New law offering greater protection in redundancy processes during pregnancy and after return from family leave

The Protection from Redundancy (Pregnancy and Family Leave) Bill received Royal Assent on 24 May 2023, becoming the Protection from Redundancy (Pregnancy and Family Leave) Act 2023. The new law will protect pregnant women and those returning from certain types of family leave in redundancy situations. In this briefing, we outline where things currently stand and what steps employers should take next.

What is the background?

Currently, employees absent on either maternity, adoption or shared parental leave are afforded special protection in redundancy situations. The law provides that before making a woman who is on maternity leave (or an employee on adoption or shared parental leave) redundant, an employer must offer a suitable alternative vacancy to them, where one is available. In other words, the employee moves to the front of the queue for such roles, ahead of other colleagues and has a right of first refusal of such a role. If an employer fails to comply with its obligations in this respect, the employee may be able to bring an automatic unfair dismissal claim.

In 2019, the Government consulted on extending this protection to pregnant employees and those who had recently returned to work following a period of maternity, adoption or shared parental leave. The Queen's Speech delivered at the end of 2019 outlined plans for a new Employment Bill which would introduce these new rights. However, the Employment Bill did not materialise. Instead, the Government backed a Private Members' Bill – the Protection from Redundancy (Pregnancy and Family Leave) Bill – which aimed to deliver these changes.

What rights and protections will employees be given?

The Protection from Redundancy (Pregnancy and Family Leave) Bill received Royal Assent on 24 May 2023 and became the Protection from Redundancy (Pregnancy and Family Leave) Act 2023. The Act is due to come into force on 24 July 2023 and allows for regulations to be made which would give:

- pregnant employees who are at risk of redundancy priority for any suitable alternative vacancy that is available from the point that they notify the employer of their pregnancy;

- employees returning from maternity, adoption or shared parental leave who are at risk of redundancy priority for any suitable alternative vacancy that is available following their return to work. It is anticipated that returners from maternity or adoption leave will be protected for six months after their return to work, but

that the protected period may be different for shared parental leave given that it may be taken in discontinuous blocks; and

- employees the right to claim automatic unfair dismissal claim where an employer fails to comply with its obligations regarding offering suitable alternative vacancies and the employee is dismissed as a result.

In practice, this will mean that a woman who notifies her employer of her pregnancy at the three-month stage and then takes 12 months' maternity leave would be protected for a total of 24 months (i.e. six months' protection during pregnancy plus 12 months' protection during maternity leave plus a further six months' protection upon the return to work). At present, such a woman would be protected for the 12-month maternity leave period only.

However, the precise scope and mechanics of these new rights and protections will be set out in separate regulations. It is not yet known when these will be laid before Parliament, although the next General Election must take place by the end of January 2025.

What steps should employers take now?

Although employers will need to await the publication of the regulations to understand the finer detail of how the rights

will work, employers should consider the following policy issues now:

- Who will have responsibility for updating any relevant staff-facing procedures and internal guidelines on how to manage a redundancy process?

- Who will deliver training to members of HR and managers who have responsibility for redundancy processes? These groups will need to understand the new rules, know how to apply them and be clear about the consequences of non-compliance.

Protection from Redundancy (Pregnancy and Family Leave) Act 2023

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