

Pregnant employees and those returning from family leave to receive special protection in redundancy situations

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The Government has backed a Private Members' Bill which plans to expand special protection in redundancy situations to pregnant employees and those returning from maternity, adoption and shared parental leave.

What is the background to these proposals?

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 the employee a suitable alternative vacancy, where one is available. In other words, the employee moves to the front of the queue for such roles, ahead of other colleagues. 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.

Perhaps unsurprisingly, the Employment Bill fell off the Government's agenda as a result of the pandemic. However, in 2021, the Government published its response to the Women and Equalities Committee's report on the gendered economic impact of Covid-19, stating that it remained committed to bringing forward the Employment Bill and, specifically, that it would

extend redundancy protection as planned.

However, the Employment Bill did not materialise. Three years and two Prime Ministers later, the proposals are back in the spotlight again. This time, by way of a Private Members' Bill – the Protection from Redundancy (Pregnancy and Family Leave) Bill – sponsored by the Labour MP, Dan Jarvis. The Government is backing the new Bill, meaning it has a good chance of getting onto the statute books even though it is a Private Members' Bill.

What changes would the Bill make to redundancy law?

The Bill itself does not make any changes to redundancy law. Instead, it would amend the Employment Rights Act 1996 to allow regulations to be made which would expand the protection to cover both pregnant employees and those who have recently returned to work after a period of either maternity, adoption or shared parental leave.

The intention is that a woman would acquire protection from the point at which she notified her employer that she was pregnant. Typically, a woman will notify her employer of her pregnancy after she has had her three-month scan (although this may be done earlier, for example, if the woman has suffered a history of pregnancy loss or the pregnancy is otherwise regarded as high risk). Therefore, in most cases, this would translate to protection during pregnancy lasting around six months, at which point the maternity leave period would commence.

The intention is that the protection would also apply for six months after the return to work. For example, a woman who notified her employer of her pregnancy at the three-month stage and then took 12 months' maternity leave would be protected for a total period of 24 months (i.e. six months' protection during pregnancy, 12 months' protection during maternity leave and six months' protection upon the return to

work). At present, such a woman would be protected for the 12-month maternity leave period only.

The precise scope and mechanics of these new protections will be set out in the regulations themselves.

What will the changes mean for employers?

With the Government's support, the Bill passed its second reading in the House of Commons on 21 October 2022. It will now progress to the Committee stage, which will allow detailed scrutiny of the Bill. After that, it would move to the Report stage and third reading and then to the House of Lords to start the process all over again. Even if the Bill passes, the new protections will not be introduced straight away. Regulations will need to be drafted and laid before Parliament.

Therefore, there are no immediate changes for employers to make in light of the Bill. However, it would be sensible to work on the assumption that the Bill will pass given the Government's longstanding commitment to introduce these changes.

Assuming that the Bill passes, and regulations are introduced, employers will need to consider the following points:

- Be mindful that the protection may apply where a woman was pregnant but suffers the loss of the child (for example a miscarriage or a still birth).
- Update any relevant staff-facing procedures and internal guidelines on how to manage a redundancy process.
- Train members of HR, and line managers who will have responsibility for redundancy processes, to ensure that they understand the new rules, know how to apply them and understand the consequences of non-compliance.

We will keep you updated on the progress of the Bill.

Protection from Redundancy (Pregnancy and Family Leave) Bill 2022 – 23

Brahams Dutt Badrick French LLP are a leading specialist employment law firm based at Bank in the City. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

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