

Special treatment in redundancy situations to be extended to pregnant employees and family leave returners from 6 April 2024

The draft Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 were laid before Parliament on 11 December 2023. The Regulations set out the details of how special protection in redundancy situations will be applied to pregnant employees and certain family leave returners. This detailed briefing explains how the new rights will work in practice.

What is the current position?

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. To this end, the Government backed a Private Members' Bill – the Protection from Redundancy (Pregnancy and Family Leave) Bill – which aimed to deliver these changes.

What new rights and protections will employees be given?

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 came into force on 24 July 2023. The Act allowed for secondary legislation to be made which would set out the detail of how the new rights would work. The draft Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 were laid before Parliament on 11 December 2023. If passed in their current format, the Regulations will introduce the changes set out below.

Pregnant employees

Pregnant employees who are at risk of redundancy will have priority for any suitable alternative vacancy that is available. This will be known as the “protected period of pregnancy”.

The protected period of pregnancy **starts** on the day that the employee informs her employer of her pregnancy (where the notification is made on or after 6 April 2024). In practice, most women notify their employers when they are around 12 weeks' pregnant. However, it should be remembered that if a woman notifies her employer before then (for example, if she has a high-risk pregnancy), her protection will start at that point. The regulations do not stipulate how the notification

should be made and so employers should work on the assumption that an oral notification to an appropriate member of staff would count.

The protected period of pregnancy **ends** on the day that the statutory maternity leave starts (when the existing protection during maternity leave would kick in). However, where a woman suffers a miscarriage before 24 weeks of pregnancy, her additional protected period will end two weeks after the end of the pregnancy. Where a woman suffers a stillbirth after 24 weeks of pregnancy, she would remain entitled to statutory maternity leave (meaning the protection would end of the day that her maternity leave started).

Maternity leave returners

Employees returning to work from a period of maternity leave ending on or after 6 April 2024, and who are at risk of redundancy, will have priority for any suitable alternative vacancy that is available. This will be known as the “additional protected period”.

The additional protected period **starts** on the day after the last day of the employee’s statutory maternity leave. In practice, this may pre-date the day the employee actually returns to the workplace. For example, it is common for employees to tag a period of holiday or parental leave onto the end of the maternity leave period. It is important for employers to remember that employees who do that are within the additional protected period.

The additional protected period **ends** 18 months after the date

of the child's birth, provided that this has been notified to the employer. Employers may stipulate that such notification is given in writing. If notification of the birth date is *not* given, then the additional protected period will end 18 months after the first day of the expected week of childbirth.

In practice, this means that the additional protected period will differ depending on when the woman starts her maternity leave in relation to the date of the child's birth (or the first day of the expected week of childbirth) and how much maternity leave she takes. For example:

- Jane notified her employer of her pregnancy when she was three months' pregnant. As Jane had a high-risk pregnancy, she started her statutory maternity leave two months before the expected week of childbirth. Her child was born in that week, and she notified her employer of the date. She took her full 12 months' maternity leave entitlement. She returned to work ten months after the birth date. Jane would have an **additional protected period of eight months** (being 18 months after the birth).
- Sarah notified her employer of her pregnancy when she was three months' pregnant. As Sarah wished to maximise the amount of time off with her baby, she started her statutory maternity leave in the expected week of childbirth. Her child was born in that week, and she notified her employer of the date. She took her full 12

months' maternity leave entitlement. She returned to work 12 months after the birth date. Sarah would have an **additional protected period of six months** (being 18 months after the birth). Note that if Sarah had elected to tag one month's annual leave on to the end of her maternity leave, this six-month additional protected period would span the one month's annual leave and a further five months when she was back at work.

- Huda notified her employer of her pregnancy when she was three months' pregnant. Huda started her maternity leave in the expected week of childbirth. Her child was born in that week, and she notified her employer of the date. However, Huda only took three months' maternity leave. She returned to work three months after the birth date. Huda would have an **additional protected period of fifteen months** (being 18 months after the birth).

At first sight this appears anomalous, however, Jane, Sarah and Huda's overall period of protection starting with the notification of pregnancy and ending with the end of the additional protected period would be the same i.e. 24 months in total. How? Jane had a shorter protected period of pregnancy (since she started her maternity leave quite early) and so she benefits from a longer additional protected period after her maternity leave ends. In contrast, Sarah had a longer protected period of pregnancy (since she started her maternity leave at the latest possible point) and so she has a shorter additional protected period after her maternity leave. Huda was similar to Sarah in that she also had a

longer protected period of pregnancy (again, she started her maternity leave at the latest possible point), but because she took such a short period of maternity leave, she benefits from a longer additional protected period after her maternity leave ends.

The key takeaway point is that there is no “one size fits all” in terms of the length of the additional protected period after maternity leave. It will depend on when the birth date (or the first day of the expected week of childbirth) fell during the maternity leave (i.e. earlier or later) **and** how long the maternity leave lasts. Employers will need to take care to calculate the exact period of protection available to each maternity leave returner.

Adoption leave returners

Employees returning from a period of adoption leave ending on or after 6 April 2024, and who are at risk of redundancy, will have priority for any suitable alternative vacancy that is available.

The additional protected period **starts** on the day after the last day of the employee’s statutory adoption leave. As above this may pre-date the day the employee actually returns to the workplace if they tag a period of holiday or parental leave onto the end of the adoption leave period.

The additional protected period **ends** 18 months after the day the child is placed with the employee for adoption (or the date they enter Great Britain in the case of overseas adoptions).

As with maternity leave, there is no “one size fits all” in terms of the length of the additional protected period after adoption leave. By way of example:

- Ravi started his adoption leave two weeks before the child was placed with him for adoption. He took eight and half months’ adoption leave and returned to work eight months after the adoption placement date. Ravi would have an additional protected period of 10 months.

- Zoe started her adoption leave on the date the child was placed with her for adoption. She also took eight and a half months’ adoption leave. Zoe would have an additional protected period of nine and a half months.

- Yusuf started his adoption leave on the date the child was placed with him for adoption. He took three months’ adoption leave. Yusuf would have an additional protected period of 15 months.

As these examples show, the length of the additional protected period will depend on when the adoption leave starts in relation to the adoption placement date (which can be no more than two weeks before the placement date) and how long the adoption leave lasts after the placement date. Again,

employers will need to take care to calculate the exact period of protection available to each adoption leave returner.

Shared parental leave returners

Employees who start a period of shared parental leave of at least six consecutive weeks or more on or after 6 April 2024, and who are at risk of redundancy, will have priority for any suitable alternative vacancy that is available.

The additional protected period **starts** on the day after the employee has taken six consecutive weeks of shared parental leave. Note that where the period of shared parental leave is below six consecutive weeks, there is no additional protected period (although the employee will be protected *during* the shared parental leave period, as is currently the case).

The additional protected period **ends** 18 months after the day the child was born or placed with the employee for adoption (or the date they enter Great Britain in the case of overseas adoptions).

Tying the end of the additional protected period to the birth date (or adoption placement date), neutralises any difficulties which might have been caused by employees taking blocks of discontinuous leave. For example:

- Jakub's baby is born on 1 January 2024.

- Jakub takes his first block of shared parental leave on between 1 February 2024 and 31 March 2024.
- Jakub returns to work between 1 April 2024 and 31 October.
- Jakub takes his second block of shared parental leave between 1 November 2024 and 31 December 2024.
- The additional protected period started on 14 March 2024 (i.e. the day after Joe had completed six consecutive weeks of shared parental leave) and ended on 1 July 2025 (being the day after 18 months from the birth of his baby).

Therefore, the calculation of the additional protected period for shared parental leave returners is relatively straightforward. All the employer needs to know is the birth date (or adoption placement date). However, if the employee has also taken a period of either maternity or adoption leave, then the additional protected period must be calculated according to the maternity or adoption rules discussed above.

Protection from dismissal

Protected employees will have 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.

Separately, there is also a risk of discrimination claims being brought against employers who get it wrong.

What steps should employers take now?

Employers should consider the following issues:

- 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.

- To what extent will any imminent redundancy plans be affected by the new rules? The extension of the protection is likely to increase the numbers of employees who have priority status for suitable alternative roles. In particular, employers will need to consider how to approach situations where there is an alternative role which would be suitable for multiple protected employees. It seems likely that a further selection process would be needed to select the best candidate for the available role.

- Who will be responsible for calculating the length of protection available to returners in each case and communicating the same to managers and other stakeholders? Given the potential nuances discussed above, it will be important not to take a broad-brush approach. Doing so risks misidentifying the protected period and exposes employers to automatic unfair dismissal claims.

[Protection from Redundancy \(Pregnancy and Family Leave\) Act 2023](#)

[The Maternity Leave, Adoption Leave and Shared Parental Leave \(Amendment\) Regulations 2024 \(draft\)](#)

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