

New guidance on avoiding pregnancy discrimination

In the know

As a result of an increased number of calls to Acas from female employees claiming they have been discriminated against by their employer due to their pregnancy, new guidance has been released to help employers navigate this tricky area and avoid Tribunal claims. Here, we take a look at the guidance.

Recruitment and progression opportunities

- Employers should not ask job applicants if they are pregnant or whether they plan on having children;
- Job applicants do not need to tell a potential employer that they are pregnant. If this information is disclosed, employers should not be influenced by it;
- Pregnant employees should be informed of new internal vacancies in the same way as other employees;
- Applications for internal moves or promotions should not be turned down because the employee is pregnant;
- Employees who are pregnant, about to take maternity leave, on maternity leave or on pregnancy/maternity related sick leave should not miss out on training opportunities.

During maternity leave

- The only term of employment that may be affected during maternity leave is pay;
- All other terms and conditions should continue to apply including company car (unless it is for business use only), annual leave accrual and pension contributions during the paid element of leave;
- Pay increases the employee would have got if not on maternity leave should be taken into account when calculating maternity pay;

Absence during pregnancy

- Absences due to pregnancy or pregnancy related illnesses must not be counted towards absence triggers;
- Disciplinary warnings for absence due to pregnancy or pregnancy related illnesses are likely to be discriminatory;
- If discretionary sick pay is available, it should be paid to avoid discrimination.

Dismissal

- It is not unlawful to dismiss a pregnant employee, but a dismissal because of her pregnancy or maternity will be an act of discrimination and an automatically unfair dismissal;
- An employee must not be chosen for redundancy because of her pregnancy or the fact she is taking or has taken maternity leave;
- Employers must be careful when choosing redundancy selection criteria that it does not disadvantage an employee who is pregnant or on maternity leave e.g. including pregnancy related absences in an absence score.

Training

Employers should provide training for all employees to develop awareness and understanding of equality and diversity.

The content of this briefing is correct at the time of publishing.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this article