated, protection from discrimination is time specific (i.e. from the start of the pregnancy up until 26 weeks following the birth of the child). This period is known as the “protective period”. **The employment provisions of the Equality Act provide for a longer “protective” period for women who share this protected characteristic**, as discussed at the end of this fact sheet.

WHAT FORMS OF DISCRIMINATION DOES THE ACT PROTECT AGAINST?

The Act protects women from **direct discrimination** because of their pregnancy and maternity in employment, the provision of services, exercise of public functions and associations.

There is **no express protection** from direct discrimination by association or perception. Further, there is **no protection** from indirect discrimination, although indirect sex discrimination may apply. Similarly, pregnancy and maternity are **not protected** directly under the harassment provisions. However, pregnancy and maternity harassment would amount to harassment related to sex.

Example: Discrimination because of pregnancy and maternity – Access to services - A member of staff, currently on maternity leave, attends a Council building for a staff meeting. During a break in the meeting the member of staff decides to purchase a drink and breastfeed her three-month old baby in the canteen. One of the senior managers on shift asks the member of staff to feed her baby in the toilets, stating that it might offend other members of staff. When she refuses, he asks her to move from her window seat to an empty corner and to finish up her drink quickly. **This could amount to discrimination because of pregnancy and maternity**, as the woman is unable to access the service in the same way as others are able to

Pregnancy and maternity discrimination includes unfavourable treatment of a woman based on a stereotype whether or not the stereotype is accurate.

Example: A club that organises salsa evening deletes a woman from their membership list as soon as they learn that she is pregnant, on the assumption that during her pregnancy she will not want to come to salsa evenings. This decision resulting in unfavourable treatment based on a stereotype is likely to be pregnancy discrimination.

Source: [Equality Act 2010 Statutory Code of Practice](#)

A woman who is subjected to unfavourable treatment outside of the “protected period” may still be covered under the sex discrimination provisions.

Example: A woman is breastfeeding her eight-month-old baby on the bus and is asked to stop feeding or get off the bus at the next stop, as other passengers have said they are offended by this. **She could claim direct sex discrimination**, and would need to show that had she not been breastfeeding she would not have been asked to leave the bus.

Source: [Equality Act 2010 Statutory Code of Practice](#)

What are the provisions for women in employment?

The Act includes specific provisions which protect women from direct discrimination at work because of pregnancy and maternity. The Act states that:

“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”³

Examples:

- An employer dismisses an employee on maternity leave shortly before she is due to return to work because the locum covering her absence is regarded as a better performer. Had the employee not been absent on maternity leave she would not have been sacked. Her dismissal is therefore unlawful, even if performance was a factor in the employer’s decision-making.
- An employee who is on maternity leave asked to be kept updated about training opportunities, so her knowledge would be up to date when she returns to work. During her maternity leave, all other workers have been sent emails updating them on the latest training opportunities but she has not. Excluding this employee is unfavourable treatment and would amount to unlawful discrimination because of pregnancy and maternity

Source: [Equality Act 2010 Statutory Code of Practice](#)

The protected period starts when a woman becomes pregnant and continues until the end of her maternity leave, or until she returns to work if that is earlier. Women who have taken ‘additional’ maternity leave (i.e. 52 weeks), are protected for the duration of their leave).

Further examples of unlawful discrimination included in the Statutory Code⁴:

- Failure to consult a woman on maternity leave about changes to her work or about possible redundancy;
- Disciplining a woman for refusing to carry out tasks due to pregnancy related risks
- Assuming that a woman’s work will become less important to her after childbirth and giving her less responsible or less interesting work as a result
- Depriving a woman of her right to an annual assessment of her performance because she was on maternity leave
- Excluding a pregnant woman from business trips

³ (s.18 (1)-(4). Cited in Equality Act 2010 Statutory Code of Practice Employment

⁴ Equality Act 2010 Statutory Code of Practice Employment

A pregnant woman is not legally obliged to inform her employer about her pregnancy until 15 weeks before the baby is due. However, pregnancy and maternity discrimination will only be unlawful if the employer is aware the woman is pregnant. "The employer must know, believe or suspect that she is pregnant – whether this is by formal notification or through the grapevine"⁵.

Outside the "protected period", unfavourable treatment of a woman in employment because of her pregnancy would be considered as sex discrimination rather than pregnancy and maternity discrimination

ARE THERE ANY EXCEPTIONS?

The Act provides that it is not unlawful to refuse a service to a pregnant woman, or to provide it only on certain conditions, if the service provider believes there is a risk to the woman's health or safety because of the pregnancy, and similar restrictions would apply to a person with a physical condition that may have health and safety implications.

Example: A leisure centre could refuse to allow a pregnant woman to use certain gym equipment (for example, a rowing machine) after a certain point in her pregnancy if it reasonably believed that allowing her to use the equipment would create a risk to her health and safety and it would also refuse, for example, to allow a man with a serious heart condition to use the equipment.

[Equality Act 2010, Explanatory Notes. Revised edition August 2010](#)

What about Positive Action? - Although positive action can be applied to women under the sex equality provisions, there is no obvious reference to pregnancy and maternity. Nonetheless, employers must comply with other laws protecting the rights of women who are pregnant or have recently given birth, which often translates in to treating them more favourably than other workers, which does not contravene the equality legislation.

Example: A man who is given a warning for being repeatedly late to work in the mornings alleges that he has been treated less favourably than a pregnant woman who has also been repeatedly late for work, but who was not given a warning. The man cannot compare himself to the pregnant woman, because her lateness is related to her morning sickness. The correct comparator in his case would be a non-pregnant woman who was also late for work.

Source: Equality Act 2010 Statutory Code Employment

⁵ Equality Act 2010 Statutory Code of Practice Employment

DO PUBLIC BODIES HAVE A DUTY TO PROMOTE PREGNANCY AND MATERNITY EQUALITY?

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with different protected characteristics. This duty applies to pregnancy and maternity.

LINKS WITH OTHER EMPLOYMENT PROVISIONS

In terms of employment, there are separate provisions contained in other legal instruments, which protect the rights of women who are pregnant or on maternity leave (such as the right to take time off for antenatal care, maternity leave, health and safety protection etc). They are unaffected by the Equality Act, which is concerned with protection from discrimination because of pregnancy and maternity.

These include:

- Part VIII of the Employment Rights Act 1996 (ERA)
- Pregnant Workers Directive (92/85/EEC)
- The Equal Treatment Directives (2006/54/EC)
- The Maternity and Parental Leave (etc) Regulations 1999

Some of the above provisions overlap with the Equality Act discrimination provisions, and therefore, if breached this may also constitute pregnancy and maternity discrimination, as shown in the example below:

Example: If an employer fails to consult a woman about threatened redundancy because she is absent on maternity leave, this will be a breach of the ERA (1996) as well as unlawful pregnancy and maternity discrimination.

Adapted from the Equality Act 2010 Statutory Code of Practice Employment

Note: For readers who may have a particular concern or interest in finding out more about the rights of pregnant women in the workplace please consult your HR practitioner.

Resources and Contacts:

1. Equality Act 2010 Statutory Code of Practice Employment
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercod e.pdf
2. Equality Act 2010 Statutory Code of Practice Services, public functions and associations
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode. pdf
3. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics www.equalityhumanrights.com