

Make Work Pay: Enhanced dismissal protections for pregnant women and new mothers

Consultation response on behalf of Thompsons Solicitors LLP

Thompsons is the most experienced trade union, employment rights, and personal injury law firm in the country, with 19 offices across the UK. It acts only for trade unions and their members on employment and industrial relations issues.

Thompsons represents most UK trade unions and advises on the full range of employment rights issues through its specialist employment rights department.

Thompsons is a large employer with over 250 employees.

Introduction

We have received an increase in referrals for advice and representation for pregnant women trade union members who have either been dismissed, feel forced to resign because of the way they have been treated in the workplace between 2023 to 2025. In one region the number of referrals increased by two hundred and fifty per cent. It may be that this is due to increased awareness of pregnant workers' rights and the rights of those taking maternity leave following the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 which extended the priority status to pregnant employees and those who have recently returned from maternity/adoption leave and shared parental leave.

The range of complaints cover small private sector and large public sector employers and range from withdrawal of working arrangements e.g. compressed hours, failure to undertake and/or implement risk assessments, risk assessments being denied flexible working and denied right to return to original job or suitable alternative role.

Constructive dismissal is a significant issue for pregnant women who consider they have been driven out by obstacles put in their place. Examples include being excluded from meetings, failure to implement adjustments arising from risk assessments and sham reorganisations.

Question 7: In your view, how common are concerns or complaints related to unfair dismissal or treatment during pregnancy?

A. Very common.

B. Common.

C. Occasional.

D. Rare.

E. Non-existent.

F. Don't know.

B. The Employment Tribunal statistics show that the number of receipts in respect of pregnancy detriment and dismissal claims increased exponentially between 2023/2024 and 2024/2025. The latest Employment Tribunal statistics published on 11 December 2025 show that increase is set to continue as the number of receipts in the first quarter of 2025/2026 increased by four hundred and eleven % compared with the first quarter of 2024/2025. While the figures for 2025/2026 are provisional they do indicate a worrying trend.

As the consultation acknowledges it is very likely that the Employment Tribunal statistics underestimate the true scale of maternity discrimination. A survey by ‘Pregnant then Screwed’¹ of 24,000 parents in 2023 found that fifty two percent of all mothers faced some form of discrimination when pregnant, on maternity leave or following their return to work.

A poll by the TUC published in January 2026 found that although thirty seven percent of those who faced unfair treatment, were dismissed or felt forced to leave their job, four in ten (37%) did not take any action. The main reasons given for not taking action include:

- taking action would be too stressful.
- not knowing where to get advice and support.
- not knowing if their experience amounts to unfair or unlawful treatment.

Delays in the Employment Tribunal service, which are, in part, due to an increase in discrimination claims to sixty percent (from thirty percent ten to fifteen years ago²) and which take longer to hear. This along with difficulties navigating the early conciliation process may also deter prospective claimants who have been subject to pregnancy and maternity leave discrimination. In the survey by Pregnant then Screwed only two per cent of affected women pursued a tribunal claim.

Question 8: In your view, how common are concerns or complaints related to unfair dismissal or treatment during new motherhood (i.e. on Maternity Leave or when recently returned to work)?

A. Very common.

B. Common.

C. Occasional.

D. Rare.

E. Non-existent.

F. Don't know.

¹ <https://pregnantthenscrewed.com/1-in-61-pregnant-women-say-their-boss-insinuated-they-should-have-an-abortion/>

² See paragraph 2.3 of the National User Group Minutes dated 7 October 2025- 54th Meeting of National [Employment Tribunal] User Group

B. We refer to our answer to question 7 above and our introduction which chimes with ‘Pregnant then Screwed and Women in Data’³ which found that half (49.5 per cent) of pregnant women, those on maternity leave, or those returning work encountered negative treatment. This included being sacked, bullied, harassed, having flexible working requests denied, breastfeeding discrimination and leaving jobs due to health and safety concerns.

A further third (35.9 per cent) said they were sidelined or demoted whilst pregnant, on maternity leave, or upon returning to work, while 12.4 per cent had been bullied or harassed. Of those who had negative experiences, one in five (20.6 per cent) left their employer.

Question 9: In general, when do you think pregnant women and new mothers are at most risk of unfair treatment? (Please select all that apply)

- A. During pregnancy. ✓
- B. During Maternity Leave. ✓
- C. Soon after they have returned to work (e.g. within six months of returning). ✓
- D. Some time after they have returned to work (e.g. after six months of returning). ✓
- E. Other.
- F. Don’t know.

We refer to our responses to questions 7 and 8 above in support of our answer. In support of selecting ‘B. During Maternity Leave’ we refer to the experiences of those we have advised and represented in the last two years who have been subjected to a reorganisation which resulted in them being managed out of a job in their absence albeit they were unaware of this until they returned to work. In other cases, requests for flexible working made during maternity leave (in order to plan a return to work) were either refused or ignored with some employers operating an “out of sight out of mind” approach to those women on maternity leave. This is despite regulation 12A (4) of the Maternity and Parental Leave etc. Regulations 1999 which provides for reasonable contact to be made and which expressly give the example, “(... to discuss an employee’s return to work).”

These experiences also lead to unfair treatment following maternity leave. In one case the employee was advised that the post she had been employed in for

Question 10: In general, when do you think pregnant women and new mothers are at most risk of dismissal? (Please select all that apply)

- A. During pregnancy. ✓
- B. During Maternity Leave. ✓
- C. Soon after they have returned to work (e.g. within six months of returning). ✓

³ <https://www.peoplemanagement.co.uk/article/1908293/pregnancy-related-job-losses-surged-third-past-decade-report-finds>

D. Some time after they have returned to work (e.g. after six months of returning). ✓

E. Other.

F. Don't know

We refer to our response above to questions 9. By way of an example of C. above, in one case the claimant, who was employed in a senior role with a public sector employer, returned from maternity leave to the same job title but had managerial responsibilities removed from her. This was a breach of regulation 18(2) of the Maternity and Parental Leave etc. Regulations 1999 and a dismissal under s. 98 and s.99 of the ERA 1996

Question 11: What impact have the 2023/24 extended redundancy protections for pregnant women and new mothers had on how pregnant women and new mothers are treated in the workplace?

A. Positive.

B. Negative.

C. Negligible. ✓

D. Don't know.

We refer to our response above to questions, 7, 8, 9 and 10. In one case the employee (our client) was replaced by another employee while she was on maternity leave. On her return from maternity leave our client was informed that there had been a reorganisation and as a result she was redeployed. The reorganisation was a sham as the employee who covered for her while she was on maternity leave continued in the role previously performed by our client prior to going on maternity leave. The redeployment to another lesser role a breach of s. 18(2) of the Maternity and Parental Leave etc. Regulations 1999 and a dismissal under s98 and s. 99 of the ERA 1996.

Question 12: What kind of test should be used to decide whether a pregnant woman or new mother was fairly dismissed during the protected period?

A. Replace the current 'range of reasonable responses' test for fairness with a new stricter standard that employers must meet, alongside proving a fair reason.

B. Narrow the scope of the existing five fair reasons, and/or remove some of them altogether.

C. Other ✓

D. Don't know.

A. We consider the option to narrow the band of reasonable responses test and refer to our response to questions 13 below.

Question 13: If 'A' to question 12, what should that new test be? (Please select all that apply)

A. Continuing the employment of the pregnant woman or new mother would have a significantly detrimental effect on the business.

B. Continuing the employment of the pregnant woman or new mother poses a health and safety risk to customers, staff, or the public.

C. Continuing the employment of the pregnant woman or new mother has a serious negative impact on the wellbeing of others.

D. Other. ✓

E. Don't know.

D. We suggest there should be a presumption that dismissal of a pregnant woman and one who is exercising or seeking to exercise or has exercised or sought to exercise the right to ordinary or additional maternity leave or equivalent maternity leave, is unfair unless the employer can establish that the dismissal is a proportionate means of achieving a legitimate aim. In light of the evidence referred to in the consultation at section 2 that dismissals of pregnant women and new mothers appear to be on the increase and underreported we consider a more stringent test should be applied and would be more effective. One single test that applies across the board has the advantage of being more easily understood and applied.

Question 19: When should employees be entitled to the enhanced dismissal protections?

A. When the employment relationship begins (when they agree with an employer that they'll start work for them, e.g. when a contract is signed).

B. From the day they start work.

C. After an initial period of employment of between 3-9 months, aligned with a typical probation period.

D. Other – please specify.

A. Where there is a binding contract between the parties. This would reduce the risk of a contract of employment being withdrawn in circumstances where an employer discovers the employee is pregnant or is exercising, or seeking to exercise or has exercised or sought to exercise the right to ordinary or additional maternity leave or equivalent maternity leave

Question 20: At what point should the enhanced dismissal protections start for pregnant women?

A. When the employee becomes pregnant.

B. When the employee becomes aware that she is pregnant.

C. When an employee informs her employer that she is pregnant.

D. Other - please specify.

A. In view of the experiences of women we have set out above in the introduction and in answer to questions 7,8,9 and 10 many women are reluctant to tell the employer that they are pregnant. However, the employer may reasonably be aware that a woman is pregnant and make decisions based on that awareness.

Question 21: When should the protection ‘window’ for new mothers entitled to maternity leave end?

A. 18 months from the birth of the child – aligning with the 2023/24 redundancy protections.

B. Six months from the return to work (the ‘return to work’ being the end of the Maternity Leave period).

C. Don’t know.

None of the above. We consider that protection should end 12 months following a return to work. Women who take the full entitlement to 12 months maternity leave or have an entitlement to additional leave be that enhanced contractual leave or other leave would be disadvantaged by option A. We do not consider six months in option B. following the end of maternity leave to work to be a reasonable period. For example, where the maternity returner requires a period of refresher training or is required to demonstrate a certain level of skill or professional development.

Question 22: Should women who are not entitled to Maternity Leave have protection against dismissal for two weeks after the end of their pregnancy?

A. Yes.

B. No – please explain your answer.

C. Other – please explain your answer.

D. Don’t know.

C. We consider that women workers and the self-employed should be entitled to maternity leave and the same protection that applies to employees. This would address the anomaly that exists whereby self-employed women and women workers qualify for statutory maternity allowance but do not qualify for maternity leave

Question 26: Do you think that parents who take long, family leave entitlements (i.e. Adoption Leave, Shared Parental Leave or Neonatal Care Leave) are vulnerable in a dismissal situation?

A. Yes.

B. No.

C. Don’t know.

A.

Question 27: Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave? (Please select all that apply):

- A. Adoption Leave. ✓
- B. Shared Parental Leave. ✓
- C. Neonatal Care Leave. ✓
- D. Bereaved Partner's Paternity Leave. ✓

We consider that in relation to B in particular that a failure to provide equivalent protection would undermine the principle identified in the House of Commons Women and Equalities Committee report namely "to enable families to share caring roles more easily and equitably to deliver positive employment outcomes"⁴.

Question 28: Thinking about your answer to question 27, should the protection against dismissal start from the first day of the leave?

- A. Yes.
- B. No.
- C. Don't know.
- D. Other – please specify.

A.

Question 29: Thinking about your answer to question 28, how long should the protection against dismissal last? (Please select all that apply)

A. For Adoption Leave, it should follow on from the approach of the enhanced redundancy protections for Adoption Leave (i.e. 18 months from the birth of the child/placement for adoption or entry into Great Britain).

B. For Shared Parental Leave, Neonatal Care Leave and Bereaved Partner's Paternity Leave, it should follow on from the approach of the enhanced redundancy protections for Shared Parental Leave and Neonatal Care Leave (i.e. if the employee takes less than six weeks of continuous leave, the protection ends on the last day of the leave; if they take more than six weeks of continuous leave, the protection ends 18 months from the birth of the child/placement for adoption or entry into Great Britain).

C. Other – please explain your answer. ✓

C. We think that the same protection should apply as set out in answer to questions 21 above

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/358/35803.htm>

Question 30: How do we ensure women, including those from minority groups, are aware of the enhanced dismissal protections for pregnant women and new mothers? (Please select all that apply)

A. Through intermediaries / trade unions / advice organisations (e.g. Pregnant then Screwed, Maternity Action, Working Families).

B. Clear information in onboarding and employee handbooks.

C. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).

E. Other - please specify. ✓

E. We consider that employers should be under a statutory obligation to inform workers in writing and in their first language of their rights to maternity and family leave and of the protections available to them. This would ensure a level playing field amongst all employers and ensure workers are aware of their rights. Although S. 1(4)(d) (ia) provides that the written statement of particulars provides for any terms and conditions relating to any paid leave other than sick leave or holiday it does not expressly provide for the written statement to include a statement of entitlement to maternity and other family leave. In any case these rights are not straightforward and therefore our preference is for there to be a statutory duty to provide each worker with a statement of their entitlement to maternity and other family leave and of the protections available. A failure to provide this could be actionable in the same way as the failure to provide a written statement.

Question 31: How do we ensure employers are aware of these changes? (Please select all that apply)

A. Through intermediaries / advice organisations (e.g. business groups).

B. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).

C. Other - please specify ✓

C. We consider that there should be a specified agency for overseeing pregnancy and family leave. This could be an arm of the Equality and Human Rights Commission (EHRC) which has the necessary enforcement powers under ss 20 to 24 of the Equality Act 2006 (EqA 2006) and more general powers under ss. 13-18 of the EqA 2006 to provide information and advice. This would also ensure consistency of approach provided it was properly resourced.

Question 32: How can we best support businesses, including smaller businesses, through this change and to avoid disputes escalating to the Employment Tribunal? (Please select all that apply)

A. Clear guidance. ✓

B. Awareness raising campaign. ✓

- C. Employer training / webinars / workshops. ✓
- D. Templates / model policies / checklists. ✓
- E. Free advice routes. ✓
- F. More information about dispute resolution (e.g. Acas early conciliation). ✓
- F. Other - please specify.

All of the above. We also refer to our answer to questions 31. We consider that also agree with the view that small employers tend to be risk averse because of their lack of exposure to maternity and family leave cases leading to misconceptions and ignorance about the productive benefits⁵. In particular some commentators have pointed out that better protection can improve recruitment and retention.⁶ The EHRC could use their powers to provide targeted support and education to smaller private sector employers and voluntary organisations.

Question 33: What unintended consequences, if any, do you think could arise from the enhanced dismissal protections? (Please select all that apply)

- A. Increased discrimination – hesitancy in or avoiding hiring women of childbearing age.
- B. Negative perception of workplace fairness/culture.
- C. Employers delay dismissal decisions until after protection period lapses.
- D. Negative impact on hiring generally.
- E. Legal uncertainty - employers avoid fair dismissal due to risk.
- F. Administrative burden (e.g. additional documentation).
- G. Unsustainable or unrealistic asks on small businesses.
- G. Other - please specify.
- H. None.

We do not consider that it is acceptable or reasonable for measures intended to address discrimination to be met with the threat of further discrimination in order to undermine proposals for reform. We are of the view that it is only if unacceptable attitudes to worker norms such as being constantly available and unrealistic expectations to provide an uninterrupted commitment to the employer/business/company are properly addressed that negative attitudes to women and families can be reversed. While we welcome the Governments “Parental leave and pay review”⁷ this will only reduce the so-called

⁵ Kowalewska: “Economic, Normative and Moral Reasoning in Employer Attitudes to Maternity Leave Cambridge University Press accepted June 2025

⁶ ibid

⁷ <https://www.gov.uk/government/calls-for-evidence/parental-leave-and-pay-review-call-for-evidence/parental-leave-and-pay-review-call-for-evidence>

unintended consequences if it repositions all workers as carers by providing statutory well paid nontransferable family leave.

Question 35: What action(s) could be taken to mitigate against any unintended consequences? *(Please select all that apply)*

- A. Clear guidance.
- B. Training and support for employers.
- C. Other - please specify.
- D. None.

Please see our answers to question 32 and 33 above.

Question 36: What do you think are the main causes of pregnancy and maternity discrimination? *(Please select all that apply)*

- A. Lack of awareness.
- B. Negative attitudes or bias.
- C. Cost and operational pressures.
- D. Fear of legal risk or complexity.
- E. Poor communication (e.g. during Maternity Leave).
- F. Other - please specify.

Please see our answers to questions 32 and 33 above

Question 37: What other changes should the government prioritise to tackle pregnancy and maternity discrimination?

Risk Assessments

A large proportion of complaints we receive, and which ultimately lead to claims for unfair and constructive dismissal arise in relation to risk assessments. The legislation is inadequate and confusing for both employers, employees and employee representatives. In particular, the duty to undertake a specific risk assessment under regulations 16 and 18 of the Management of Health and Safety at Work Regulations 1999 ('the Regulations') applies to a new or expectant mother only where:

- the employee informs her employer in writing that she is pregnant (or has recently given birth and/or is breastfeeding).
- the work is of a kind which could involve a risk by reason of her pregnancy, having recently given birth or is breastfeeding to the health and safety of a new or expectant mother or to that of her baby; and

- the risk must arise from processes, working conditions or exposure to physical, chemical or biological agents.

As can be seen from the second bullet point there must be some evidence that the work involves a potential risk to the new or expectant employee's health or the health of her baby. The Employment Appeal Tribunal⁸ affirmed that there is no automatic right to a specific risk assessment for pregnant workers. An amendment is crucial to addressing the reason behind some of the pregnancy dismissals we have encountered.

Holidays

Clarity is also required over the right to accrue holidays and pay during maternity and family leave and when it can be taken has led to discriminatory treatment. In one case we are aware of an employee had £2,144.10 deducted from her wages because the employer, a large educational establishment, had failed to take into account her holiday entitlement.

Thompsons LLP January 2025

⁸ *O'Neill v Buckinghamshire County Council* 2010 IRLR 384