

# Alliance Against Pregnancy Discrimination in the workplace

## Pregnant women and new mums at risk of redundancy

There has been an alarming increase in the number of pregnant women and new mothers who are being made redundant. It appears that some employers are using the recession as an excuse to break the law on discrimination. With the economic downturn has come a rise in the number of calls to our organisations from women facing maternity or pregnancy discrimination. We have examples of pregnant women being singled out for redundancy and of women returning from maternity leave to find their jobs have gone.

Even before the recession, the Equal Opportunities Commission had already estimated that 30,000 women lose their jobs each year as a result of being pregnant, and this figure looks set to rise.<sup>1</sup> This shocking impact of the recession is not only morally wrong and deeply damaging to workplace gender equality - it is illegal.

The law is clear. It is unlawful discrimination to dismiss or otherwise disadvantage an employee for a reason related to her pregnancy or maternity leave. This protection will still apply in the months after a woman has returned from maternity leave if it can be shown that her pregnancy or leave contributed to, for example, her selection for redundancy.

### Adding insult to injury

I was both anxious and excited about going back to work. I had made the heart-wrenching decision to leave my baby. I'd spent days agonising over childcare, and finally paid a large deposit at our local nursery. I had already left my son there for the last two weeks to get him (and me) used to it gradually.

I had to go out and buy new clothes as none of my old ones fitted me anymore, and got my hair done so I looked a bit less exhausted. Like many of the women I knew I felt unconfident about going back - but also exhilarated by the prospect of being an adult again. When the big day came I dropped my baby off at the childminder's, determined not to cry, and arrived at work early and raring to go. The Head of Personnel invited me for a coffee to welcome me back and to explain that, with regret, I was being made redundant.

Sarah, South East.

### The evidence

The Government is failing to collect information on whether there has been an increase in pregnancy related redundancies, and there has been little attempt to ensure that employers comply with the law.

A group of agencies has formed the Alliance Against Pregnancy Discrimination in the Workplace in order to monitor the situation, provide advice, and campaign. Those agencies which have help-lines, or provide legal advice, have clear evidence of pregnancy related redundancies occurring.

A young woman was told by her employers, shortly before going on maternity leave, that her hours of work were to be cut by half, starting the following week.

When she challenged this, she was told she was now being made redundant. The employer followed no dismissal or redundancy procedures.

Citizens' Advice

1: *Greater Expectations: Final Report of EOC investigation into discrimination against new and expectant mothers in the workplace*, Equal Opportunities Commission, June 2005

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**Maternity Action** released an information sheet on maternity and redundancy in February 2009 and have had a steady stream of requests for further information.

- Pregnant women and women on maternity leave have reported that they were given no reason why they were selected for redundancy, or were given reasons which appear to be unlawful discrimination, such as the employer's preference for full time employees.
- Many of those who sought advice were made redundant on maternity leave and were not offered alternative employment in accordance with the law.
- Many women made redundant reported previous problems in negotiating part time working, and health and safety protection during pregnancy or maternity leave.

**Working Families** receives over 5,000 calls a year to their free legal helpline from disadvantaged parents and carers. Even before the recession they were receiving an unacceptably high number of calls where women believed that they had been discriminated against because of pregnancy or maternity leave. The following are typical of the kinds of requests for advice received:

- Women on maternity leave who are made redundant but have not been given first refusal on any suitable alternative vacancy or have had to have an interview, even though this is against the relevant regulations.
- Women who are dismissed from their employment on the day they inform their employer of their pregnancy, or very soon after.
- Women who are pregnant and have been selected for redundancy with the suggestion that pregnancy is the reason.
- Women on maternity leave who wish to return to work part time but have to leave employment instead because their employer refuses to allow them to work part time.

A woman who was 28 weeks pregnant was told she would be made redundant in the next month. She was the only one of seven staff to be selected for redundancy and was given no reasons why she was selected.

When asked why she thought she was selected she said "My employer doesn't want to pay SMP" (Maternity pay).

Maternity Action



A caller in the early stages of pregnancy told her employer that she was pregnant and he dismissed her later that day.

Working Families



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**Gingerbread** is the national charity working with single parent families. Their national helpline, which takes around 25,000 calls a year from single parents, is receiving an increased number of calls from single parents who have lost their jobs in the recession. These include calls from women who are pregnant and are concerned that they have been unfairly selected for redundancy. Being pregnant and alone can make life financially tough, and the impact of redundancy on people's incomes is severe. These women will lose out on both Statutory Maternity Pay and Working Tax Credit, taking a significant financial hit.

At law firm **Leigh Day and Co**, lawyers specializing in pregnancy discrimination have received a substantial increase in calls. As a result they have just set up a new helpline offering 10 minutes free advice to any woman facing redundancy which she thinks may be related to her pregnancy, maternity leave or part-time status.

## Cause for concern

The Alliance is concerned that women will be seen as fair game for dismissal during recession. Prominent and influential business leader Alan Sugar has publicly said what some others seem to feel: "We have maternity laws where people are entitled to have too much. Everything has gone too far." He went on to warn that employers would start to discriminate against women again.<sup>2</sup>

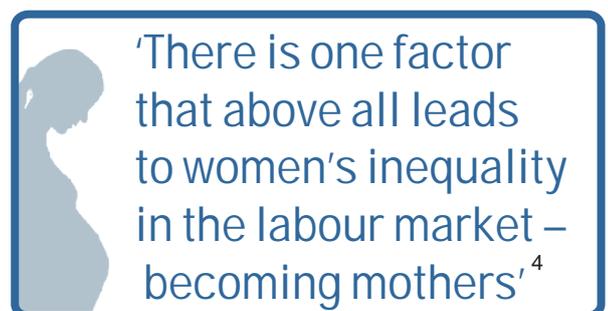
Comments like Sir Alan's lead others to think that this kind of behavior is acceptable. A recent poll that revealed that a staggering 24% of men and 17% of women interviewed admitted that they thought pregnant women and new mothers should be first in line for redundancy.<sup>3</sup>

Yet sexist views don't make good business sense. Protecting women who are pregnant or on maternity leave is vital to encourage and support women's participation in the workplace. Good employers recognise the economic cost of discrimination which reduces the pool of talent from which they recruit and means they lose valuable, experienced staff. Discriminatory practices also expose employers to the risk of legal action, with no limit on the compensation they could have to pay.

## Why does it matter?

The long term consequences of job loss as a result of pregnancy or maternity leave jeopardise women's financial security for their whole lives.

Women dismissed or otherwise discriminated against during pregnancy are less likely than other women to return to work after having a baby. If they do return to work, it has been estimated that their earnings will be reduced by five per cent.<sup>5</sup> The impact will last into retirement through lower pension earnings.



2: *The Daily Telegraph*, 27th March 2008

3: *The Economic Downturn – the concerns and experiences of women and families*, Government Equalities Office, 2009

4: *Fairness and Freedom: The final report of the equalities review*, Equal Opportunities Commission, 2007

5: *Fairness and Freedom: The final report of the equalities review*, Equal Opportunities Commission, 2007.

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## Real life

These stories are typical of the calls made to advice lines. All names have been changed.

Ann was told she was being made redundant on the day she returned from maternity leave to her senior job in a big city firm. This was in March but the decision had been made months earlier in December when her 'hunting instinct' was marked lower than the other directors. Ann was not consulted during the process, and had only ever received good performance appraisals with no hint that she had under-performed until now. In April the firm claimed that there were no other suitable jobs for her. To top the whole degrading process off, Ann was told in a glass office with all her colleagues watching.  
(Leigh Day and Co)

While on maternity leave, Debbie was told that her job had been selected for redundancy. Her employer failed to tell her that two vacancies had arisen in her workplace for which she could have applied. When Debbie challenged this, she was told it was not company policy to inform 'employees who are out of the business'.  
(Citizens Advice, Wales)

Tracy's baby is due in October. She is an agency worker and since informing the agency they've stopped sending her work. The only contact they've made was a text message saying 'warehouse has no vacancy. U need to be light duties. Do u want to risk the health of your child?'  
(Working Families)

Two weeks before Angela was due to return from maternity leave, she dropped in on her employer to check arrangements for her return. She found that the department she worked in had been closed down and the staff made redundant. She had not been informed of this. She asked what position she would hold when she returned from maternity leave and she was told that they didn't know if they would have a position for her and she was to email the company for further information.  
(Maternity Action)

## Has this happened to you?

- The lawyers Leigh, Day and Co may be able to help you if you have been made redundant while pregnant or on maternity leave – visit [www.leighday.co.uk](http://www.leighday.co.uk).
- Free help and legal advice is available from Working Families helpline on 0800 013 0313 or visit [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)
- Maternity Action has produced an information sheet available on [www.maternityaction.org.uk](http://www.maternityaction.org.uk)
- Are you prepared to share your story? Visit [www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk).

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## What is the Government doing?

Pregnant women need all the protection they can get during a recession. It is clear that more must be done to ensure that employers do not illegally pick out pregnant women for redundancy. The Government needs to play an active role in ensuring that the law against pregnancy discrimination is enforced.

Instead, the Government's new Equality Bill which is currently being debated in Parliament could make things even worse. Currently a woman must not be treated 'less favourably' because she is pregnant or on maternity leave. The Equality Bill appears to water this protection down by saying that she cannot be treated 'less favourably than is reasonable' (Clauses 16 and 17). What is 'reasonable' remains undefined, opening a legal can of worms and allowing unscrupulous employers to use inconvenience or cost as justification for actions which at present would clearly be illegal. It is sometimes cheaper or easier for employers to discriminate against pregnant employees and women on maternity leave. But this is precisely why unequivocal laws are needed to prevent them from doing so.

Moreover for women who are pregnant or who have just given birth, the prospect of costly and time consuming legal processes is particularly daunting and the result is likely to be that even more women feel they have to walk away from seeking justice through the courts. Legal experts in the field fear that if this clause goes through, the protection of pregnant women at work will be substantially weakened.

That the law might be watered down is unimaginable in a Bill designed to promote equality, and all the more dangerous during the recession. The Alliance is therefore calling for Government and employers to actively enforce the law prohibiting workplace discrimination on pregnancy related grounds; and the Government not to weaken the law on pregnancy discrimination in the Equality Bill.

## Alliance demands

We call on the Government to send a strong message to business that it is illegal to discriminate against a woman at work because she is pregnant or on maternity leave, and that recession and redundancies are not an excuse to break the law.

Specifically we call on The Secretary of State for Business:

1. To publically endorse the message that making a woman redundant because she is pregnant or a new mother is unlawful.
2. To actively publicise legal obligations on pregnancy discrimination to employers (and refer them to resources such as the EHRC pregnancy tool kit)
3. To actively publicise to pregnant employees their rights if facing redundancy.
4. To provide information to public bodies on their legal responsibilities in relation to pregnancy discrimination and ensure that their performance in this area is included when reporting on their compliance with the gender equity duty.
5. To monitor the incidence of discrimination against pregnant women, women on maternity leave, and women back at work for less than three months to ensure that the law is being complied with.

# Alliance Against Pregnancy Discrimination in the workplace

## Pregnancy, redundancy and the law: a summary

Employees must not be dismissed or disadvantaged in their working conditions because they are pregnant or on maternity leave. This is unlawful discrimination. The protection applies from the first day of employment. In some circumstances women are entitled to special protection; for example protection from dismissal due to pregnancy related absence.

Under what is known as 'regulation 10' women have special protection if made redundant while on maternity leave. Employers have to offer them any suitable job available. They will be given first refusal and will not need to attend an interview. Failure to comply means that the dismissal is automatically unfair and may also be sex discrimination, which is not subject to any cap on compensation.

An employer must:

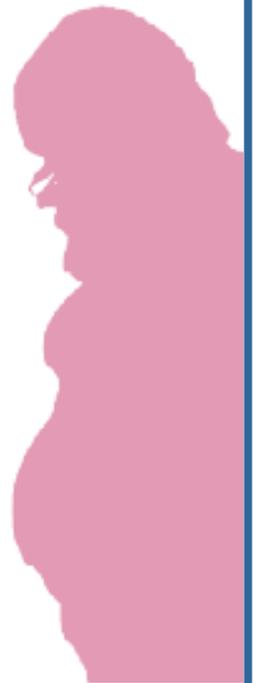
- Consult pregnant women and those on maternity leave about redundancy or restructuring in the same way as other employees;
- Consider a redundant employee for suitable alternative work even if she is pregnant or on maternity leave; there is a positive duty to offer a woman suitable alternative employment (in preference to other employees) where her job is made redundant during maternity leave;
- Follow a fair procedure or the redundancy may be unfair;
- Allow a woman to return to the same job after maternity leave, even if this is inconvenient. Failure to do so where the work still exists may be discrimination;
- Treat a woman working part-time the same as a full-time worker unless there is a very good non-discriminatory reason.

An employer must not:

- Treat a pregnant woman less favourably for a reason related to her pregnancy, pregnancy related absence or absence on maternity leave. It is discrimination to dismiss, make redundant or otherwise treat her less favourably, eg in relation to a pay rise, promotion, training;
- Select a woman for redundancy for a reason related to her pregnancy, the consequences of her pregnancy or absence on maternity leave;
- Select a woman for redundancy because she is working part-time or flexibly unless there are very good objective reasons;
- Treat a pregnant woman less favourably because of pregnancy related absence, however long the absence.

The consequences of discrimination:

- Compensation for future loss of earnings and benefits, which is not subject to any cap;
- Compensation for injury to feelings.



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## Equality is not just for the good times

It is shocking that 35 years after the Sex Discrimination Act the law to protect pregnant women at work is so widely flouted. In a recession it becomes all the more important for the rights of the vulnerable to be upheld.

Equality is not just for the good times. It is time to stop discriminating against pregnant women and new mums.

Join us in calling on employers and Government Ministers to stamp out pregnancy discrimination in the workplace.

## Take Action:

As an individual:

- Sign up to the e-petition: <http://petitions.number10.gov.uk/pregnancyprotect>
- Write to your MP asking them to write to Vera Baird QC MP, Solicitor General, asking her to amend Clause 16 of the Equality Bill so that pregnant women are protected at work. Download a template letter from [www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)

As an organisation:

- Join the Alliance by contacting [rosbragg@maternityaction.org.uk](mailto:rosbragg@maternityaction.org.uk).

## Alliance Members:

Citizens Advice Bureau ([www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)), Fawcett Society ([www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)), Gingerbread ([www.gingerbread.org.uk](http://www.gingerbread.org.uk)), Leigh Day and Co ([www.leighday.co.uk](http://www.leighday.co.uk)), Maternity Action ([www.maternityaction.org.uk](http://www.maternityaction.org.uk)), Working Families ([www.workingfamilies.org.uk](http://www.workingfamilies.org.uk))

