



HM Government

Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace

March 2016

Contents

Ministerial Foreword	3
Introduction	4
Detailed Response to the EHRC's Recommendations	5
Recommendation One: Leadership for change.....	5
Recommendation Two: Improving employer practice	7
Recommendation Three: Improving access to information and advice	9
Recommendation Four: Improving health and safety.....	11
Recommendation Five: Improving access to justice	12
Recommendation Six: Monitoring progress	13

Ministerial Foreword

This Government is committed to creating a strong workforce that is fit for the future. To do this we need to make sure that there are no barriers to everyone fulfilling their potential, enabling pregnant women and new mothers to participate fully if they choose to, and giving employers access to the widest possible pool of talent. This is not only the right thing to do for families and society as a whole; it's important for our future prosperity and economy.



The law is clear that discrimination against particular groups of employees is completely unacceptable. Whilst it is good to see that the vast majority of employers realise it is important to support pregnant women and new mothers in the workplace, it is very disappointing that a small but significant minority fail to comply with the law.



The recommendations made by the Equality and Human Rights Commission (EHRC) on tackling pregnancy and maternity-related discrimination in the workplace help get to the root of the problem. The employers, mothers and stakeholders who participated in this important piece of research have represented business and women and helped shape these important recommendations. We thank them for their contributions.

It will take coordinated action from Government, the EHRC and business - at all levels and of all sizes, as well as stakeholders to truly tackle pregnancy and maternity-related discrimination in the workplace and stamp it out for good. The Government is committed to working with everyone to take forward the actions outlined in the Government response.

Businesses of all sizes need to recruit and retain talent if they are to prosper. But we understand that working families also need support which is why we are helping both mums and dads balance having a family with their career. We will provide up to 30 hours free childcare for working parents and extend Shared Parental Leave and Pay to working grandparents. In the last Parliament, the Government also extended the Right to Request Flexible Working to all employees with 26 weeks service.

A work environment in which all employees can work to the best of their individual and collective ability benefits individual employers, employees and the economy. Supporting parents by enabling mothers and fathers to stay in work and progress is critical to economic growth and makes business sense.



The Rt Hon Nicky Morgan MP
Minister for Women and Equalities



The Rt Hon Sajid Javid MP
Secretary of State for
Business, Innovation & Skills

Introduction

Women make up almost half of the UK workforce (around 47%) and over 15 million women are active in the UK labour market at any time. The percentage of women who are working or actively seeking work is at its highest level on record (around 72%) and in nearly 30% of couples that are not same sex, the woman is the higher earner. Around 11 million (78%) of parents work and working parents make up around 36% of the workforce.

Supporting parents to join and stay in the labour market remains a priority for this Government. The UK has a strong framework of employment protections, including maternity rights to protect women from suffering disadvantage at work because they take time out to have a child. However, there are concerns that employers do not always comply with the law, and that pregnant women and women taking maternity-related leave may be disadvantaged in the workplace, sometimes amounting to discrimination.

To investigate these concerns, the Department for Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission (EHRC) jointly commissioned research into pregnancy and maternity-related discrimination. This was the largest research project of its kind undertaken in Great Britain, drawing on the experiences of more than 3,000 mothers and more than 3,000 employers.

The interim findings from this research were published in July 2015. Whilst some of the findings were encouraging – many employers see the value and the importance of supporting women through their pregnancy and on their return from maternity related leave – there are worrying levels of reported discrimination and poor treatment.

EHRC undertook to make recommendations to Government and to others on action to address the findings of the research. EHRC organised and facilitated roundtable discussions with a variety of stakeholders to inform its recommendations. We are grateful to stakeholders who took the time to participate in these discussions and to the employers and employees who participated in the research project.

The EHRC's final recommendations were delivered to Government on 1 February 2016. This document sets out the Government's formal response to these, taking each of the recommendations in turn. We have not commented on the recommendations for organisations outside Government.

The framework of legislation that underpins equality, employment rights and responsibilities is reserved to the UK Parliament in relation to Wales and Scotland. This UK Government response therefore covers England, Wales and Scotland. Nevertheless, the Scottish and Welsh Governments have a role in helping to disseminate good business practice and the EHRC has accordingly made recommendations to them. The Scottish and Welsh Governments are responding separately to the EHRC's recommendations.

Detailed Response to the EHRC's Recommendations

Recommendation One: Leadership for change

Recommendation 1a

The EHRC recommends that UK Government, Scottish Government and Welsh Government:

- **works in partnership with the Commission and business leaders to :**
- **develop a joint communications campaign aimed at employers, underlining the economic benefits of unlocking and retaining the talent and experience of pregnant women and new mothers, and**
- **demonstrate creative approaches to attracting, developing and retaining women in the workforce before, during and after pregnancy**

Government response

Accept in principle: There are clearly significant benefits to individual employers, and the wider economy, in cultivating and retaining the skills and experience of all employees, including pregnant women and new mothers. Whilst the vast majority of employers agree, the challenge is to persuade the small minority of employers who cannot already see the value of retaining talent and experience and ensuring that all of their staff are treated fairly.

The Government will work with the EHRC and business leaders to promote opportunities for women, including pregnant women and new mothers: with a view to closing the gender pay gap, empowering women who want to work to do so, and ensuring that female talent is recognised and rewarded. We will work in partnership with the EHRC and business leaders to identify the most appropriate and cost-effective ways to do this. Business will have a key role to play in this. We must not alienate employers who are already playing their part and who are already supporting pregnant women and new mothers to participate in the labour market.

It clearly benefits the economy and individual employers if their entire workforce is able to participate to the best of their individual and collective capabilities. As part of the work that Government has already started on closing the gender pay gap and supporting the economic contribution of women, we are working in collaboration with business to tackle the barriers that prevent success in the workplace. We have announced a £0.5m package of support to help business measure their gender pay gap and take action to reduce it; and help for employers to consider how best to support women to return to work after maternity leave.

We will also continue to support the Women's Business Council in tackling outdated, stereotypical assumptions that some people make about women and mothers in particular. That forms part of our work with business to make clear the value women bring to the workplace and the importance of making sure all employees are fully able to contribute to our country's economic growth.

Recommendation 1b

The EHRC recommends that UK Government:

- **explores the feasibility of a collective insurance scheme to support small and medium-sized employers to spread the cost of providing enhanced maternity pay (where they wish to do so) and cover for maternity leave.**

Government response

Accept: Government recognises the challenges that some employers, particularly small and medium-sized employers and new businesses, in attracting and retaining female talent by offering an enhanced maternity package.

We can see the potential advantage for individual employers in spreading the cost of such an investment over time, for example, through a collective insurance scheme or other arrangement. Of course, the decision to provide this type of policy would essentially be a commercial one, and it would not be appropriate for Government to interfere with these decisions. However, Government will certainly explore this issue with organisations representing small to medium sized businesses and insurers, identify any barriers to this kind of provision and consider how they can be overcome.

Recommendation Two: Improving employer practice

Recommendation 2a

The EHRC recommends that UK Government:

- **considers the most effective intervention and implement the changes required to prevent employers seeking information about women's pregnancy, motherhood or plans to have children that could be used to discriminate unlawfully during recruitment.**

Government response

Accept in principle: It is disappointing that a small minority of employers make assumptions about the cost of women to their workforce and focus on that, rather than the benefits of the talents of a diverse workforce. We recognise that individual employers need to plan and providing that they do not discriminate unlawfully, for example, on the grounds of race, sex, pregnancy / maternity or disability, employers are free to use the recruitment methods that best suit their business needs.

We do not believe that it would be appropriate to legislate further to impose new requirements on employers when the law is already clear: employers must not ask female candidates questions at interview which are intended to enable them to discriminate against pregnant women or other protected groups.

The Government concludes that this issue is largely due to employers' awareness of their legal responsibilities with regard to pregnant women and women who are planning a family. We will work with the EHRC and business representative groups to raise employers' awareness of the rights of pregnant women and employers' responsibilities towards them, including their legal obligations.

Recommendation 2b

The EHRC recommends that UK Government, Scottish Government and Welsh Government:

- **work in partnership with the Commission to identify effective interventions that enable employers to manage and make best use of the talent and experience of pregnant women and new mothers and to ensure that employers are aware of and comply with their legal obligations.**

Government response

Accept. In addition to working with employer groups and the EHRC to find opportunities both to persuade employers who cannot already see the value of retaining female talent and experience and to raise awareness of employers' legal obligations, as set out in our response to Recommendations 1a and 2a above, the Government is supporting the wider work of the EHRC to support employers in complying with the law.

This programme of work includes:

- Video case studies of good practice by employers in managing pregnancy, maternity leave and the mother's return to work – including breastfeeding;
- An online toolkit aimed at small and medium-sized employers who may not have HR expertise in managing employees who are pregnant, on maternity leave or returning to work; and
- Online guidance on discrimination and pregnancy and maternity rights aimed at individuals and employers.

Recommendation 2c

The EHRC recommends that Acas:

- **works with the Commission to raise the awareness of employers across England, Scotland and Wales of existing guidance on recruiting and managing pregnant women and maternity-related issues and absence, and produces training for line managers.**

Government response

Accept. Acas will work with the EHRC and stakeholders to raise awareness of guidance on recruiting and managing pregnant women and maternity-related issues and maternity-related absence in the workplace. Acas already has guidance products in place and is already working with the EHRC on a number of proposals aimed at employers, for example, an e-learning package and a suite of online materials on pregnancy and maternity policy.

Recommendation Three: Improving access to information and advice

Recommendation 3a

The EHRC recommends that UK Government:

- **reviews the availability of and women's ease of access to employment advice services and address any barriers identified;**

Government response

Accept. Government fully understands that employers and employees need to have access to clear, comprehensive and consistent information and advice in order to understand their statutory rights and obligations. We will review the existing guidance and accessibility of employment advice services to ensure that pregnant women and women on or returning from maternity-related leave can access the information and advice services they need to make informed decisions and challenge bad practice.

Recommendation 3b

The EHRC recommends that UK Government:

- **use existing information channels, such as health professionals, and existing mechanisms, such as MAT B1 Forms, to deliver timely and relevant information on employment rights and obligations to pregnant women and employers;**

Government response

Accept in principle. Government will take steps to ensure that the information provided in the Maternity Certificate (Form MAT B1) meets user needs, including signposting to further information on employment rights that are relevant to pregnant women.

We will also look at the guidance for healthcare professionals on Gov.UK to ensure that they are aware of pregnancy and maternity-related employment rights, for example, the right to time off to attend ante-natal appointments. The decision as to what information is most relevant to a pregnant women in her particular circumstances should ultimately be a matter for individual healthcare providers.

Recommendation 3c

The EHRC recommends that UK Government:

- **create a single comprehensive on-line site, drawing on appropriate advice sector expertise, so that employers and individuals can easily find out about their rights, responsibilities and good practice in relation to pregnancy and maternity in the workplace.**

Government response

Accept in principle. Government recognises that the research findings have highlighted gaps in employees' understanding of their statutory rights and employers' understanding of their obligations towards pregnant employees and women on maternity-related leave. We agree that both employers and employees need to know where to look for information and that this information should be consistent, clear and accessible.

It would be difficult to cater for all of the various types of information that employers and employees need on a single website. Different organisations respond to different user needs and consequently tailor the information that they provide to their audiences. We accept, however, that there is scope for more joining up and better signposting to the types of information that are available.

We will work with Acas, EHRC and organisations representing pregnant women and employers to establish what information is most important for pregnant women, to understand the needs of users better, and to improve the online information on rights, responsibilities and good practice.

Recommendation Four: Improving health and safety

Recommendation 4

The EHRC recommends that the Health and Safety Executive:

- **review their guidance to employees and employers to ensure it emphasises the importance of ongoing and open communication between employers and new and expectant mothers in enabling employers to comply with their obligations to:**
- **ensure the general risk assessment includes an assessment of the risk to new and expectant mothers, where applicable**
- **inform the employee of any risks identified to her health and safety and the relevant preventive and protective measures, and**
- **and review the general risk assessment where there is reason to suspect it is no longer valid;**
- **address the issues raised in the research findings about health and safety in particular industry sectors and occupational groups by working with stakeholders in these areas to improve practice; and**
- **raise employers' awareness of their health and safety obligations to pregnant women and new mothers, and awareness of existing guidance on breastfeeding.**

Government response

Accept. The health and safety of employees in the workplace is paramount.

The Health and Safety Executive (HSE) accepts this recommendation. HSE welcomes the research finding that almost all employers understood their legal responsibility to undertake a general health and safety risk assessment, including ensuring a safe working environment for pregnant women and mothers returning from maternity leave. However, it is clear that women's experiences and the approach taken by employers varied. HSE want to make sure that good practice is shared across all sectors; so HSE will take forward these recommendations, review current guidance and work through existing partnership channels, particularly in sectors highlighted in the research report.

Recommendation Five: Improving access to justice

Recommendation 5a

The EHRC recommends that UK Government:

- **in light of the findings of its review, makes changes to the employment tribunal fee system to ensure that fees are not a barrier to accessing justice for women experiencing pregnancy and maternity discrimination.**

Government response

Reject. It is too soon to consider whether any action is needed here. In June 2015 the Government announced the start of the post-implementation review of the introduction of fees in the Employment Tribunal. This will consider, insofar as this is possible, any equality impacts that have resulted from the introduction of fees. The review is well underway and will report in due course.

Recommendation 5b

The EHRC recommends that UK Government:

- **considers increasing the time limit for a woman to bring an Employment Tribunal claim in cases involving pregnancy and maternity discrimination from three to six months, in line with other employment claims such as redundancy and equal pay. Further research may be needed to examine whether other types of discrimination claims may also benefit from a similar extension.**

Government response

Reject. There is no evidence from the responses to the research into pregnancy and maternity-related discrimination to suggest that there is a need to increase the time limit for a woman to bring an Employment Tribunal claim. The existing statutory three-month time limit for bringing most claims before an Employment Tribunal has some inbuilt flexibility – it is not a rigid time limit. The Employment Rights Act 1996 provides, in relation to most statutory rights, that a claim may be accepted after the expiry of the three-month limit where the Tribunal is satisfied that it was not reasonably practicable for a complaint to be presented in that period. In addition, the Equality Act 2010 also provides for the time limit for presenting a complaint to be extended, to whatever limit the Tribunal consider to be ‘just and equitable’.

Recommendation Six: Monitoring progress

Recommendation 6a

The EHRC recommends that UK Government, Scottish Government and Welsh Government:

- **take action to include relevant questions about pregnancy and maternity discrimination and disadvantage in planned surveys of employers and mothers, report on the outcomes and keep under consideration what further research or action may be needed to address enduring areas of discrimination and disadvantage.**

Government response

Accept. Government agrees that it is important to track mothers' experience of their treatment in the workplace. We will consider how best to do this. Acas will continue to share information and emerging trends with the EHRC.

Recommendation 6b

The EHRC recommends that Acas:

- **considers monitoring and publishing the number and outcome of Early Conciliation cases in England, Scotland and Wales that involve pregnancy or maternity discrimination or a breach of other rights related to pregnancy or maternity.**

Government response

Accept: The Advisory, Conciliation and Arbitration Service (Acas) provides impartial information, advice and guidance to employers and employees on all aspects of workplace relations, as well as practical support for developing and maintaining the type of workplace relations that underpin business success.

Where individuals feel their issues need to be resolved outside the workplace, they are now obliged to tell Acas they intend to make a tribunal claim and Acas offers both parties its conciliation service in an attempt to avoid the need for legal proceedings.

Acas already publishes the number of cases relating to pregnancy and maternity discrimination in its annual report and is investigating options to publish further data sets to allow outcome analysis to be done by external bodies.



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication available from www.gov.uk/bis

Contact us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

Email: enquiries@bis.gsi.gov.uk

BIS/16/148