

Equality Commission

FOR NORTHERN IRELAND



Pregnancy and Maternity at Work

**A Guide for
Employers
in Northern
Ireland**

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The Law

What is unlawful pregnancy and maternity discrimination?

Pregnancy Discrimination

It is unlawful *pregnancy discrimination* to treat an employee less favourably:

- On the grounds that she is pregnant.
- For a reason relating to her pregnancy.
- Because of illness related to her pregnancy.

Some examples of where a woman's treatment would constitute pregnancy discrimination include:

- She is temporarily unable to do the job for which she is employed, whether permanently or on a fixed-term contract on the grounds of her pregnancy.
- She is temporarily unable to work because to do so would be a breach of health and safety regulations.
- The cost of covering her work is too expensive to the business.
- Her absence is due to pregnancy related illness.
- Her inability to attend a disciplinary hearing due to morning sickness or other pregnancy-related conditions.
- Poor performance linked to pregnancy related conditions, for example morning sickness.

Maternity Discrimination

Unlawful *maternity discrimination* is discrimination that relates to an employee's maternity leave. There are three types of maternity leave:

- *Compulsory maternity leave*, which is two weeks immediately after the birth which all employees entitled to maternity leave, must take.
- *Ordinary maternity leave*, which is the first 26 weeks of leave, including the compulsory leave period.
- *Additional maternity leave*, which is a further 26 weeks of leave.

It is unlawful maternity discrimination to treat a woman unfavourably:

- Because she is on compulsory maternity leave.
- Is taking or is trying to take ordinary or additional maternity leave.
- Has taken or tried to take ordinary or additional maternity leave.

Alternatively, employees may be entitled to request *shared parental leave*. This is leave of up to 50 weeks which can be shared by parents (who are employees) once the mother has given notice to shorten her maternity leave entitlement or returned to work.

Guidance for employers on shared parental leave and pay is available on the [Department for the Economy's website](#)

You should not subject the employee to unfavourable treatment for taking, seeking to take, or because you believe they are likely to request shared parental leave.

Further information is available on NI Direct's website:

- [Shared parental leave and pay](#)
- [Pregnancy and maternity rights workplace](#)

Special provision for a woman on maternity leave

In some situations you may need to treat a woman on maternity leave more favourably to remove any disadvantages she might suffer because of being on maternity leave. Special provision for a woman in connection with her pregnancy, childbirth or maternity leave is not sex discrimination against a man, provided that the action you take does not go beyond what is necessary to rectify her disadvantage. For example, when carrying out a performance assessment exercise based on meeting annual targets an employer must find a proportionate way to adjust the scoring to compensate for the fact that a woman's score would otherwise be lower because she was on maternity leave for part of the period being assessed.

Returning to work after leave

In most circumstances, you must allow an employee to return to the same job. However, the right to return is slightly different when the employee is returning from ordinary maternity leave, when there must be no change to her job, and returning from additional maternity leave when you may, in very limited circumstances, offer the employee a suitable alternative job instead. Where those circumstances don't apply but you do not allow an employee to return to her job this will be maternity discrimination, for example, if you don't let her return to her job solely because you want to keep the maternity cover in her job.

There are similar rules about what should happen when an employee returns to work after taking shared parental leave.

Who is protected from pregnancy and maternity discrimination?

Pregnancy Discrimination

- All employees, casual workers and agency workers are protected from pregnancy discrimination from the first day of their employment.
- The protection also covers recruitment decisions.
- You are legally required when making recruitment decisions not to consider that a woman is pregnant, or might become pregnant. It is unlawful not to appoint a woman because she is pregnant or might become pregnant. The job should be offered to the best candidate based on merit and ability.

Further information:

- [Employment status and the rights of different workers](#)
(NI Business Info website)
- [Guidance on the Agency Workers Regulations \(NI\) 2011](#)
(Dept for Employment and Learning, pdf publication)

Maternity Discrimination

It is maternity discrimination for you to treat an employee unfavourably because they are on compulsory maternity leave.

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Employees are protected from maternity discrimination for taking or trying to take ordinary and additional maternity leave. As noted previously, it can be maternity discrimination to treat someone unfavourably because of her ordinary or additional maternity leave, even if the treatment happens after the maternity leave has come to an end. For example, if an employee's job is changed unfavourably on her return from leave because she has been on maternity leave, this would be unlawful maternity discrimination. This is different from when protection from pregnancy discrimination applies.

When is a woman protected from pregnancy and maternity discrimination?

Pregnancy Discrimination

A woman is protected from *pregnancy discrimination* as soon as you know, or believe or suspect that she is pregnant. She does not have to tell you she is pregnant until 15 weeks before her baby is due to be born. If she chooses not to tell you and you aren't aware that she is pregnant, she will not be protected from pregnancy discrimination if she is treated unfavourably, for example, by being dismissed or disciplined if she takes time off for pregnancy related illness. She will also not be entitled to other rights, like paid time off for antenatal appointments, unless she has appropriately notified you that she is pregnant.

Maternity Discrimination

For employees entitled to statutory maternity leave, the protection from discrimination lasts from the beginning of your employee's pregnancy until the end of her additional maternity leave entitlement, or when she returns to work.

For those who are not entitled to maternity leave, the protection afforded is from the beginning of pregnancy until two weeks after the end of the pregnancy. This is called the *protected period*. Factory workers are prohibited from working for four weeks after giving birth regardless of whether they are entitled to maternity leave. For factory workers not entitled to maternity leave the first two weeks of that period fall within the 'protected period' and they will be protected from *pregnancy discrimination*. Unfavourable treatment after the 'protected period' up to the end of their compulsory four week absence is likely to be *pregnancy and maternity or sex discrimination*.

What is unfavourable treatment?

Unfavourable treatment is when an employee is treated unfairly on the grounds of her pregnancy or pregnancy related illness, or because she is seeking to take maternity leave.

Pregnancy Discrimination

You must make sure that neither you nor your employees, treat an employee unfavourably **on the grounds of her pregnancy**, or pregnancy related illness, for example:

- Refusing to recruit her because she is pregnant or on maternity leave.
- Refusing to allow her to take reasonable paid time off to attend antenatal appointments or criticise her for taking time off to attend antenatal appointments.
- Failing to protect her health and safety where there are any risks.
- Dismissing her.
- Changing or removing her job responsibilities unless:
 - Necessary for health and safety reasons or;
 - To arrange cover just before her maternity leave.
- Disciplining her or treating her less favourably because of pregnancy related illness that occurred during the protected period.
- Excluding her from business trips or refusing to allow her to travel, when it is still safe.
- Refusing to let her have the same training opportunities as other employees.
- Not considering her for promotion.
- Denying her a pay rise or bonus.
- Otherwise treating her unfavourably, for example by ignoring her or making hurtful comments about her pregnancy or maternity leave.

Maternity Discrimination

You must make sure that neither you nor your employees treat an employee unfavourably **because of** her taking, trying to take or having taken maternity leave.

Some examples are where a woman is:

- Unfairly made redundant; this would include failing to consult her because she is on maternity leave, disadvantaging her in the selection process, not offering her suitable alternative available work.
- Not being considered for promotion.
- Not offered training; it is particularly important to give an employee the opportunity of attending training if this will affect a pay rise or promotion.
- Not told about job opportunities.
- Not consulted about a re-organisation which affects her job in a detrimental way.
- Not allowed to return to the same job after maternity leave or some of her responsibilities are removed or re-allocated.
- Dismissed.

In some situations you may need to treat a woman on maternity leave more favourably to remove any disadvantages she might suffer because of being on maternity leave.

Other legal provisions

Other relevant legal provisions include protection from:

Direct sex discrimination, which is where a woman is treated less favourably than a man is, or would be, because she is a woman (not because she is pregnant). For example, it would be direct sex discrimination to refuse to recruit a job applicant because you fear that she may later become pregnant after you have appointed her.

Indirect sex discrimination, which is where there is a provision, criterion or practice, which applies to both women and men that puts women at a particular disadvantage compared to men and is not necessary for the business. For example, if a woman worked full-time prior to when she became pregnant she might wish to work part-time after her return from maternity leave. To refuse to allow her to do so might be indirectly sex discriminatory unless you can justify your decision.

Victimisation, which is where a woman is treated badly because she previously made a complaint of discrimination.

Protection from a detriment (that is some form of connected disadvantage), which is where an employee is disadvantaged on the grounds of her pregnancy, maternity leave or other type of family leave. For example, where you refuse to allow a new mother or her partner to take any period of shared parental leave which had been previously agreed to.

Automatic unfair dismissal, which is where an employee is dismissed because she is pregnant or is taking, will take, or has taken maternity leave. For more information on unfair dismissal contact the Labour Relations Agency at www.lra.org.uk

Employers' Liability

Where one of your employees treats a woman unfavourably on the grounds of her pregnancy you, as the employer, are legally responsible for your employee's discrimination/actions unless you have taken all reasonable steps to prevent the discrimination happening in the first place.

Recruitment

Q. *What are my responsibilities when considering job applicants?*

A. When considering job applicants, you should appoint the best person for the job based on merit and ability and not reject an applicant, because she is:

- Pregnant (which would be pregnancy discrimination).
- Likely to become pregnant (which would be sex discrimination).
- Has just taken, or is about to go on maternity leave (which would be maternity discrimination).

Q. *Can I interview only applicants who are not women of child-bearing age?*

A. No, not if the reason you are not interviewing applicants of child-bearing age is the possibility that a woman might become pregnant, or because of her age. You are legally required not to discriminate against applicants because you think they might become pregnant or because of their age. If the best candidates happen to be those who are not women of child-bearing age, it would not be discrimination as the selection would be on the basis of merit, not age or becoming pregnant. If challenged by an unsuccessful applicant of child-bearing age, your defence would be to show that the selection was on the basis of merit.

Q. *Can I offer a pregnant woman a temporary job until she starts her maternity leave?*

A: You must not offer a pregnant woman a temporary job until she starts her maternity leave, if you would have offered her a permanent job had she not been pregnant. Offering her a temporary job in those circumstances is treating her unfavourably on the grounds of her pregnancy, which is unlawful discrimination.

Q: If I am advertising a new job, must I tell an employee who is on maternity leave?

A: Yes, if you are advertising a new job you must tell an employee on maternity leave and she must be given an opportunity to apply for the job if she wants to.

Q: What if an employee cannot attend an interview because she has just given birth?

A: It is good practice to adjust the interview date if it is planned to be near the time of the birth. An employee must not be disadvantaged because of being on maternity leave, though this does not mean waiting until the end of her maternity leave to have the interview. It is good practice to discuss timing with her.

Questions about a job applicant's pregnancy or children

Q: Can I ask a job applicant whether she is pregnant or planning to have children?

A: No, this should be avoided. You are legally required when making recruitment decisions not to consider that a woman is pregnant, or might become pregnant. It is unlawful to not appoint a woman because she is pregnant or might become pregnant. The job must be offered to the best candidate based on skills and experience.

Q: Can I ask applicants about their families even if it is just part of a friendly chat?

A: No, this should be avoided. You are legally required, when making recruitment decisions, not to consider a woman's family commitments. It is unlawful to not appoint a woman because she currently has children or is planning to have children. The job must be offered to the best candidate based on skills and experience.

Disclosing pregnancy

Q: *If a woman lies about her pregnancy at her job interview, is that a breach of trust, which means I can dismiss her?*

A: No, a pregnant woman is not under any obligation to disclose her pregnancy during an interview. Dismissing her for not mentioning her pregnancy would be *pregnancy discrimination*.

Q: *If I find out that a woman is pregnant after offering her a job, can I withdraw the job offer?*

A: No, this would be *pregnancy discrimination* as the reason for withdrawing the offer of a job is because she is pregnant. You are legally required not to take into account the fact that a woman is pregnant, or might become pregnant when making recruitment decisions.

Q: *If a woman applies for a job when she is on or about to go on maternity leave, must I consider her when I need someone in post immediately?*

A: Yes, you must treat her the same way as any other job applicant, except you may have to wait for her to start work if she is on maternity leave. You can discuss when she might start.

It would be *maternity discrimination* if, because of her maternity leave, you:

- Refused to interview her or did not appoint her to a job if she was the best candidate.
- Gave her a job for a limited period instead of permanent employment.
- Insisted she started work when she was on maternity leave unless she agreed, or;
- Offered her a lower salary or other different, less favourable terms.

Q. *I have been asked to give reasons why a pregnant job applicant was refused a job. Must I respond?*

A: You are not legally required to respond unless a discrimination questionnaire has been issued. Generally, if the job applicant asks questions about why she did not get the job, it is good practice to give your reasons and explain why another candidate was more suitable.

Request to be appointed on part-time or other flexible basis

Q. *I have offered a woman a job, which was advertised as full time, can she ask to work part-time in this role?*

A. Yes, she can ask to work part time or ask to have a different working pattern after you have offered her the job. While the statutory right to request flexible working does not apply until she has been employed for 26 weeks, employees who have less than 26 weeks continuous service may have the right to complain of indirect sex discrimination if a request to work flexibly is denied.

Pay, Promotion, Reviews, Breaks and Benefits

Statutory maternity pay

Q: Must I pay statutory maternity pay (SMP)?

A: You must pay SMP to all employees who qualify. The employee has to have been employed for 26 weeks by the 15th week before the week in which the baby is due and earn a minimum amount. Further information is available on the [NI Business Info website](#).

Q: How do I work out my employee's statutory maternity pay?

A: You can use GOV.UK's online calculator at: www.gov.uk/maternity-paternity-calculator.

Q: How much statutory maternity pay must I pay an employee?

A: SMP is 90% of the woman's pay for the first six weeks of maternity leave. Once an employee qualifies for SMP, it is payable for the full 39 weeks even if her employment ends before then. Further information is available online at www.gov.uk/employers-maternity-pay-leave.

Q: Can I recover statutory maternity pay (SMP) from the government?

A. Yes, all employers can reclaim some or all of the SMP they pay. Employers who qualify for small employer's relief can recover 103% of the amount they pay. Other employers can claim 92% of the amount paid.

Maternity leave and pay if pregnant on appointment

Q: If I appoint a pregnant woman is she entitled to maternity leave and pay?

A: You must allow her to take maternity leave, provided she gives the required notice by no later than the end of the 15th week before the expected week of childbirth or, if later, as soon as reasonably practicable. It is unlikely that she will be entitled to statutory maternity pay as she will need to have started the job before she became pregnant (i.e. have worked for you for at least 26 weeks up to the 15th week before the expected week of childbirth). Further information is available online on [NI Direct's website](#).

Q: Must I pay statutory maternity pay if the employee decides not to return to work?

A: You must pay statutory maternity pay (SMP) for the full 39 weeks even if your employee is not going to return to work and you cannot ask her to repay SMP.

For circumstances that affect the payment of SMP, including where the employee works for another employer or gets a pay rise see [GOV.UK's website](#).

Contractual maternity pay

Q: If I pay contractual maternity pay over and above statutory maternity pay (SMP), can I recover it if the employee resigns?

A: It depends what your contract of employment with the employee says. If it says that she must pay back the contractual maternity pay if she does not return to work or remain in work for a minimum period after her return from maternity leave, then you are entitled to reclaim the amount you paid over and above SMP. You may not be able to rely on the contract to claim repayment if you have broken the contract yourself, for example by discriminating against the employee.

Q: Does the employee have to pay back contractual maternity pay if she is made redundant?

A: An employee only has to pay back contractual maternity pay if her contract says that she must pay it back if she is made redundant.

Many employers do not enforce repayment of contractual maternity pay when an employee is made redundant however this is a matter for consideration in each particular case.

Contractual rights, obligations and benefits during maternity leave

Q: Does the contract of employment continue during maternity leave so that the employee has continuous service?

A: Yes, unless the contract is broken for example the employee resigns or a fixed term contract comes to an end without being renewed.

Any period of maternity leave must be treated as though the employee is working for the purpose of calculating her length of service for any service related benefits, redundancy payments or for claiming unfair dismissal.

This means that you and the employee must follow all the obligations under the contract. All policies and procedures apply as they would if the employee were not on maternity leave, unless you need to make special provision to remove any disadvantage because of her maternity leave. For example, you should not expect an employee to attend a recruitment or promotion interview soon after giving birth.

Q: What benefits continue during maternity leave?

A: An employee on maternity leave is entitled to all contractual benefits except:

- Benefits provided solely for business use, such as a company car.
- Pay/remuneration (which is generally replaced by statutory maternity pay and any contractual maternity pay, for example under an employer's contractual maternity pay scheme).

Examples of benefits that you must continue to provide during maternity leave include:

- Accrued annual leave.
- Pension contributions during the paid period; the employer contributions are based on normal pay, but the employees' are based on maternity pay.
- Participation in share ownership scheme.
- Membership of health club.
- Reimbursement of professional subscriptions.
- Health and life insurance.
- Use of company car, unless it is for business use only.
- Use of mobile phone, laptop unless it is for business use only.
- The benefit of a pay rise.
- Salary sacrifice schemes such as childcare vouchers.

Pay rises and bonus

Q: Must I give a pregnant employee the same pay rise as other employees if she is about to go on maternity leave for a year?

A: Yes, a pregnant employee must be treated in the same way as if she was not pregnant. Her pay rise must be reflected in her earnings related statutory maternity pay and any contractual maternity pay.

Q: Must I give a pay rise to a woman on maternity leave?

A: Yes, you must give a pay rise to a woman on maternity leave if she would have received a pay rise if she was working. Any pay rise must be incorporated into any earnings related statutory or contractual maternity pay.

For example, if a woman on maternity leave is receiving contractual maternity pay and staff are awarded a two per cent pay rise, failure to include this in a woman's contractual maternity pay would be unlawful *discrimination*. Her contractual maternity pay must be recalculated so it is based on her salary plus the two per cent increase.

Q: *Is an employee on maternity leave entitled to a bonus for that period?*

A: An employee on maternity leave is not usually entitled to a bonus for that period, except for the compulsory maternity leave period, but it may depend on the type of bonus. She must be paid a bonus relating to work done prior to maternity leave and this must be paid at the same time it is paid to other employees.

There may be some situations where all employees are given a discretionary bonus irrespective of the work they have done, for example, a discretionary loyalty bonus. In these circumstances, a woman on maternity leave may argue that she should receive this. The legal position will depend on the facts of each case so you should seek legal advice about your employee's entitlement.

Pension

Q: *Must I continue paying towards the employee's pension during her maternity leave?*

A: Yes, you must continue paying towards the employee's pension during her maternity leave for at least the paid part of maternity leave. The employer's contributions are usually based on the employee's normal salary when working. The employee's contributions are based on her actual income during maternity leave, i.e. statutory or contractual maternity pay.

Sick pay

Q: *If an employee is sick during her maternity leave, is she entitled to sick pay?*

A: No, she is not entitled to sick pay during maternity leave. Once she has returned to work she will be entitled to sick pay in the same way as any other employee.

Training

Q: I do not want to offer a pregnant employee training because she is about to go on maternity leave and she will have forgotten it by the time she returns. What must I do?

A: You must not deny training to a woman because she is pregnant or about to go on maternity leave, and must not make the assumption that she will forget it. If there is training during her maternity leave, it would be good practice to discuss using a Keeping in Touch (*KIT*) or Shared Parental Leave in Touch (*SPLIT*) day to attend.

Q: Must I offer training to an employee on maternity leave if it is available to other employees?

A: Yes, you must offer training to an employee on maternity leave if it is available to other employees, particularly if the employee would be disadvantaged by being excluded from training. The law suggests that where a woman on maternity leave is excluded from a training course because she is on maternity leave, and this disadvantages her in relation to her career or pay, this would be *maternity discrimination*. You could agree with the employee to provide her with alternative training. It is good practice to discuss this with your employee.

Q: What if an employee on maternity leave chooses not to attend training and so loses out on promotion?

A: An employee does not have to attend training during maternity leave if she chooses not to. It would be advisable to provide the training to her as soon as possible after her return from maternity leave so that she is not disadvantaged.

Performance Reviews

Q: An employee has not performed well and she says this is because she has had pregnancy related illness. Can I mark her down in her appraisal because of her poor performance?

A: If her poor performance is related to her pregnancy or pregnancy related absence then you must not mark her down. To do so would be *pregnancy discrimination*. You can take account of any poor performance, which occurred before she became pregnant as this was clearly not affected by her pregnancy.

Q: If an employee is going to be on maternity leave at the time we do performance reviews, what must I do?

A: It is good practice for you to consider whether it is practical to have the review before she goes on maternity leave. It is best if you can carry out a performance review before her maternity leave, if possible. If it is not possible, then you must make sure that she is not disadvantaged because she does not have a performance review for that year. If her bonus or promotion is linked to her review score, you must treat her as if she had a normal performance review and pay her bonus in any event.

Probation period

Q: An employee, who is in her probation period, has told me she is pregnant. Can I extend her probation if her performance has been affected by her pregnancy?

A: You must not extend the probation period if the reason for your employee's poor performance is because of her pregnancy or pregnancy related illness. But, if extending her probation period is justified by the extent of poor performance before she became pregnant, you can do so because the reason for the extension is not related to her pregnancy.

Promotion

Q: A pregnant employee is due to be considered for promotion but I want to wait until she returns from maternity leave. Can I do that?

A: No. You must treat your employee as though she was not pregnant or about to be on maternity leave. She must be considered for promotion regardless of her pregnancy or impending maternity leave. To do otherwise would be pregnancy discrimination.

Notification of Pregnancy

Q: I think that an employee may be pregnant; can I ask her?

A: It is not good practice to ask a woman if she is pregnant, unless she has formally notified an appropriate manager, for example, her manager or human resources. She does not have to tell you until 15 weeks before her due date.

Q: What information should I give an employee who tells me she is pregnant?

A: Tell her about any policies you have which cover pregnancy, maternity leave and other parental leave rights. She may need advice about time off for antenatal care, health and safety risks and details of the information she needs to give you before her maternity leave. For further information on employees' rights is available on the [NI Business Info website](#).

It would also be helpful if you advise the pregnant employee of your policies for returning from maternity leave, for example your flexible working policy and your breastfeeding policy.

Q: Must I treat a pregnant employee differently in any way?

A: Unless a pregnant employee needs adjustments to her working conditions for health and safety or pregnancy related reasons, you must treat her the same as any other employee.

Q. *Can I talk to a pregnant employee about her pregnancy?*

A. Yes, you can talk to a pregnant employee about her pregnancy.

For example you might want to ask:

- How she is feeling, as this may be necessary to consider health and safety or other adjustments to her work, for example to the hours she works.
- When she wants to start her maternity leave and how long she is likely to take; but you must not put pressure on her to make a firm decision before she is ready or has to do so.
- When she wants to take her annual leave; this continues to build up during her maternity leave.
- When to hold an appraisal if this is due during her maternity leave.

Q: What do I need to avoid saying or doing?

A: You must not put pressure on a pregnant woman to say exactly when she will start and finish her maternity leave until she has to do so (15 weeks before her due date). You must not make negative comments or jokes about her pregnancy or maternity leave or allow other employees to do this.

Pregnant during maternity leave

Q: *My employee is due back from maternity leave and I think she is pregnant; do I have to let her return to work?*

A: Yes, you must not treat her unfavourably because she is pregnant. If you treat her unfavourably or prevent her from returning to work, this would be *pregnancy discrimination*.

She is entitled to a further period of maternity leave and she may qualify for statutory maternity pay (SMP) or any contractual maternity pay for her next baby if she meets the normal qualifying conditions. You must calculate her entitlement to SMP. If she is not entitled to this you must give her form SMP1 so that she can claim maternity allowance.

Most or all SMP you pay can be reclaimed from HM Revenue & Customs.

All employers can reclaim 92% of SMP. Small employers can recover 103% of the amount they pay.

Harassment

Q: *How do I ensure that my employees do not harass a pregnant colleague?*

A: It is good practice to provide training on managing pregnancy and maternity leave at work on a regular basis, not just when an employee is pregnant.

It is also good practice to have a clear written policy on harassment that you enforce by taking disciplinary action against employees who do harass. Download the Equality Commission's [template harassment policy for employers](#) (Word doc).

Time off for antenatal care: mothers, fathers and partners

Q: Does a pregnant employee have the right to take time off to attend antenatal care? Do I have to agree?

A: Yes, you must allow a pregnant employee, regardless of hours worked or length of service, reasonable paid time off for antenatal care, which has been recommended by a doctor or midwife. Requests for time off can only be refused if it is reasonable to refuse. She must not be disadvantaged for asking for time off or taking it. What is reasonable depends on the circumstances, for example, how long the appointment is, how often your employee wants to take time off, the amount of notice you are given and how easy it is to arrange a suitable appointment outside working hours. For example, it may be reasonable for you to refuse the time off if your employee does not give reasonable advance notice, the appointment is not urgent and if you cannot get cover.

Q. Do agency workers have rights to paid time off to attend antenatal care appointments?

A: Yes, if they have worked for 12 continuous weeks in the same job with the same hirer, they are legally entitled to paid time off to go to antenatal appointments or classes if they cannot reasonably arrange them outside working hours. Further information is available on the [NI Direct's website](#).

Q: Can I ask for proof of antenatal appointments?

A: Yes, after your employee has been to her first antenatal appointment you can ask for proof of appointments. The employee or agency worker is not entitled to time off until she provides you with proof of the appointment once you have asked for it. The employee must provide a certificate confirming that she is pregnant, such as a MAT B1 (which confirms her pregnancy and gives the expected week of childbirth) and an appointment card or similar.

Q: What is antenatal care?

A: Government guidance says that antenatal care includes not only medical examinations but also, for example, antenatal classes, relaxation or parentcraft classes, as recommended by a registered doctor, midwife or health visitor.

Q: *Can I ask a part-time employee to attend antenatal care outside her working hours?*

A: You must not unreasonably refuse to allow an employee to attend antenatal appointments during normal working hours. It is good practice to allow a part-time employee to attend antenatal appointments during her normal working hours. This is something you can discuss with your employee so that you can plan ahead.

Q: *A pregnant woman's partner (male or female) has asked if they could take time off to attend their partner's antenatal appointment. Must I agree?*

A: Partners have a legal right to attend two antenatal appointments (up to six and a half hours for each appointment). You are not legally required to pay for this time off. The partner must provide written confirmation (a declaration) of the appointment date and time and entitlement if requested to do so, but does not have to provide a copy of the appointment card or letter. Download the [employer guide to the right employees have to accompany a pregnant woman to ante-natal appointments \(pdf\)](#).

Pregnancy Related Illness/ Miscarriages and Stillbirth

Q: A pregnant employee has morning sickness. What should I do?

A: If she is not well enough to work at certain times of the day, it would be good practice to discuss a temporary adjustment to her hours, for example starting later to avoid rush hour traffic or working from home. You are not legally required to do this, but the alternative might be for your employee to be absent from work for the whole day.

Q: What if a pregnant employee is not well enough to work because she has pregnancy related illness?

If your employee is not able to work because of pregnancy related illness she is entitled to be off work until she has recovered and is fit for work. You must not take account of pregnancy related illness; for example, in disciplinary or redundancy decisions and it must be recorded separately from other sickness absences.

Q: A pregnant employee is off work with pregnancy related illness. Can I ask for medical evidence and ask when she will be back?

*A: A pregnant employee must be treated in the same way as other employees. If you have a policy which requires all employees to provide medical evidence after a period of illness then you can ask for this from a pregnant employee. You must not put pressure on her to return before she is well enough to do so. This might be *pregnancy discrimination*.*

Q: Must I pay an employee who is off work with pregnancy related illness?

A: If the woman's contract of employment entitles her to receive sick pay, then she is contractually entitled to receive sick pay for pregnancy-related absences too.

Q: What happens if an employee is off sick in the four weeks before the start of her maternity leave? Can I insist she starts her maternity leave immediately?

A: Yes, if your employee is off work with pregnancy related illness in the four weeks before her maternity leave is due to start this automatically triggers her maternity leave unless you agree that she can carry on working. If she is still able to work, without risk to her health and safety, and she wants to continue to work, you do not have to insist she goes on maternity leave earlier than planned.

Q: Can I recruit a temporary replacement if my pregnant employee is likely to be off ill for a long time?

A: Yes, you can recruit a temporary replacement if your pregnant employee is likely to be off ill for a long time, but you must not remove an employee's job from her just because she is off work with pregnancy related illness. You can cover her absence in the short-term in the same way as you would with any employee. It is good practice to discuss this with your employee to reassure her that her replacement is temporary until she is well enough to return to work.

Q: What if she is ill for a reason not related to her pregnancy?

A: If your employee's ill health is not related to pregnancy then she can take sick leave like any other employee. You must not insist on her starting her maternity leave early unless the illness is related to her pregnancy.

IVF treatment

Q. Is an employee entitled to time off to have fertility/IVF treatment?

A. You are not legally required to give an employee time off to have fertility/IVF treatment. Any time off for fertility/IVF treatment should be treated in the same way as other medical appointments. We recommend that employers treat requests for time off for fertility/IVF treatment sympathetically. Employers may wish to establish procedures for allowing time off for fertility/IVF treatment. These procedures may enable women to tell named members of staff on a confidential basis that they are having treatment.

Q: *What are the rights of a woman undergoing IVF and when is she treated as being pregnant?*

A: A woman undergoing IVF is treated as being pregnant after fertilised eggs have been implanted. If the implantation fails, the protected period, during which a woman must not be treated unfavourably on the grounds of her pregnancy, ends two weeks later.

Q: *What if a woman is ill following IVF treatment?*

A: It is good practice to record pregnancy related illness (which may include illness in connection with the IVF treatment) during the protected period separately from other sickness. It is a legal duty to ignore the pregnancy-related absences during the protected period (inc. where the pregnancy results from IVF).

Miscarriage and stillbirth

Q: *What must I do if an employee has a miscarriage in the first 24 weeks of her pregnancy and needs time off?*

A: Your employee may need time off work if she is ill as a result of a miscarriage (that is she loses the baby in the first 24 weeks of her pregnancy). Sickness absence related to a miscarriage must be treated in the same way as pregnancy related sickness.

Q: *What happens if an employee's baby is still born?*

A: If an employee's baby is still born after 24 weeks of pregnancy, she is legally entitled to maternity leave and protection from pregnancy and maternity discrimination in the same way as if she had a live birth.

Notification of Start of Maternity Leave

Q: Can I ask when my employee will start her maternity leave so that I can plan the work?

A: You can ask her about when she wants to start her maternity leave, but she may not be able to give you a definite answer if she is only recently pregnant. You must not put pressure on her to give you a definite date before she is legally required to do so.

She must tell you when she wants to start her maternity leave 15 weeks before the date she is due to give birth.

Q: What questions can I ask my employee about her pregnancy or maternity leave?

A: You can ask your employee:

- How she is feeling, as this may be necessary to consider any health and safety risks or other work adjustments, for example to the hours she works.
- When she is likely to start her maternity leave and how long she is likely to take; but you must not pressure her to make a firm decision before she is ready.
- When she wants to take annual leave.
- When to hold a performance review if this is due to be held during her maternity leave.

Q: When should my employee tell me she is pregnant and wants to start her maternity leave?

A: In the 15th week before the baby is due (that is when she is about six months pregnant) she must tell you:

- That she is pregnant.
- The week she expects to give birth (expected week of childbirth).
- When she intends to start her maternity leave, which cannot be before the beginning of the 11th week before the week she expects to give birth.

After your employee has told you the date she wants to start her maternity leave you must write to your employee, within 28 days, confirming her start and end dates. The end date will be 52 weeks after the start of her maternity leave unless she wants to return earlier. If your employee is on maternity leave and decides to return before that date, she must give you eight weeks notice. Further information is available on [NI Direct's website](#).

Q: Can my employee change the start of her maternity leave?

A: Yes, she can change the date she wants her maternity leave to start, but she must tell you 28 days before that date. You must then give her the new date when her maternity leave will start and end.

Preparing for Maternity Leave and Maternity Cover

Q: In preparing for my employee's maternity leave, when can I start the handover period?

A: This will largely depend on the job involved and when the employee wants to go on maternity leave. It is good practice for the handover to take place in good time but you must not remove your employee's responsibilities before it is necessary for the handover – this could be pregnancy discrimination.

Q: Can I ask my employee if she will be returning to work and when?

A: You can ask if she has any thoughts of how long she wants to take off, but you must not put any pressure on her to make an early decision before she is ready. You must assume that she will return to work after 52 weeks unless she gives you notice that she wants to return earlier.

Maternity cover

Q: How should I go about providing maternity cover?

A: You will need to assess your business needs. Possible options are:

- Recruiting a temporary replacement (maternity cover).
- Temporarily rearranging your business so that her role is performed by existing members of staff.
- Recruiting a permanent employee to cover the role for the maternity period, but making it clear that the woman on leave can return to that role after her leave.

Q: *Can I appoint someone on a permanent contract to cover the maternity leave period?*

A: Yes, but you must not do so with a view to the person employed to cover the maternity leave period taking over the pregnant employee's responsibilities on a permanent basis. A pregnant employee is usually, depending on the number of weeks she was off, entitled to return to the same job after her maternity leave. Similar rules apply to returning from adoption leave and shared parental leave.

Q: *A pregnant employee is working on an important project. Can I remove her from this work to ensure continuity?*

A: You must not remove a pregnant employee from her job unless she agrees. To change an employee's job because she is pregnant, and not for a health and safety reason, or by agreement with her, is likely to be *pregnancy discrimination*.

Q: *I am concerned that a male or female employee may need time off because his or her partner is about to give birth and he or she will no longer be able to travel on a job. What can I do?*

A: Protection from pregnancy discrimination is only for women who are pregnant. However, the law says that a person can be protected from *associative discrimination*. That is when a person is treated less favourably because of their association with a person with a particular characteristic that is protected from discrimination by law, for example, where they are treated less favourably because they are caring for their disabled child. It is not clear whether this would apply in the case of pregnancy discrimination, but it may do. If for example, you took a man's responsibilities away in these circumstances it may be unlawful sex discrimination if you would not have treated a woman in the same way.

Contact With Employees On Maternity Leave

Q: What contact must I have with a woman on maternity leave?

A: You **must** contact her about:

- Any reorganisation, or other changes, that affect her job.
- Any promotion or other job opportunities, explaining what she needs to do to apply.
- Possible planned redundancies.

Q: What should I discuss with the employee about contact during leave?

A: Before your employee starts her maternity leave it is good practice to discuss:

- How much contact you will have.
- What form the contact will take, for example by email, access to the intranet, letter or telephone call.
- What the contact should cover, for example about staff leaving, new staff who have joined, training events, social activities.
- Whether your employee wants to receive news bulletins.
- When an appraisal will be held, if it is due during her maternity leave.
- If she wants to take part in any training.
- Keeping in Touch days and the pay for such days.
- Other information that the employee would like to receive.

It is good practice to explain to the employee:

- There will be times when you are legally required to contact her, e.g. if there is a redundancy situation or where there are developments that affect her job, promotion possibilities, new job opportunities.

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- She is not under any obligation to work during maternity leave.
 - If she wants to attend training, you will provide details of any training taking place and she should say what training she can attend.
 - The payment arrangement for any days worked.
 - Apart from times when you must contact the employee, you will provide as much, or little, contact as agreed.

Keeping in Touch (KIT) and Shared Parental Leave in Touch (SPLIT) days

Q: What are **KIT** and **SPLIT** days?

A: If you agree, an employee can work for up to 10 days during her maternity leave without this affecting her entitlement to Statutory Maternity Pay. These are called **KIT** days.

If an employee takes shared parental leave (SPL) she and her partner if they take SPL, can each work a further 20 days during SPL. These are known as **SPLIT** days.

Q: *Can I ask an employee to work during her maternity leave?*

A: You can ask an employee to work, but you must not require an employee on maternity leave to work. You must not treat her in a less favourable, disadvantageous or detrimental way. Working during maternity leave is voluntary for the employee.

Q: *Must I offer an employee KIT or SPLIT days?*

A: No, you are not legally required to offer an employee *KIT* or *SPLIT* days.

Q: *Must I pay an employee if she works during maternity leave?*

A: You are not legally required to pay for *KIT* or *SPLIT* days. You should note that you may have to pay for a *KIT* or *SPLIT* day depending on what the day involves.

See page 62 of the Department of Employment and Learning's publication:

- [Shared parental leave and pay - employers' technical guide \(pdf\)](#)

Annual Leave And Maternity

Q: Is my employee entitled to build up annual leave during their maternity leave?

A: Yes, they continue to be legally entitled to annual leave for the period they are on maternity leave. The minimum is 28 days in the year including bank/customary holidays (pro-rata if they are part-time) but their employment contract may provide for longer.

Q: Can an employee carry over annual leave from the previous leave year?

A: An employee must be allowed to carry over any unused part of her statutory leave entitlement of 28 days (including bank holidays).

Q: Is my employee entitled to be paid for annual leave when on maternity leave?

A: No, they must not take annual leave and maternity leave at the same time. If they are on annual leave when their baby is born, maternity leave will start on that day and their annual leave will finish.

Q: Can an employee take the annual leave they accrued while on maternity leave a day or two a week upon their return to work?

A: Yes, if you agree. It may help an employee to settle back into work if this leave pattern can be accommodated however you will want to ensure that it is consistent with your business needs.

Further guidance about maternity leave, annual leave and sick pay is available on the [NI Business Info's website](#).

Returning to Work/Breastfeeding

Q: Can I ask an employee to return to work before she has used up her full maternity leave entitlement?

A: Employees are legally entitled to take up to 52 weeks' maternity leave but they can return to work at any time after the compulsory leave period, (which is two weeks immediately after the birth or four weeks for factory workers) provided they give eight weeks' notice (or less if you agree).

You can ask an employee if she will return to work before she has used her full maternity leave entitlement but you must not:

- Put pressure on her to return earlier than she wants, by, for example, repeatedly asking her when she is going to return.
- Tell or threaten her that she will be disadvantaged, if she does not return earlier.
- Disadvantage her if she changes the date she intends to return – though she must give the appropriate notice.

Breastfeeding

Q: Do I need to have a policy on breastfeeding?

A: It is good practice to have a policy on breastfeeding which sets out how requests will be considered. This can help you to make objective, correct and fair decisions. It will also help create a positive environment in which mothers feel they can engage in breastfeeding related activities without being treated unfavorably.

Q: Does my employee have a legal right to take time off to breastfeed during her working hours?

A: No, there is no legal right to time off to breastfeed or for rest periods. However, a refusal to adapt working hours could be indirect sex discrimination unless you can show the refusal is justified by the needs of the business.

Q: Is it sex discrimination if I refuse extra breaks for breastfeeding?

A: Refusal to allow a breastfeeding employee to express milk or to adjust her working conditions to enable her to continue to breastfeed may amount to unlawful sex discrimination. However, if you have considered the request, discussed the issue with your employee and still cannot allow extra breaks without there being an unacceptable impact on your business then this would help explain your decision and would be less likely to constitute indirect sex discrimination.

Q. What facilities do I need to provide for breastfeeding employees?

A: You are legally required to provide somewhere for breastfeeding employees to rest. Where necessary, this should include somewhere for them to lie down. You should consider providing a private, healthy and safe environment for employees to express and store milk for example, it is not suitable for new mothers to use toilets for expressing milk.

Q: Are there any workplace risks associated with breastfeeding?

A: There may be risks, other than those associated with pregnancy, to consider if an employee is still breastfeeding on their return to work. These will depend on her working conditions but could include:

- Working with organic mercury.
- Working with radioactive material.
- Exposure to lead.

This list is not exhaustive. You will need to consider any other risks that could cause harm to the mother or child's health and safety, for as long as she wishes to continue to breastfeed. If you have any doubts, you may wish to seek professional advice from an occupational health specialist.

Q: What must I do to protect an employee's health and safety on her return to work after maternity leave if she is still breastfeeding?

A: After an employee gives you written notice that she is breastfeeding you should consider any risks identified by the workplace risk assessment and take reasonable action to reduce or remove these risks. Less favourable treatment of a woman because she is breastfeeding may be sex discrimination. A refusal to accommodate breastfeeding may be indirect sex discrimination if the refusal cannot be justified.

Q: What must I do after identifying a health and safety risk for a breastfeeding mother?

A: You should:

- Consider whether it is possible to remove the risk by, for example altering the employee's working conditions or hours of work.
- If this does not remove the risk, offer her suitable alternative work.
- If there is no suitable alternative work, you must suspend her on full pay.

Flexible Working

Q: A pregnant employee has said she might want to return to her job part-time. What must I do?

A: If she has been employed for 26 weeks she has a statutory right to formally request flexible working. The procedure you must follow when handling these requests is explained in the following publications:

- [Equality Commission's template policy on flexible working \(pdf\)](#)
- [The Labour Relations Agency's Advisory Guide](#)

Q: What type of changes to her working patterns or location can an employee request?

A: She can ask to change:

- The hours she works.
- The time she works, for example a later start or earlier finish.
- Location of work, for example to working at home.

Q: If I agree to the flexible working request will the change be permanent?

A: Yes, it will usually be a permanent change to her contract but you can agree with your employee that it is a temporary change with an agreed review date. This will allow you and the employee to trial the arrangement to determine its suitability for both parties. The arrangement might then be retained or an alternative arrangement agreed.

Q: Can men ask for flexible working and should I treat the request differently?

A: Male employees who have worked for you for more than 26 weeks have a statutory right to ask for flexible working. You must treat the request in the same way as you would treat a request from a woman in similar circumstances. Failure to do so may be *sex discrimination*.

Q: What is the procedure for an employee using their statutory right to make a request for flexible working?

A: An employee must make a written, dated application setting out:

- Proposed change to working conditions and date of change.
- Effect of change on the employer and how to address any impacts.
- A statement that this is a statutory request and setting out any previous applications, with dates.

If the change is because of a disability, to care for a child or dependant or race, it is good practice to encourage the employee to say this, so it can be taken into account. This will help protect you against claims of indirect discrimination or failure to make a reasonable adjustment in particular.

Q: How should I respond to a statutory request for flexible working?

A: You must:

- Consider the benefits of the requested changes for the employee and the business, weighing the benefits against any adverse business impact.
- Avoid both direct and indirect discrimination.
- Discuss the request with the employee within the statutory timeframe, allowing them to be accompanied to a meeting by a work colleague or trade union official recognised by you as the employer, unless you have already agreed the request in which case a meeting may not be necessary.
- Give a decision within the statutory timeframe and the decision should be in writing.
- You must consider each request individually and with an open mind, following the requirements of the existing legislation.
- It is good practice to make a decision as quickly as possible so that you and the employee can plan her return to work and the employee can find the right childcare for the days she will be working.

Q: I do not feel I can agree the statutory request to work flexibly. Can I refuse the request and for what reasons?

A: You can refuse a statutory flexible working request for one of the eight reasons set out in Article 112G *Employment Rights (NI) Order 1996*. The grounds for refusal under the flexible working procedure are:

- The burden of additional costs.
- An inability to reorganise work amongst existing staff.
- An inability to recruit additional staff.
- A detrimental impact on quality.
- A detrimental impact on performance.
- A detrimental effect on ability to meet customer demand.
- Insufficient work for the periods the employee proposes to work.
- A planned structural change to the business.

Q: Can an employee take any legal action if I refuse a statutory request for flexible working?

A: If you refuse the request for flexible working without a good business reason this might be *indirect sex discrimination*. To reduce the risk of complaints arising and increase your chances of successfully defending those that do arise, see the [Commission's guide on flexible working](#).

Q: What happens if I do not follow the statutory procedure for handling requests for flexible working?

A: Your employee may make a claim against you for:

- Failure to consider the flexible working application in a reasonable manner.
- Failure to notify the employee of a decision within three months.
- Refusing the application without a specified business reason.

An industrial tribunal may order you to reconsider the employee's application or make an award of compensation up to a maximum of eight weeks' pay.

Dismissal/Disciplinary Procedures

Q: *Can I take disciplinary action against a pregnant employee?*

A: You can only take disciplinary action against a pregnant employee if the action is about a matter which is nothing to do with her pregnancy, for example if you think she has been dishonest. You must not take disciplinary action if this relates to your employee's performance, which has been poor because of pregnancy related illness or another reason related to her pregnancy.

Q: *The employee says she cannot attend a disciplinary meeting because of pregnancy related sickness. Must I change the date?*

A: You should reschedule for when the employee is well enough to attend. If you take action at the initially scheduled meeting that she cannot attend because of pregnancy related illness this may be *pregnancy discrimination*.

Q: *Can I dismiss an employee when she is pregnant?*

A: Yes, but only if the dismissal is not related to the employee's:

- Pregnancy.
- Pregnancy related illness.
- Pending maternity leave.
- Sex.

If you dismiss an employee who is pregnant you must provide her with a written explanation about why she was dismissed as is the case for dismissal in general.

If the employee has worked continuously for you for at least one year you must also show there is a fair reason for the dismissal and that you followed a fair procedure as required under the statutory dismissal procedure contained in the [Employment \(Northern Ireland\) Order 2003](#).

Q: Is an employee allowed the opportunity to appeal against dismissal?

A: Yes, you are required to offer an appeal against the decision in order to comply with the law. If possible it should be heard by a person more senior than the person who made the decision to dismiss the employee.

Q: What should I do if an employee threatens to resign, or does resign, saying this is because she has been discriminated against?

A: It is good practice to first find out why she says she has been discriminated against and then try to reassure her that you will take steps to investigate (if necessary) in order to resolve her concerns. If she has already resigned and you think that this is because of a misunderstanding you may want to ask her to reconsider her resignation. In a scenario like this one it is best to take advice as there may be a failure to address the grievance or a potential constructive dismissal case.

Q: If an employee resigns during maternity leave must she give notice?

A: If an employee resigns during maternity leave she must give notice, as required under her contract. This does not apply if she can show that she resigned because your behaviour was a fundamental breach of her contract, such as discriminatory treatment. If she resigns in these circumstances, and claims constructive dismissal, she can resign either with notice or without giving notice.

Q: A pregnant employee on maternity leave is claiming constructive dismissal. What does this mean?

A: In order to claim constructive dismissal your employee must show that:

- You behaved so badly, which includes discriminating against her, that the trust and confidence between you has fundamentally broken down and therefore she had no other option but to resign.
- She resigned because of your or your employee's behaviour.
- She does not wait too long before she resigns. If she does wait too long you could argue that she accepted the behaviour by continuing to work.

Q: Can I dismiss an employee who is on maternity leave, other than for redundancy?

A: You can dismiss an employee if there is a lawful fair reason for the dismissal and you follow a fair procedure as set out in the legislation (see above). For example, if you discover that an employee has been dishonest; you can take disciplinary action and dismiss her, provided you follow the fair procedure in the legislation, that is, the [Employment \(Northern Ireland\) Order 2003](#).

You must not dismiss an employee on the grounds of her pregnancy or maternity leave or for reasons relating to her pregnancy or maternity leave. That would be *pregnancy or maternity discrimination*.

Q: *Must I provide written reasons for dismissal during maternity leave?*

A: Yes, you must write to the employee setting out the reason for her dismissal.

Responding to claims of unfavourable treatment

Q: *What should I do if an employee raises concerns about being treated unfairly on the grounds of her pregnancy or maternity leave, and I do not agree?*

A: It will depend on the circumstances but in any situation, if an employee suggests she has been treated badly on the grounds of her pregnancy or maternity leave and this is not the case, in your view, it is good practice to discuss her concerns, either informally or via a formal grievance, if that is her wish. This provides you with the opportunity to reassure the employee that her treatment was not due to her pregnancy or maternity leave and to assure her that you will investigate it. It is good practice to explain the situation from your point of view and clarify any misunderstandings. For example:

- If there has been a misunderstanding, set out why. For example, if she believes that other employees received a pay rise, but not her, you could explain that no-one received a pay rise if that is the case, or say why she did not.

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- If the allegation is about another employee's treatment of her, say that you will investigate and get back to her.
 - If she has been put at risk of redundancy and believes she is the only one and the reason is her pregnancy, explain why there is a redundancy situation and why it is not related to her pregnancy. If possible, answer any questions she has.
 - If she is concerned about her work being changed after she told you of her pregnancy, it is best practice to agree that it should not be changed or agree an alternative which is acceptable to her.
 - If you have criticised her performance and she says this was affected by pregnancy related illness, you could explain how your criticisms are unrelated to her pregnancy.

Q: What should I do if an employee raises a grievance without having any informal discussion?

A: If an employee raises a grievance and she has made no informal attempt to discuss her concerns before her grievance that is her decision and there may well be very good reasons why she wishes to take the formal approach and these should be elicited and respected. From here you should adhere to the requirements of the [Labour Relations Agency Code of Practice on Discipline and Grievance](#).

Redundancy

Q: *What is redundancy?*

A: A redundancy situation is where there is, for example, either a closure of the business (or particular workplace) or a reduced need for employees to do work of a particular kind.

Q: *Must I take any special measures for pregnant employees if I am considering redundancies?*

A: You must make sure that you do not disadvantage a pregnant woman on the grounds of her pregnancy. For further information see the [Labour Relations Agency's general guide on handling redundancy](#).

Q: What do I need to do to ensure the redundancy procedure is fair and doesn't discriminate against any of my employees?

A: You must follow a fair process. You must take the following steps:

Identify whether and why there is a redundancy situation. If you are not sure see the [Labour Relations Agency's advice on handling redundancy](#).

Consult any trade union (if there is one) and employees, including those who are absent with pregnancy related sickness or on maternity leave.

- Identify relevant employees likely to be affected by the redundancy (who may not be limited to the exact same work or grade).
- Draw up consistent and fair criteria or use pre-agreed criteria for selecting people for redundancy which are relevant to the job going forward and which are transparent, objective, and capable of measurement.
- Identify who in your business will select those who will be considered for redundancy. The person should make him/herself familiar with the work, experience, qualifications and skills of all affected employees including employees who are absent due to pregnancy.

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- Consult all affected employees about the redundancy criteria and how they have been assessed so they can correct any mistakes.
 - Ensure there is a fair procedure for considering suitable alternative work.
 - Ensure that you have a fair and transparent way of dealing with any appeal. Involve a more senior manager in the appeal if you can.

Consultation about redundancies

Q: What issues must I consult about when I plan to make employees redundant?

A: You must consult all employees about:

- Reasons for redundancy and the posts affected.
- Alternatives to compulsory redundancies, such as voluntary redundancies, or reduced working hours.
- The selection criteria for those employees at risk of redundancy.
- How the employee's redundancy selection assessment was performed.
- Any suitable alternative work.

You must make sure that any pregnant employees off work, for example due to a pregnancy related illness, have the same access to consultation information as other employees.

Q: Should I consult an employee on maternity leave if there is a redundancy exercise?

A: Yes. An employee on maternity leave must be consulted in the same way as all other employees. If she cannot come into work to attend meetings you should consider other ways of consulting her, by telephone or visiting her at home or meeting in a convenient place if she prefers. Failure to do so would be *maternity discrimination*.

Redundancy criteria

Q: How do I decide the right selection criteria to use when making employees redundant?

A: If you use a selection process to decide who to make redundant it must be consistent, transparent, objective and measurable. Typical criteria include:

- Objectively assessed individual skills and/or qualifications.
- Objectively assessed performance at work.
- Attendance and absence records (with caveats for disability, pregnancy/ maternity).
- Live disciplinary record.

If you have decided to use performance as one of your main selection criteria, you must ensure you do not disadvantage pregnant employees or those on maternity leave. For example:

- If the last performance assessment was done during pregnancy or maternity leave and showed lower scores than usual for this reason, this must not be taken into consideration against the selection criteria.
- If an employee missed the performance review cycle because of pregnancy related illness or maternity leave it is good practice to consider using a previous review and awarding the same score unless there is good reason (unrelated to her pregnancy) for giving a different score. She must not be disadvantaged if she missed the performance review cycle because of pregnancy related illness or maternity leave.

Q: *How can I ensure that a pregnant woman or woman on maternity leave does not suffer any disadvantage during the redundancy process?*

A: It is good practice to first consider how she might be disadvantaged on the grounds of her pregnancy or maternity leave. You must then try to remove any possible disadvantage. For example:

- Pregnancy related illness may affect her performance so must be discounted.
- She may miss out on what's been happening at work, such as information on workplace developments so you must make sure she is updated.

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- If there is to be an interview it is good practice to hold this at a time to suit the employee and not too close to the birth.
 - If an interview process is required, it is good practice to make sure the employee is given sufficient notice (for example to make childcare arrangements and to catch up with work-related developments).

Q: *What type of redundancy selection criteria may be discriminatory?*

A: The following selection criteria are likely to be discriminatory:

- Marking an employee down because of pregnancy related sickness or absence.
- Assessing a pregnant employee's performance for a period when she was suffering from pregnancy related sickness – even if she did not take time off.
- Targets which were measured during a period when her work was affected by her pregnancy.
- Number and size of client base, when a pregnant employee has handed over her clients because of her impending maternity leave.
- In the absence of an actual appraisal, awarding her 'average' when in her previous appraisal she scored 'good' or 'exceptional' (unless there is a reason unrelated to her pregnancy for awarding the lower grade).
- Criteria that disadvantages part-time workers, for example the ability to work when required or to work overtime.

Q: *Can I make an employee redundant when she is on maternity leave?*

A: Yes, you can make an employee redundant when she is on maternity leave provided that:

- There is a genuine redundancy situation which is not caused by the maternity leave itself.
- You ensure any women who have been on maternity leave, are currently on maternity leave, or are planning to go on maternity leave are not disadvantaged.

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- You consult the employee on maternity leave in the same way as other employees. If she cannot attend meetings at work, find another way of consulting, for example by telephone, meeting nearer her home or at home (if agreed).
 - The selection process, including selection criteria and their scoring, does not disadvantage the employee on the grounds of her pregnancy or maternity leave.
 - If the employee's role is made redundant during maternity leave, you are legally required to give her the first option on any suitable alternative paid work, which is available. She must be considered **before** any other employee. It is your responsibility to identify a suitable alternative available position and offer it to your employee. It is not enough to tell the employee to search the intranet to find a suitable alternative job.

Q: What is the position if an employee is on a fixed-term contract which comes to an end during her maternity leave?

A: Employees on fixed-term contracts have similar maternity and employment protection rights to permanent employees. If you do not renew a fixed-term contract because of maternity leave this would be maternity discrimination.

Suitable alternative work

Q: What is suitable alternative work?

A: The alternative work must be suitable and appropriate in the circumstances. Suitable alternative work means that the job must be no worse than her previous role in relation to location, terms, conditions and status.

If there is more than one suitable alternative job you are not legally required to offer her the option of which one she wants. Your obligation is to offer her a suitable alternative job.

Q: *What if there is a suitable alternative job for an employee at risk of redundancy who is about to go on maternity leave but I need it filled immediately?*

A: It would be discrimination to refuse to offer such a job to an employee who is about to go on maternity leave because she cannot start the job until the end of her maternity leave.

Q: *Can I tell an employee on maternity leave to find a suitable alternative job herself and to apply for it?*

A: No, you must identify any suitable alternative job and offer it to her. An employee on maternity leave who has been selected for redundancy must be offered a suitable vacancy before any other employee. If you do not do this, her redundancy may be automatically unfair dismissal.

Q: *What is the situation if she refuses an offer of a suitable alternative job?*

A: If you offer a suitable alternative job to a woman on maternity leave and she turns it down, without a good reason, she loses her right to a redundancy payment.

Q: If there is a suitable alternative job, can I offer it to the rest of the redundant employees or must I offer it to the pregnant employee?

A: Pregnant employees do not have priority over vacancies in a redundancy situation. However, employees on maternity leave, adoption leave or shared parental leave do have priority and must be offered a suitable alternative job before others can be considered for it.

To decide if a job is suitable and appropriate the law says it must be no worse than an employee's previous job with regard to location, terms, conditions and status and the employee has the capacity for the work.

For example, if the vacancy is at a different location and poses additional childcare and travelling problems for the employee it may not be suitable, in which case if she refuses it she would not lose her right to a redundancy payment.

Q: What if there is no suitable alternative job to offer an employee?

A: If there is no suitable alternative vacancy, a woman can be made redundant during her maternity leave provided the reason for redundancy is not connected to her pregnancy or maternity leave and you have followed a fair redundancy process.

Health And Safety

Q: What are my health and safety obligations to women of child-bearing age?

A: All employers with workers of child-bearing age must conduct a health and safety assessment to evaluate workplace risks for pregnant and breastfeeding women. This must cover employees and other workers. You must give any person working for you information about any risks to them and you must take steps to remove or reduce any risks.

The [Health and Safety Executive \(HSE\) website](#) sets out all your legal obligations and provides answers to frequently asked questions.

There is [practical guidance](#) on the HSE website about how to complete a risk assessment and record health and safety arrangements.

There is also a [flow chart](#) which sets out the steps you must take.

Q: What are the common risk factors at work for pregnant women?

A: Examples provided by the Health and Safety Executive include:

- Lifting/carrying heavy loads.
- Standing or sitting still for long lengths of time.
- Exposure to infectious diseases.
- Exposure to lead.
- Exposure to toxic chemicals.
- Work-related stress.
- Unhealthy workstations and posture.
- Exposure to radioactive material.
- Threat of violence in the workplace.
- Long working hours.
- Excessively noisy workplaces.

Q: *Must I do a specific risk assessment when I am told that a woman is pregnant?*

A: No, not if there is already a risk assessment in place which has addressed risks for pregnant women. But, if there is a risk to a particular employee, you must check your risk assessment to see if there is anything else you need to do to make sure the employee and her baby are not exposed to risk.

Q: *What happens if a pregnant employee cannot do her job because there are risks to her health and safety?*

A: Firstly you must consider;

- Change her working conditions or hours of work where it is reasonable to do so to avoid the health and safety risk.
- If this is not possible offer her a suitable alternative job where the terms are similar. The woman must not suffer a detriment.

Q: *What must I do if the job involves stacking shelves and/or carrying heavy boxes?*

A: You must take steps to protect her from any risk. For example, it is recognised that heavy lifting is a risk to pregnant women so they should not be expected to do this.

Q: *What are the consequences of failing to comply with my legal obligations in relation to health and safety?*

A: This is likely to be pregnancy discrimination. If the employee resigns, for example, because her health and safety is at risk because you have not taken steps to protect her from the risks, this may be unfair constructive dismissal and/or pregnancy discrimination. Further information can be sought from the Health and Safety Executive's website:

- [Frequently asked questions](#)
- [The Law](#)

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November 2016