



Advice note from the Equality Commission's Advisory Services Team

Protecting pregnant employees working during the Covid-19 pandemic

In these challenging times employers have many serious matters to consider, but one issue of which they should be more mindful than ever is the need to give continuous consideration to eliminating the health and safety risks that pregnant workers are exposed to when they are required under their contracts of employment to continue working.

Pregnant women are on the NHS list of people at increased risk from coronavirus and are presently being advised, to a greater degree than others, to follow the [Government's guidance on social distancing](#). They are advised to be "particularly stringent" in following the guidance, which includes, among other things, the instruction to "work from home, where possible".

For that reason, it is timely to remind employers of their obligations, particularly the statutory employment and health and safety law provisions that provide for:

- [suspending pregnant employees](#) on grounds of health and safety, **on full pay**, if workplace health and safety risks cannot be eliminated or avoided, including avoided through opportunities for home-working or the offer of suitable alternative work,
- carrying-out health and safety risk assessments, including [specific risk assessments for pregnant employees](#), which should cover, at this time at least, the risks they may face in travelling to work on public transport and with maintaining continuous adherence to social distancing rules, especially if the work involves dealing with members of the public,
- [protection from suffering any detriment](#) (such as dismissal or loss of pay) that an employee incurs for having taken steps to protect her own health and safety, such as by leaving the workplace because she has not been provided with appropriate personal protective equipment (PPE), where she reasonably believes that she is in serious and imminent danger.

Agency workers have [some similar rights](#).

Breaches of these duties, such as a failure to conduct a risk assessment with the effect that a pregnant employee suffers a detriment, may also amount to unlawful sex discrimination.

Recommendations

The Equality Commission strongly recommends that employers do not ignore these highly important duties:

Risk assessments must be carried out in relation to pregnant women and action must be taken to remove or avoid any risks that are found.

Unless the risk is assessed as reasonable or can be lowered to a reasonable level, for example, by working from home, or by providing PPE, the pregnant employee should be suspended on full pay until such time as she can work safely.

Furloughing

Using the Government's [Coronavirus Job Retention Scheme](#), by placing a pregnant worker on furlough at 80% of normal earnings, may look like an obvious solution, but employers should proceed with care.

If the employer has work available to be done and if the only reason why the pregnant employee cannot do it, or cannot be allowed to do it, is due to health and safety risks of the kind described here, there is a strong argument that the employee **should be suspended from work on full pay** in accordance with the statutory provisions noted above.

Employers may enquire of the administrators of the furlough scheme, HM Revenue and Customs (HMRC), whether they may recoup any monies from the scheme to cover the costs of paying their suspended employees' wages. Unfortunately, the written guidance that HMRC have published to date does not answer this particular question.

Further advice and information

Health and safety in the workplace

For advice on promoting health and safety in the workplace, and on how to carry-out health and safety risk assessments contact the [Health and Safety Executive NI](#).

Employment law

For advice on how comply with statutory employment law, contact the [Labour Relations Agency](#).

Equality and discrimination law

For advice on employers' obligations under equality and discrimination law, contact the Equality Commission's helpline on **028 90 500 600** and ask for our **Advisory Services Team**. Alternatively, you can email information@equalityni.org or edenquiries@equalityni.org and we will answer as soon as possible.