



**Protecting the health and safety of pregnant workers and new mothers in the workplace**

A toolkit for UNISON trade union reps

# Why this toolkit is needed

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This toolkit has been produced by Maternity Action and UNISON with support from the TUC. It is designed to help UNISON reps ensure that the health and safety of members who are pregnant is protected from the moment that the rep becomes aware that a member is pregnant to their return to work and beyond. It is mainly targeted at health and safety reps but will also be useful for UNISON stewards who may be the first point of contact for someone who is experiencing problems at work because of pregnancy.

There are very specific risks in the workplace for anyone who is or may be pregnant, or who has recently given birth. All these risks are preventable and there are clear regulations in place to protect new and expectant mothers. Unfortunately, many employers either do not know what they should be doing or ignore their legal responsibilities. Many women do not know where to go to for clear guidance on their health and safety rights or are afraid to challenge their employer if they feel that not enough is being done to protect them.

Non-binary and trans people may also carry pregnancies and can face additional disadvantage in the workplace because of their non-binary or trans status. This toolkit covers all pregnant persons. Existing legislation and most research mainly refer to pregnant women and new mothers however, and this is necessarily reflected in the language of the toolkit.

In 2016 the Equalities and Human Rights Commission published a series of reports into maternity and pregnancy discrimination. It found that 41% of mothers reported a risk or impact to their health or welfare in the workplace, rising to 50% of those in agency, casual or zero hours employment. One in 25 mothers had left their jobs because of risks in the workplace not being tackled which it calculated could affect as many as 21,000 mothers each year. One in 10 mothers had been discouraged from attending antenatal appointments – affecting as many as 53,000 mothers each year.

The report found a continuing lack of action to tackle risks in the workplace with 10% reporting that their employer had failed to address identified risks. There were also concerns about the quality of risk assessments with one in five mothers saying that they had identified risks which their employer had not, and many feeling that it had been just a tick box exercise to comply with company procedures. Unfortunately most women (72%) were left with no option but to continue working in an unsafe environment.

In response to the Covid pandemic Maternity Action carried out a survey in 2021 of 400 women who had been working and pregnant at some point since it began. The report **Unsafe and Unsupported: workplace health and safety for pregnant women in the pandemic** showed that for many women the pandemic had exacerbated their concerns and that employers were still not doing enough to protect them despite the increased risks that Covid posed for them and their babies. Over two-thirds (69%) said that they were fairly or very worried about catching Covid because of their work. Over half (59%) had raised concerns about health and safety with their employers but almost one in five (17%) of these women said their employer took no action to address their concerns. Women were fearful of the consequences of pressing their employer to address unsafe working conditions. One-third (36%) of the women surveyed were worried that their jobs would be at risk if they took time off or asked their employer to do more to protect them from Covid.

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That is why local reps have such a vital role to play in providing information and support to pregnant members and new mothers, ensuring that they understand their rights and that the employer does everything necessary to protect their own and their baby's health.

This toolkit is intended to help trade union workplace representatives do just that – and ensure that their employer has processes in place to protect and support their staff during and after pregnancy. It also explains how to support members who have any problems or concerns.

If you have any specific problems where you need help or advice, your local branch health and safety officer or branch secretary may be able to assist. If not, they may pass on your query to a regional officer, who may in turn contact UNISON's Health and Safety Unit.

And do not forget UNISON Direct, a service dedicated to providing information and advice for members. The number is 0800 0 857 857.

**NOTE: In Northern Ireland there is a separate Northern Ireland Health and Safety Executive and you can access their website and guidance on pregnant employees here:**

**New and expectant mothers | Health and Safety Executive Northern Ireland ([hseni.gov.uk](https://hseni.gov.uk))**

There is a full list of all relevant legislation across the UK in **Info Sheet 8** at the end of this toolkit.

July 2022

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## Employers' responsibilities for the health and safety of pregnant workers and new mothers

### What obligations does the employer have to protect the health and safety of pregnant workers and new mothers?

The main regulations covering pregnant workers at work, as well as new mothers, are the Management of Health and Safety at Work Regulations 1999. These require an employer to protect the health and safety of new and expectant mothers. The Equality Act 2010 also provides protection from discrimination for anyone who is pregnant and those on maternity leave. An employer may have their own relevant policies in place that provide better terms, conditions and protections than the statutory rights so do check if there are any that apply to your member.

The employer must make sure that working conditions do not put the health of the worker or their baby at risk. It is unlawful for an employer to dismiss a pregnant person or treat them unfavourably because they cannot do the same work as a result of health and safety risks during pregnancy or when they have given birth or are breastfeeding.

The employer is also responsible for managing any risks posed to the pregnant worker or their child by undertaking a risk assessment that identifies those risks and sets out how they will be removed or mitigated.

If the risk assessment reveals a risk, the employer must do all that is reasonable to remove it or prevent exposure to it. The employer must provide information on the risks and what action has been taken.

If the risks cannot be removed or mitigated, women who are employees or agency workers with at least 12 weeks continuous service in the same placement must be provided with suitable alternative work or, if this is not possible, must be suspended on full pay. See **Info Sheet 4** for more information on this.

### Do women in casual work have the same protections?

The protections that a woman has will depend on whether she is classified as an employee or a worker. See **Info Sheet 2** for the protections that apply to women in casual work including those categorised as workers rather than employees.

### What protections do women who are employees have?

The following rights apply to all women who are employees, regardless of whether they are full-time or part-time or how long they have been in their job. These health and safety rights apply to workers who are pregnant, breastfeeding or who have given birth or had a stillbirth in the last six months.

# 1

## Employers' responsibilities for the health and safety of pregnant workers and new mothers

### How to ensure the employer provides protection

In order to ask the employer to take action to protect their health and safety your member must:

- ▶ Tell their employer in writing (e.g. by email) that they are pregnant or breastfeeding or that they have given birth in the last six months.
- ▶ If the employer asks for proof of pregnancy, the member must provide a certificate of pregnancy from their doctor or midwife.

The Health and Safety Executive advises that the employer must allow a reasonable amount of time for a pregnant worker to obtain proof of their pregnancy and they should not delay taking action while waiting for it. However, if proof is not provided within a reasonable time, the employer does not have to continue any changes to her working conditions or suspension on full pay.

The employer cannot insist on seeing a MATB1 maternity certificate before taking health and safety action as the MATB1 cannot be issued until someone is at least 20 weeks pregnant but they can ask her GP or midwife to provide other evidence of pregnancy to show the employer. The MATB1 only confirms the due date and is for Statutory Maternity pay purposes only.

### When is the best time to tell the employer about the pregnancy?

It is up to your member to decide when to tell their employer. They may not want to tell anyone when in the early stages of pregnancy and may wish to wait until after the first scan. It is entirely up to them to tell the employer when they feel ready.

However, they will need to tell the employer that they are pregnant if they want paid time off for antenatal appointments or if they want the employer to take action to protect their health and safety – for example by carrying out a risk assessment.

**If they need health and safety adjustments, they must notify their employer in writing** (e.g. email) that they are pregnant, breastfeeding or have given birth in the last six months and should keep a copy.

### Sickness during pregnancy due to health and safety risks

A pregnant worker should not have to take sick leave because of a health and safety risk at work as they could lose wages and/or maternity pay if they only receive Statutory Sick Pay when off sick.

If their sick leave is being caused by their working conditions it is very important to notify the employer in writing of their pregnancy and ask the employer to take action to protect their health and safety, as outlined above.

Statutory Maternity Pay may be affected if they receive Statutory Sick Pay or reduce their hours (and therefore earnings) during approximately weeks 18 to 26 of the pregnancy.

In order to qualify for Statutory Maternity Pay (SMP) they will need to earn at least £123 per week on average (April 2022-April 2023) in the two months (if paid monthly) or eight weeks (if paid weekly) before the end of the 15<sup>th</sup> week before the baby is due. If their eligibility for maternity pay is at risk you could advise them to consider using annual leave during these weeks to make sure they meet the eligibility criteria for SMP.

# 1

## Employers' responsibilities for the health and safety of pregnant workers and new mothers

### What happens if the member has to take sick leave during their pregnancy?

If the member is not well during their pregnancy they should follow the employer's normal sickness reporting procedures. The employer must record any pregnancy-related sickness absence separately from other sick leave, so that pregnancy-related sickness absence is not used as a reason for disciplinary action, dismissal or redundancy. It is automatic unfair dismissal and pregnancy discrimination to dismiss anyone for a reason connected to her pregnancy.

A pregnancy-related illness includes any condition that is linked to pregnancy, including depression, anxiety and other mental health conditions related to pregnancy or childbirth. If you or your member are unsure, you should encourage your member to seek advice from their GP or midwife and ask them to write to the employer so that the employer is aware that their condition is pregnancy-related.

Pregnant employees are entitled to receive the same sick pay as other employees. Check the member's contract or staff handbook or relevant policies. If the employer normally pays full sick pay (contractual sick pay) during sick leave, the member will be entitled to receive that in the usual way. Once they have used up any entitlement to contractual sick pay provided by the employer (or if the employer does not provide any contractual sick pay) they may be able to claim Statutory Sick Pay.

If the employer refuses to pay sick pay for a pregnancy-related illness, the member could have a claim for pregnancy discrimination.

### Time off to attend antenatal appointments

It is important for the health of both the pregnant person and the baby that they see their medical practitioners at regular intervals so that any problems are picked up as early as possible.

The amount of time off someone will need is a very individual matter and no two pregnancies are the same. It helps if the member can give their employer as much notice as possible of appointments and talks to their manager about how work will be covered during absences.

The law says that employees (and agency workers who have been in the same placement for at least 12 weeks) are entitled to reasonable paid time off for their antenatal care. The employer cannot ask them to take appointments outside working hours. If they work part-time, they are still entitled to time off where appointments fall during normal working hours if this is unavoidable. The member should try to minimise disruption to their working day by making appointments at a time that will reduce absence from work, but if they have no control over the timing of appointments they are entitled to take a reasonable amount of time off for antenatal care.

Antenatal care can include classes providing they are recommended by a registered midwife, nurse or GP as part of the antenatal care. If their employer asks, they must provide proof of pregnancy and proof of the appointment – but note that the employer cannot ask for proof for the first appointment.

# 1

## Employers' responsibilities for the health and safety of pregnant workers and new mothers

### Risk of Serious and Imminent Danger

If a member goes into work and considers that they are in serious and imminent risk of danger to their health and safety they are protected against dismissal, detrimental treatment and loss of pay if they leave work in order to protect themselves. Putting a worker in that situation is potentially a breach of health and safety law. An example would be where someone in the workplace has coronavirus and could therefore spread it to other workers in high risk groups.

Anyone in this situation should let their employer know why they are leaving the workplace so that they are not considered to be absent without leave and explain why they believed they were at risk. If they are subsequently dismissed or disciplined or are not paid they can bring a claim in an employment tribunal under s.44 or s.100 Employment Rights Act 1996. They will need to show that they reasonably believed that there was a serious and imminent risk based on what they knew at the time and what advice they had received about the risks.

**Note that although enshrined in law this right is not a straightforward one to exercise. Any worker exercising this right could be deemed to be taking industrial action and if this is not done in a way that complies with the strict legal requirements the employer could try to take action against them.**

**It is very much a right of last resort and the context of a situation will be key to whether refusing to return to work or any other steps are appropriate. This means that an employee cannot automatically refuse a reasonable instruction to return to work without a good reason.**

**If a member feels that they are being put at risk it is crucial to get advice and discuss the situation with their UNISON representative who in turn should seek advice from their branch/regional office or UNISON's legal team.**



## Protection for workers in casual and insecure employment

Workers who become pregnant have to navigate a barrage of complex employment legislation to understand their maternity and parental rights. For those employed in precarious contracts such as zero hours, short term and other casual contracts the complexities are even greater. Many do not have employee status and are classified as 'workers' or 'self-employed' – often incorrectly. Employment status is important because it dictates entitlement to a number of key maternity and parental rights. Those in insecure employment find that their rights can be greatly diminished, detrimentally impacting their entitlements to maternity and parental pay and leave, health and safety protection, time off for antenatal appointments and rights to return to work.

### Establishing the type of employment contract

Hopefully your member will have a written contract or a letter that sets out their terms and conditions of employment. It will say whether they are an 'employee' or a 'worker'. If they do not have a written contract they should ask the employer for this information. Your member will need to know what their employment status is in order to work out their maternity and parental rights

### General health and safety protections for pregnant 'workers'

All workers and employees have the following health and safety protection. If someone is pregnant, has given birth in the last six months or is breastfeeding, their employer must make sure that the kind of work they do and their working conditions will not put their health or the baby's health at risk.

All employers must carry out a workplace risk assessment, identifying any risks to pregnant workers or new mothers. They must do all that is reasonable to remove or reduce any risks such as altering working conditions or hours of work, providing somewhere to sit and to rest, extra breaks or ensuring that she does not do any heavy lifting.

Only staff categorised as **employees or agency workers with at least 12 weeks' continuous service in the same placement** have the right to be offered suitable alternative work or to be suspended on full pay – this does not apply to those who are **workers or agency workers with less than 12 weeks in the same placement**.

### Zero hours workers

The legal definition of a zero hours' contract is a contract which says that you only have to work when the employer makes work available and there is no guarantee that work will be available or that it will be offered to you. Some zero hours contracts only give 'worker' status and employers use these types of contracts to cover busy periods or irregular patterns of work. However, many zero hours' contracts state that you are an 'employee' so check any written contract or ask the employer.

If someone is working for the same employer over a long period of time on regular hours it is more likely that they are an employee, regardless of what it says in their contract, and they should be entitled to the same rights as an employee. Employees can work full-time or part-time and can include apprenticeships, permanent contracts and short-term or fixed-term contracts. If you have any doubts about a member's employment status contact UNISON for advice.

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## Protection for pregnant workers in casual and insecure employment

### Agency workers

All agency workers have the right to health and safety protection from day one of their employment. Once your member has notified their employer (where they are working) in writing that they are pregnant or have given birth in the last 26 weeks or are breastfeeding, the employer must review their risk assessment and specifically consider any pregnancy related risks. If there are risks, the employer they are working for must take reasonable action to remove any risks such as changing their working conditions or hours and give them information about any risks. Unfortunately, agency workers can find it difficult to get someone to take responsibility for carrying out a risk assessment but it is important that this is done by the employer.

If a pregnant worker has worked for at least 12 weeks in the same placement and their placement is ended because of health and safety, the agency must provide them with suitable alternative work if it is available and it avoids the risks to her health and safety. If there is no suitable alternative work they are entitled to be suspended on full pay by the agency for the length of the intended placement or for as long as the placement would have been likely to last.

For more information on agency workers' rights see the Maternity Action information sheet **Maternity and Parental Rights for Agency Workers**. This includes a model letter that agency workers can use to assert their rights.

### Time off for antenatal care

If your member is a **worker** they will not be entitled to time off for antenatal care, so they will need to arrange antenatal appointments outside working hours wherever possible or ask their employer if they can take leave.

**Agency workers** are not entitled to paid time off for antenatal care until they have completed at least 12 weeks continuous employment with the same employer. Once they have completed 12 weeks continuous employment, their agency and the employer they are working for must allow them to take reasonable paid time off to attend antenatal appointments. This can include a reasonable amount of travelling and waiting time if it is within their working hours. The agency is entitled to ask for proof of pregnancy and of each appointment, apart from the first appointment. The member can ask their GP or midwife to provide a note confirming pregnancy. The agency cannot insist on having the MATB1 maternity certificate as a pregnant woman is not entitled to it until she is 20 weeks' pregnant. The agency should accept an appointment card or letter as proof of the appointment and cannot ask for additional evidence.

### Right to request flexible working

The right to request flexible working only applies to those who are 'employees' and is only a right to 'request' with employers able to cite a broad range of business based reasons for refusal. Those who are categorised as 'worker' do not have the right to request flexible work and will have to try to negotiate working hours and other flexibilities with their employer.



## What to do when a member tells you they are pregnant

- ▶ Check whether your member has told anyone else that they are pregnant. If they have decided not to tell other people at work for the time being – including their manager – you can provide support by obtaining copies of any maternity policies that the employer has and so help them to maintain confidentiality in the early stages of pregnancy.
- ▶ Give your member a copy of **Info Sheet 8: Resources and further reading** of this toolkit – this will provide them with links to further information that they may find useful to access at different stages of pregnancy, maternity leave and return to work
- ▶ Ask the employer to ensure that workers always have access to copies of risk assessments that cover their work. If the member does not want to disclose their pregnancy yet, but they are concerned about a particular workplace risk, they have no way of asking the employer about it or asking for a copy of any relevant risk assessments related to their work without alerting them to the fact that they are pregnant. If the employer does not provide easy access to these, then the union health and safety representative can ask for copies of them and ensure that their members have access to them.
- ▶ Does your trade union have any useful information that you can direct your member to about their maternity rights? Some unions allow members to pay a reduced subscription while on maternity leave. Your UNISON members will find the resources useful in the left hand box below.
- ▶ Check the employment status of your member – Are they an employee or a worker? This will affect their rights to health and safety protection.
- ▶ Talk through the pros and cons of when to tell their employer that they are pregnant. In order to get health and safety protections from the employer such as a risk assessment and time off for antenatal care, they will need to tell their manager about their pregnancy. See **Info Sheet 1** for more information about what the employer needs to do and how your member must notify them.
- ▶ Does your member have any immediate concerns about potential risks including the risk of catching Covid? If so you can arrange to attend a meeting with them and their manager to talk through those risks and what action needs to be taken to mitigate or remove them. **Info Sheet 5** sets out the particular risks that may affect pregnant workers (including guidance on Covid as at April 2022) so you can use that as a checklist.
- ▶ Does your member know about their rights to time off for antenatal classes and appointments (note that rights to time off and pay will depend on their employment status – see **Info Sheet 2**)? It is worth checking whether their employer has a local agreement on this. See **Info Sheet 1** for more details about rights to time off.
- ▶ Once the member has told their employer about their pregnancy make sure that their manager is organising a risk assessment. This should be undertaken with the involvement of a UNISON rep and all identified risks must be addressed. See **Info Sheet 4** for more information on risk assessments.
- ▶ If the member needs to take sick leave during their pregnancy make sure that it is recorded separately and cannot be used for purposes such as selection for redundancy, disciplinary action or dismissal.
- ▶ It can be a good idea to schedule in some short meetings with your member during their pregnancy to check that the employer is taking the steps needed to protect their health and safety such as carrying out and reviewing any risk assessments at regular intervals; checking they have any suitably fitting uniform or PPE; checking that they know what they need to do and when, such as providing the MATB1 to their employer and giving sufficient notice of when they wants to start maternity leave.

### USEFUL INFORMATION

**Pregnancy. Your rights at work – UNISON Shop**

**Legal support on work-related issues | Legal services | UNISON National (a guide for members)**



## Risk assessments, suitable alternative work and maternity suspensions

For most pregnant workers, the risks to themselves or their baby are relatively low and they can continue to work without any problems, but each pregnancy is different, as is every workplace. The most important thing is to ensure that the employer considers the risks and takes any necessary action to control them and that the pregnant worker is involved in the process and any concerns are met. If your member believes that the risk assessment was not thorough enough they should write to their employer setting out any risks which were not identified or where insufficient action has been taken to mitigate them and discuss how these will be addressed.

### Is a general risk assessment sufficient to protect pregnant workers?

Many employers wait until a worker notifies them that they are pregnant before doing anything. This is wrong. Any employer who has women of childbearing age should ensure that their general risk assessment includes any risks to new and expectant mothers. This is because many people do not know they are expecting until relatively late in the pregnancy, and even if they do, there are many reasons why they may choose not to disclose their pregnancy to their employer until quite late in the pregnancy. If the general risk assessment reveals any risk, it must be removed or reduced “as far as is reasonably practical”. Although it is important to ensure that any general risk assessment includes risks to women of childbearing age the employer must also carry out a specific risk assessment for anyone who is pregnant.

### Does my employer have to carry out an individual risk assessment for a pregnant worker?

Yes, once the worker has notified their employer of their pregnancy in writing, the employer must consider the risks associated with their individual job role and any health conditions and make the adjustments needed to keep them safe.

A pregnant worker is entitled to be provided with safe work or suitable alternative work while their employer arranges a risk assessment and if this is not possible they should be treated as suspended on full pay until the employer is able to carry out a risk assessment and make adjustments.

Many employers are unaware that they need to carry out an individual risk assessment for a pregnant worker and think that any general risk assessments they have devised will be sufficient. In a recent case, the Court of Justice of the European Union (CJEU) decided that failure to carry out an individual risk assessment can be sex discrimination:

#### **Otero Ramos v Servicio Galego de Saude [2017] CJEU C-531/15.**

Ms Ramos was a nurse in a hospital Accident and Emergency department. She asked for adjustments to her working conditions as a result of her shift pattern, exposure to x-rays, infections and stress. This was refused as the employer had a workplace report that assessed the job as being risk-free.

The CJEU decided that a risk assessment must include ‘a specific assessment taking into account her individual situation’ in order to decide if her or her baby’s health and safety was put at risk. This is because different risks could arise at different stages of the pregnancy. Risks will also depend on individual circumstances and personal medical history all of which must be taken into account when deciding what health and safety protection is required. Tribunals must continue to take account of EU case law.

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## Risk assessments, suitable alternative work and maternity suspensions

### What should a risk assessment cover?

All employers are required by law to protect the health and safety of their workers. The employer must carry out a workplace risk assessment of the risks to their workers as well as the risks to others affected by their business, such as visitors and contractors.

If the work could involve a risk to pregnant worker or new mothers, the workplace risk assessment must also include an assessment of risks to new and expectant mothers arising from any 'processes, working conditions, physical, biological and chemical agents'. Biological agents includes infectious diseases such as coronavirus Covid-19.

If the risk assessment reveals a risk, the employer must do all that is reasonable to remove it or prevent the worker's exposure to it. The employer must provide information on the risks and what action has been taken.

The Health and Safety Executive advises that:

- ▶ *Having regular discussions with a new or expectant mother is an important way to monitor any changes and address any concerns about health and safety.*
- ▶ *Depending on the work involved, this might mean ongoing reviews for a pregnant worker because their dexterity, agility, co-ordination, speed of movement and reach could be impaired as their size increases. Working conditions can also present a risk to mother and child at different pregnancy stages.*

### The employer must consider the risks and take action as follows:

- ▶ **Step 1:** temporarily alter the worker's working conditions or hours of work, if this is reasonable and avoids the risk, such as allowing extra breaks, ensuring that they can sit down and avoiding heavy lifting. This applies to all workers.
- ▶ **Step 2:** If that is not possible or does not avoid the risk, the employer must offer the worker suitable alternative work on terms and conditions that are not substantially less favourable than their original job.
- ▶ **Step 3:** If there is no suitable alternative work, the employer must suspend the worker on full pay for as long as necessary to avoid the risk.

Steps 2 and 3 apply to employees only and agency workers with more than 12 weeks in the same placement. They do not apply to those categorised as 'workers'.

**Note:** a maternity suspension will last until 4 weeks before the expected week of childbirth as the employer can trigger her maternity leave/pay from that point if the worker is absent from work wholly or partly because of pregnancy.

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## Risk assessments, suitable alternative work and maternity suspensions

### What would count as suitable alternative work?

Alternative work must be suitable and appropriate for the worker to do. This usually means that work will only be suitable if it is similar to their normal job and involves the same skills and experience. It will usually only be regarded as appropriate if it is on the same terms and conditions, including pay, and on the same days or hours.

Mrs Hardman was a care assistant in a nursing home. Her job involved lifting elderly residents. She informed her employer that she was pregnant and provided a medical certificate saying that she should avoid heavy lifting. Her employer did not do a risk assessment and offered her a job as a cleaner. The tribunal decided that this was not suitable alternative work and, at an appeal hearing, the Employment Appeal Tribunal decided that failure to carry out a risk assessment where there is evidence of risk is unlawful discrimination because of pregnancy. *Hardman v Mallon t/a Orchard Lodge Nursing Home* [2002] IRLR 516.

In the case study of Mrs Hardman above it was not considered suitable for a care assistant to be offered alternative work as a cleaner.

If the employer can only provide alternative work on reduced hours they must continue to pay the worker's normal salary. If they normally works certain shifts for childcare reasons and their employer offers alternative work on other days/hours when they do not have childcare available this would not be considered to be appropriate as alternative work.

Cases so far have generally involved physical risks such as heavy lifting or exposure to chemicals. If there is concern about mental health risks from working conditions such as long hours, heavy workload or stress, you will need evidence to show that these are risks associated with your member's work and that her employer failed to take appropriate action (*O'Neill v Buckingham County Council* UKEAT/0020/09/JOJ).

### The employer has offered different work which is not as well paid. Is this 'suitable alternative work'?

Alternative work must be suitable and appropriate for your member to do. This usually means that work will only be suitable if it is similar to their normal job and involves the same skills and experience. It will usually only be regarded as appropriate if it is on the same terms and conditions, including pay, and on the same days or hours.

Two flight attendants were offered ground work because of their pregnancy and were told they would receive their basic pay only and not their flight allowances. The Employment Appeal Tribunal found that they had not been offered suitable alternative work as the terms and conditions of the ground work were substantially less favourable. They should have been offered the same terms and conditions or they should have been suspended on full pay. *British Airways v Moore & Botterill* [2000] EAT 185

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## Risk assessments, suitable alternative work and maternity suspensions

### What happens to pay and contractual rights during a maternity suspension?

A worker continues to be employed during the suspension and they should continue to benefit from pension rights, pay increments and holiday accrual.

A worker is entitled to receive their normal pay and any other contractual benefits unless their employer offered them suitable alternative work and they 'unreasonably' refused it. If the employer does not pay them during a period of suspension they may be able to make a claim in an employment tribunal for unauthorised deduction of wages under the Employment Rights Act 1996 s.13. If the employer claims that they refused suitable alternative work it would be up to the tribunal to decide if it was a suitable alternative. You should contact your local UNISON branch for advice and assistance in this situation.

### If the member is suspended for health and safety reasons can the employer make her start their maternity leave early?

Normally it is up to the worker to decide when they wish to start their maternity leave. They must give their employer notice by the 15<sup>th</sup> week before their baby is due. However, if they are absent from work because of their pregnancy, the employer can start their maternity leave from four weeks before the week their baby is due. Pregnancy-related absence includes pregnancy-related illness and suspension on health and safety grounds.



## Types of risks affecting pregnant workers

### What risks should the employer be considering?

The Health and Safety Executive website contains guidance for employers on health and safety during pregnancy here which you can show to the employer.

The employer's workplace risk assessment must specifically include the following risks to pregnant workers and new mothers:

**Physical agents** (this is not an exhaustive list and there may be others in your workplace)

- ▶ Movements and postures
- ▶ Manual handling
- ▶ Shocks and vibrations
- ▶ Noise
- ▶ Radiation (ionising and non-ionising)

**Biological agents**

- ▶ Infectious diseases

**Chemical agents**

- ▶ Toxic chemicals
- ▶ Mercury
- ▶ Antimitotic (cytotoxic) drugs
- ▶ Pesticides
- ▶ Carbon monoxide
- ▶ Lead
- ▶ Air pollution (including diesel and particulates) which can affect outdoor workers such as traffic wardens and street cleaners

**Working conditions**

- ▶ Facilities (including rest rooms)
- ▶ Mental and physical fatigue, working hours
- ▶ Shift work
- ▶ Stress (including post-natal depression)
- ▶ Passive smoking
- ▶ Temperature
- ▶ Working with visual display units (VDUs)
- ▶ Working alone
- ▶ Working at height
- ▶ Travelling
- ▶ Violence and harassment
- ▶ Personal protective equipment
- ▶ Nutrition and hydration

# 5

## Types of risks affecting pregnant workers

Below are details about some of the more common risks that pregnant workers face. It is not intended to be a complete list and there may be others in your workplace

### Lifting, twisting, turning, standing and sitting

Moderate exercise during pregnancy can help promote a healthy pregnancy, but that is different from either heavy physical activity or repetitive activity, including squatting, stooping or lifting above the head. Pregnant people are at higher risk of an injury while lifting due to differences in posture, balance, and an inability to hold things close to the body because of their changing size. Pregnant people may also be more likely to be injured from lifting heavy objects because changes in hormones can have an effect on ligaments and joints. This is to accommodate the developing baby and also prepare for the birth. It is also true that falls are a major source of trauma during pregnancy and that is more likely to happen when carrying, rushing, or walking on an uneven or slippery surface. Prolonged standing or heavy lifting can cause an increased chance of miscarriage or preterm delivery (premature birth).

Even sitting can be problematic as workstations will have to be adjusted as the pregnancy develops. As the body changes, the mother will get further away from their desk and this can cause back and neck strain unless the position of the screen is adjusted. Often standard chairs are unsuitable because the curvature of the back can alter and posture will change. Many pregnant people also develop lower back pain which will mean they will need greater support.

### Personal Protective Equipment (PPE) and Uniforms

Uniforms can become restrictive and cause problems with moving, reaching, lifting so suitably sized uniforms and protective wear should be made available as the pregnancy progresses. The same applies to any personal protective equipment that is required to be worn and it is important to ensure that this fits well and provides the protection needed. Employees must be provided with adequate information, instruction and/or training on the use of PPE. Employers also have to make sure that the PPE is suitable for the purpose, and provided to all staff at no cost to them. The TUC has produced a guide for trade union reps **Personal Protective Equipment and Women: guidance for workplace representatives on making sure it is a safe fit.**

### Working in extreme temperatures

There can be increased risks when working in high temperatures, both inside and outside. This is because, during pregnancy, the body has to work harder to cool down both the pregnant person's body and that of their unborn baby. This means a pregnant worker is more likely to get heat exhaustion or heat stroke sooner than a worker who isn't pregnant. Pregnant people are also more likely to become dehydrated. Giving the worker more control over the temperature of their workspace so they can make it cooler or warmer as they require will help.

Your member should discuss any concerns with their doctor or midwife as high temperatures (and very low temperatures) can be a risk to pregnant people. They should ask for a letter stating that their working conditions are a risk to them and/or their baby. They should notify their employer of their pregnancy in writing and ask them to take reasonable action to alter their working conditions, backed up by any evidence they have obtained from their GP or midwife. The employer should suspend them on full pay if there is no suitable alternative work available.

# 5

## Types of risks affecting pregnant workers

### Infectious diseases

Working with or exposure to certain bacteria, viruses, or other infectious agents could increase the chances of having a miscarriage, a baby with a birth defect, or reproductive problems. The risks of some, like rubella, are well known, but some other common infections, such as cytomegalovirus, are also linked to birth defects, while several others, like chickenpox, seasonal influenza and pneumonia can be more severe if caught during pregnancy. This is a particular concern in some healthcare settings, for those who work with children and anyone working with animals.

If the worker is regularly in contact with children, people who are more likely to have an infectious or contagious disease, or animals the employer should ensure that any colleagues, clients, parents etc., are encouraged to notify them if they develop or carry any transmittable disease.

Some infectious diseases are more likely to be dangerous in the very early stages, such as rubella, where the greatest risk is in the first ten weeks of pregnancy. This means the employer has to consider the risks whenever there are women of child-bearing age who might be exposed. The employer could consider offering a temporary move to another work base eg to a different school in the case of a teacher working in a school where there has been an outbreak. If the employer cannot offer suitable alternative work it is likely that the worker will have to be suspended on full pay for as long as there is a risk.

### Covid-19

#### Guidance for pregnant women

As at April 2022 the Government has withdrawn most of its guidance for pregnant women on Covid-19 to the concern of UNISON, Maternity Action, TUC and Royal College of Midwives who wrote a joint letter to the Health and Safety Executive (HSE) and the Department of Health and Social Care (DHSC) to object to this and call for the guidance to be reinstated.

The situation regarding Covid infections and guidance from the Government, DHSC, HSE and other organisations changes regularly so please use the links below for the most up to date information. The information below was correct at the time of writing this toolkit in May 2022 and it can be helpful to refer the employer to this information if there are particular concerns about the risk of contracting Covid at work.

UNISON has published guidance **Coronavirus: Your Rights at Work** which covers all four UK countries and includes sector specific advice. UNISON has also produced detailed guidance on **Pregnant Workers and COVID-19**. See Info Sheet 8 for links to all these and other UNISON documents.

The Royal College of Obstetricians and Gynaecologists (RCOG) and the Royal College of Midwives (RCM) have published joint guidance for pregnant women (latest version March 2022) which is regularly updated and can be accessed [here](#). It says that:

*“There is growing evidence that pregnant women may be at increased risk of severe illness from COVID-19 compared with non-pregnant women, particularly in the third trimester (from 28 weeks of pregnancy).”*

*“Risk factors associated both with being infected and hospitalised with COVID-19 include being unvaccinated, Black, Asian and minority ethnic backgrounds, having a body-mass index above 25 kg/m<sup>2</sup>, having a pre-pregnancy co-morbidity, (e.g. diabetes or hypertension), a maternal age of 35 years or older, living in increased socioeconomic deprivation, and working in healthcare or other public-facing occupations.”*

# 5

## Types of risks affecting pregnant workers

When pregnant women become infected and unwell with COVID-19 they are three times as likely to give birth to a premature baby and twice as likely to experience a stillbirth. The **NHS website states that**: “*You’re at higher risk of getting seriously ill from Covid-19 if you’re pregnant. If you get Covid-19 late in your pregnancy, your baby could also be at risk.*” Women from an ethnic minority group are more likely to be admitted to hospital if they get Covid-19 and NHS maternity teams are taking extra steps to protect women who are at higher risk.

The **NHS website advises pregnant women** that if they get any symptoms of Covid-19 they should “*Try to stay at home and avoid contact with other people if you have a high temperature or feel unwell...Speak to your midwife or maternity team – they will advise you what to do.*”

**The DHSC advice at April 2022** is that: “*Pregnant women are strongly advised to get vaccinated. If you are pregnant and you develop symptoms of COVID-19, it is important that you contact your GP, midwife or maternity team, or 111. Guidance for pregnancy and COVID-19 can be found on the NHS website.*”

RCOG has produced a number of FAQs for pregnant women about Covid and vaccination which you can see **here**. They have also produced an **information sheet** to help pregnant women make an informed decision about having a Covid vaccination.

Maternity Action has an **information sheet on health and safety during pregnancy and on return to work** which includes information on Covid risks and a model letter for writing to employers to ask for health and safety protection.

They also organised two Q&A webinars on Covid Vaccination and Pregnancy and Fertility which were recorded and can be viewed **here**.

### **Action to be taken by the employer**

The employer must take action in relation to infectious diseases (including Covid-19) if there is a higher risk of infection at work than the mother is likely to be exposed to outside her workplace. However the HSE no longer no longer requires every business to consider COVID-19 in their risk assessment or to have specific measures in place.

Under the Control of Substances Hazardous to Health (COSHH) Regulations employers must protect workers who come into contact with COVID-19 as **set out on the HSE website**:

- ▶ directly through their work, for example in researching the virus in laboratories
- ▶ due to their work activity, such as health and social care workers caring for infectious patients

In these cases, employers must still do a risk assessment and implement control measures.

COSHH does not cover situations where:

- ▶ one employee catches a respiratory infection from another
- ▶ a member of the public has infected an employee with coronavirus through general transmission in the workplace

**The HSE website also says** that: “*Although HSE will no longer require COVID-19 control measures, employers must continue to consult workers and their representatives on any changes they make that might affect health and safety.*”

The employer must also take into account any medical evidence from your midwife or GP about the risks that Covid poses to a pregnant person.

# 5

## Types of risks affecting pregnant workers

### Tiredness and breaks

All employers must provide suitable facilities for a pregnant worker or nursing mother to rest, which should include somewhere to lie down. The **HSE states that** new and expectant mothers are entitled to more frequent rest breaks. They should discuss this with their employer and agree the necessary timing and frequency of rest breaks. Agree an increase in breaks to ensure that the pregnant worker can visit the toilet more often and drink plenty of fluids.

Under the Working Time Regulations 1998 staff are entitled to at least 20 minutes uninterrupted rest break if working more than 6 hours. This should be taken during working time, such as a tea or lunch break, and not at the start or end of the day. If the work is 'monotonous' e.g. factory work, the employer may have to give a pregnant worker extra rest breaks to ensure their health and safety is not at risk.

If you think that their working conditions are a risk and are making them unwell e.g. the job involves long hours, a heavy workload or is a very tiring job, the worker should notify their employer in writing of their pregnancy and ask their employer to take action to protect their health and safety. If the job is very tiring the employer should take reasonable action to temporarily alter their working conditions or hours of work or, if that does not help, offer suitable alternative work. Make sure that any change is confirmed in writing and that it is agreed for a temporary period only. Any health and safety adjustments must ensure that pay and maternity pay are not affected.

### Working irregular and unsociable hours

Both long hours and some shift work can increase health problems. Working irregular hours such as night shifts can change circadian rhythms. These regulate pregnancy hormones, so shift work and long working hours have been linked to miscarriages, and preterm births.

Workers who work shifts, or who work long hours, often do not get enough sleep. This can adversely affect health, and has been connected to hypertension and gestational diabetes. Blood flow to the foetus is at its peak during sleep, so when sleep is disrupted or reduced, the blood flow to the placenta may be reduced.

If working night shifts a pregnant worker has the right to transfer to suitable alternative day work if they are pregnant, breastfeeding or have given birth in the last six months. They must tell their employer in writing that they are pregnant and provide a medical certificate saying that they cannot work at night for health and safety reasons. The suitable alternative work must be on similar terms and conditions and it must be suitable for them. If there is a good reason why they cannot work days or if there is no suitable alternative day-time work available, they should be suspended on full pay.

# 5

## Types of risks affecting pregnant workers

### Stress

Some stress during pregnancy is normal, but if stress becomes constant, the effects can be damaging. Stress has been linked to poorer pregnancy health and possible developmental problems in babies. The nature of the job may be a source of stress but poor employer practices can be too. For instance, pregnancy discrimination or the threat of redundancy may cause or exacerbate stress. Practical steps such as changing the worker's workload or working hours may help to reduce stress provided it is with their agreement. Ensuring that pregnant workers and new mothers are treated fairly, with respect and without fear of discrimination will also help. Employers should ensure that all new mothers are offered support through access to an Employee Assistance Programme or an occupational health provider. Refresher training on return to work (or prior to return by use of paid Keeping in Touch (KIT) days) can also help reduce the stress of coming back to work.

Support should also be available when a worker returns early because they have a miscarriage, or the baby is stillborn. Often miscarriages will happen when the worker is still working. It is important that employers ensure that they liaise with the worker to offer the support they need, allowing time off to grieve and recover.

### Postnatal depression and depression during pregnancy

Postnatal depression is common and affects more than one in ten mothers within a year of giving birth. It can be made worse by any workplace stress, or even just the worry of returning to work after the birth. It is important to encourage seeking help if experiencing depression as, with the right support, a full recovery is possible. Depression in pregnancy is also very common, affecting more than one in ten pregnant people. It is important that the mother talks to their GP or midwife to make a diagnosis and discuss treatments.

### Violence and harassment

Both actual and threatened violence can pose a danger to a pregnant person's health, including the risk of an early birth or miscarriage. In addition, pregnant people may be less able to remove themselves from danger. The threat of violence or abuse is also linked to the problems associated with stress. For those working in health and social care such threats can be faced not only in workplaces but when visiting patients in their homes.

### Travelling (for work and commuting)

Travelling outside your place of work for work purposes is a possible health and safety risk if you are pregnant or have recently given birth or are breastfeeding. The employer should consider whether the amount of travelling can be temporarily reduced or replaced with other work such as office-based or working from home. Varying start and finish times may also help reduce the stress of a commute.

Employers also have to take into account the likelihood that pregnant workers may have an increased need for toilet facilities and that it is important that they can drink enough to keep hydrated without worrying about accessing these facilities. This can be a concern for workers such as bus, freight and train drivers.

There can also be an increased risk of musculoskeletal problems such as back pain during pregnancy which can be made worse by either driving or sitting in a train, car or plane for long periods.

# 5

## Types of risks affecting pregnant workers

It is not just the travelling that can pose an additional risk (although travelling can be linked to stress and long hours), but the fact that the pregnant person can be away from the levels of care needed in the later stages of pregnancy. Travelling, or working in transportation, could mean being a long distance away from medical assistance in the event of difficulties or premature labour.

### Ventilation

Ventilation is an important factor in the workplace but this has become even more so as a result of the Covid pandemic. Steps should be taken to address indoor air quality to reduce the risk of all respiratory viruses, improve air quality and to reduce CO<sub>2</sub> in the air. Covid is an airborne virus, meaning it is primarily spread through the air in tiny particles, known as aerosols. Aerosols are different to droplets, which are larger and can be spread from touching surfaces – they are breathed out by a person. That means anyone can spread them, unknowingly – you don't need to be coughing or sneezing.

Aerosols are small, they can remain suspended in the air for hours. So a person entering a room where someone who is infectious but not showing symptoms has been, even if they have already left, means they might still breathe in a Covid-19 aerosol. A combination of concentration, airflow, humidity and temperature, all contribute to whether the aerosol load will be infectious. This means ventilation, where the air is renewed and refreshed regularly, is an important method for reducing Covid transmission.

Every workplace risk assessment should include aerosol transmission and outline what steps are being taken to improve ventilation where necessary.

You can find more guidance and resources from the TUC on ventilation [here](#) and see [UNISON's guide on Covid and ventilation here](#).

Hazards Campaign provides a number of resources on ventilation particularly in light of the Covid pandemic. You can access this and a recording of the 2021 TUC webinar Managing ventilation as a Covid Safety Measure [here](#).

### Noise

This may be a problem for two reasons. Increased noise levels can cause stress which can cause changes in a pregnant person's body that can affect their developing baby, but it is also generally accepted that sound can travel through the body and reach the womb. This means that very loud noises may be able to damage the baby's hearing. The levels likely to affect the hearing of a foetus are not known but the nature of the work means a pregnant worker may be exposed to very high noise exposure that is normally controlled by hearing protection, then the risk should be considered and controlled.

# 5

## Types of risks affecting pregnant workers

### Chemicals

There are a lot of chemicals found in the workplace that could be hazardous to pregnant workers. In some cases, it is because the foetus might be more vulnerable to certain chemicals, particularly in early stages of pregnancy when the baby's organs are developing, or because changes in a pregnant person's immune system or lung capacity could put them at greater risk. Heavy metals such as lead, cadmium cobalt and mercury increase chances of miscarriage, stillbirth or a birth defect. These metals can also affect a baby's brain development. There are also specific risks from chemicals used in chemotherapy and from anaesthetic gases. Some solvents, epoxies, resins, pesticides, disinfectants and sterilising fluids increase the chances of having a miscarriage, stillbirth, preterm birth, a low birthweight baby, or a baby with a birth defect. Many solvents also pass into breast milk so should be avoided during breastfeeding.

Information on potential risks to pregnant or breastfeeding mothers should be contained in the Safety Data Sheets that the supplier has to provide the employer. There are legal requirements about what must go in these although, because of recent changes to the regulations, some older data sheets will have different wording. The kind of phrases that the employer should check for are:

- ▶ May cause genetic defects (route of exposure, if applicable)
- ▶ May damage fertility or the unborn child
- ▶ Suspected of damaging fertility or the unborn child
- ▶ May cause harm to breastfed children
- ▶ Suspected of causing genetic defects (route of exposure, if applicable)

Unfortunately, not all Safety Data Sheets are reliable and sometimes information is omitted, so the employer should have systems in place to ensure that they are aware of the potential risks from any chemicals or other hazards that could affect a pregnant worker or new mother.

### Ionizing radiation

Healthcare workers and others who may be exposed to ionising radiation as part of their jobs face increased risks as it has been linked to birth defects.



## Supporting breastfeeding when returning to work

If the mother wants her employer to take action to protect their health and safety they must notify her employer in writing that they are breastfeeding. If the employer does not take reasonable action to ensure a safe environment for breastfeeding, tell them about the health reasons for breastfeeding.

### Benefits of breastfeeding

Not all mothers can, or choose to, breastfeed but many want to continue after they have returned to work. Continuing to breastfeed is one way to maintain the close relationship the mother has built up, providing her baby with extra comfort and security. Mothers who feel unhappy about leaving their baby when they return to work often find that continuing to breastfeed helps them to cope better. There is also good scientific evidence of the benefits of breastfeeding.

Breastmilk protects babies against infections, so babies who are breastfed are significantly less likely to suffer from serious conditions such as gastro-enteritis, respiratory infections, urinary tract infections and ear infections. Breastfeeding is associated with a reduced risk of later childhood diseases such as eczema, asthma, wheezing and diabetes.

Breastfeeding also protects the mother's health. Mothers who breastfeed are less likely to develop breast cancer, some forms of ovarian cancer, and hip fractures as a result of osteoporosis in old age.

### How long should breastfeeding continue?

Because of the health benefits of breastfeeding, health professionals recommend breastfeeding exclusively for at least the first six months (this means that the baby doesn't need any food or drink other than breastmilk for this period). After that, the scientific evidence is that the longer breastfeeding continues (while also introducing the baby to solid food), the greater the ongoing health benefits for both the mother and her baby. In some cases, prolonged breastfeeding may be a necessity, for example, if the baby is allergic to formula or cow's milk. Your member must be able to choose how long they breastfeed for.

### How to continue breastfeeding after returning to work?

There are various ways in which the mother can combine breastfeeding with going back to work.

If there is a workplace nursery or other childcare very close to the workplace, they may be able to visit the baby during the working day and breastfeed normally.

If visiting the baby during the working day is not possible, expressing breastmilk is an option. A mother may decide to partially breastfeed, which means breastfeeding the baby when she is at home and giving the baby formula milk while the mother is at work.

# 6

## Supporting breastfeeding and returning to work

### What support should the employer provide for expressing milk at work?

Just as breastfeeding is a skill to be learnt, so is expressing breastmilk. Most people find that it takes a bit of practice and will want to start before they actually return to work. You can advise your member to get practical advice from organisations like the National Childbirth Trust and La Leche League.

Ideally the employer will have a policy on breastfeeding at work, but if not you can help your member to negotiate suitable facilities and negotiate a policy for future use by other new mothers. Your member will need to talk to their employer about where they can express milk and when – this will depend on where they works. A large employer may have a 'mother and baby room'. In other workplaces it may be possible to use a first aid room, spare office or any private room, preferably with a lockable door.

How often a mother expresses milk and for how long is very individual. It will depend on how easy it is to express, how many feeds there are when not with their baby and how much milk the baby normally takes. Ideally, the mother would be allowed to take breaks when needed but it may be necessary to fit around existing breaks or lunch hour or the demands of the job. Remember, just as a baby rarely feeds to an exact schedule it will not matter if the mother cannot express at exactly the right time or if the occasional day is missed.

In many other European countries breastfeeding mothers have a statutory right to paid breastfeeding breaks or a shorter working day if they have a baby under 12 months. In the UK, breastfeeding mothers have some legal protection under health and safety and sex discrimination laws.

Employers have legal obligations to provide:

- ▶ Health and safety protection
- ▶ Flexible working hours and protection from indirect sex discrimination
- ▶ Rest facilities
- ▶ Protection from sex discrimination or sexual harassment

### Is there a health and safety risk at work?

There are very few direct risks when breastfeeding but scientific evidence shows that the baby's health and the mother's health can be affected if the mother does not breastfeed until the baby is at least 12 months old. So, if the mother's working conditions stop her from breastfeeding successfully, you may be able to argue that it is putting both her health and the baby's health at risk.

Some hazardous substances can enter breastmilk and might pose a risk to the baby. If the mother's work brings them into contact with a dangerous substance, their employer should take appropriate steps to make the job safe. If the job cannot be made safe, the mother must be transferred to a suitable alternative job or suspended on full pay.

# 6

## Supporting breastfeeding and returning to work

Health and Safety Executive guidance includes the following risks:

- ▶ Mercury
- ▶ Lead
- ▶ Certain biological agents may be transmitted through breastfeeding or through close physical contact between mother and child. Examples of agents where the child might be infected are hepatitis B, HIV (the AIDS virus), herpes, syphilis, chickenpox and typhoid. For most workers, the risk of infection is not higher at work than elsewhere, but in certain occupations exposure to infections is more likely, for example laboratory work, health care, looking after animals or dealing with animal products.
- ▶ Substances labelled R64 may cause harm to breastfed babies.

You can find the **guidance by the HSE here**.

### What action should the employer take?

While breastfeeding, there are special health and safety protection under the same regulations that give protection to pregnant employees.

All employers must carry out a general workplace risk assessment. If they employ women of childbearing age employers must also carry out a 'specific' risk assessment of risks to new and expectant mothers arising from 'any processes, working conditions, physical, biological and chemical agents'. If the risk assessment reveals a risk, the employer must do all that is reasonable to remove it or prevent exposure to it. The employer must provide information on the risks and what action has been taken.

If there are still health and safety risks and you want the employer to take action **the worker must tell the employer in writing that they are breastfeeding**.

The employer must consider the risks and take reasonable action to temporarily change the mother's working conditions or hours of work, for example, working shorter shifts, giving regular shifts or avoiding night work or overnight stays.

Reasonable action to protect the worker's health and safety while breastfeeding could include adequate rest breaks to ensure proper nutrition, access to water and washing facilities. The employer should ensure that the environment is not too hot or too cold and should also consider levels of fatigue, stress and changes in posture.

If adjustments to working hours or conditions would not avoid risks to breastfeeding, the mother should be given a temporary transfer to suitable alternative work. Examples might be working with harmful chemicals or where the job involves extensive travel away from home. Any alternative work or additional breaks for breastfeeding or expressing milk should be provided without loss of pay.

### Am I entitled to breastfeeding breaks?

No, the law does not currently allow a simple, straightforward right to breastfeeding breaks. However, it is good practice and the employer must consider any health and safety issues, as stated above. If the employer refuses to provide any breastfeeding breaks, the mother may be able to use lunch or other breaks or take them at a slightly different time. The **HSE states that** *"there are no legal restrictions on breastfeeding at work and there should be no workplace time limits for expressing milk, so this is not something that should prevent you from returning to work"*.

# 6

## Supporting breastfeeding and returning to work

If the employer refuses a request from the mother to change their hours enable them to continue breastfeeding, seek advice about indirect sex discrimination from UNISON.

### Rest facilities

Employers are obliged under the Workplace (Health, Safety and Welfare) Regulations 1992 to provide “suitable facilities” for a breastfeeding employee to “rest”. The Approved Code of Practice states that these facilities should be conveniently situated in relation to sanitary facilities and, where necessary, include the facility to lie down. These “rest facilities” are very likely to also be a suitable place for breastfeeding or expressing. Although private, the toilet is never a suitable place in which to breastfeed a baby or collect milk.

The Health and Safety Executive and guidance from the European Commission recommend that employers should provide:

- ▶ access to a private room where women can breastfeed or express breast milk;
- ▶ use of secure, clean refrigerators for storing expressed breast milk while at work, and
- ▶ facilities for washing, sterilising and storing receptacles.

### Protection from sex discrimination or sexual harassment

Detrimental treatment or offensive teasing on the grounds of breastfeeding or failure to provide a private room for expressing milk may amount to sex discrimination or sexual harassment if it has the purpose or effect of violating a woman’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive work environment.



## Checklist for union reps – negotiating and updating your H&S policy

### Do your local policies and procedures include the following?

- ▶ Do not wait until you become aware that there is a pregnant person in the workplace before checking that the correct procedures are in place. The employer should have a written policy outlining what they do to protect the health, safety and welfare of pregnant workers and new mothers. Ask to see it and ensure that the employer consults you on the development and review of such health and safety policies.
- ▶ Ensure that you are consulted on risk assessments and check to see that they cover all the potential risks to workers who may be pregnant and that these risks have been controlled – not just once the employer knows that one of the workers is pregnant (as a union health and safety representative you have the right to this information).
- ▶ Is there a clear statement committing the employer to undertaking an individual risk assessment for any worker who informs them that they are pregnant? Is there also a commitment to carry out reviews of the risk assessment at different stages as the pregnancy progresses or if working conditions or duties change during the course of the pregnancy? Are these happening?
- ▶ Has the employer procedures in place to support the mental health and wellbeing of pregnant workers and new mothers, or those who have suffered a miscarriage or stillbirth?
- ▶ Does your local bullying and harassment policy include such behaviour towards pregnant workers, those who have recently returned to work after maternity leave and who are expressing milk or breastfeeding in the workplace? For example teasing or negative comments about their commitment to their job or time they need to take off work because of their pregnancy?
- ▶ Does your sickness absence policy make it clear that any pregnancy related absences should be recorded separately and not be used for the purposes of selection for redundancy or disciplinary action?
- ▶ Check what steps are taken to ensure a revised risk assessment is undertaken when a new mother returns to work.
- ▶ Is refresher training available when a worker returns after pregnancy – this can help reduce the stress caused by returning after a long period away from the workplace?
- ▶ Does the employer have a flexible working policy and if so does this provide the same rights to those who are categorised as workers – for example on casual or short term contracts – as it does to those who are permanent employees?
- ▶ Does the employer provide paid breaks for workers who have returned to the workplace and are still breastfeeding or wish to express milk? If not are they willing to allow them to work flexibly to help continue breastfeeding?
- ▶ Has your employer made a commitment to provide suitable facilities for anyone wishing to express milk at work including a suitable room to express and storage facilities for expressed milk? Safety reps can carry out a workplace inspection to check on the suitability of these facilities.



## Resources and further reading

If this toolkit has spurred your interest in health and safety issues and you are not already a UNISON health and safety rep why not think about becoming one to help support and protect all UNISON members in your workplace? For more information go to:

**Become a Safety rep | UNISON Health and Safety | UNISON National**

**UNISON guides ([www.unison.org.uk](http://www.unison.org.uk))**

**UNISON Health and Safety | UNISON National**

**Coronavirus: Your Rights at Work**

**COVID-19 and ventilation in the workplace: guidance for UNISON safety reps**

**Pregnant Workers and COVID-19**

**Risk assessment guidance for safety reps – UNISON Shop**

**Gender, safety and health guide – UNISON Shop**

**Pregnancy. Your rights at work – UNISON Shop**

**Legal support on work-related issues | Legal services | UNISON National (a guide for members)**

**Maternity Action ([www.maternityaction.org.uk](http://www.maternityaction.org.uk))**

Maternity Action has over 50 information sheets on its website covering the whole range of workplace issues for pregnant workers and new parents.

**You can access these here**

There are also specific information sheets on **health and safety, breastfeeding and sickness.**

**Other Organisations**

**Health and Safety Executive (HSE) [www.hse.gov.uk](http://www.hse.gov.uk)**

**Protecting New and Expectant Mothers at Work** (guidance for employers)

**New and expectant mothers at work: your health and safety** (advice for new and expectant mothers)

**Health and Safety Executive Northern Ireland**

**New and expectant mothers | Health and Safety Executive Northern Ireland ([hseni.gov.uk](http://hseni.gov.uk))**

**Royal College of Obstetricians and Gynaecologists (RCOG)**

RCOG has information about Covid vaccines during pregnancy. You can find this here.

They have also produced an **information sheet** to help pregnant women make an informed decision about having a Covid vaccination.

**Relevant UK regulations****Regulation in England, Wales, and Scotland**

- ▶ Health and Safety at Work etc. Act 1974
- ▶ Management of Health and Safety at Work Regulations 1999
- ▶ Workplace (Health, Safety and Welfare) Regulations 1992
- ▶ Control of Substances Hazardous to Health Regulations 2002
- ▶ Manual Handling Operation Regulations 1992
- ▶ Personal Protective Equipment Regulations 1992
- ▶ Provision and Use of Work Equipment Regulations 1998
- ▶ Health and Safety (Display Screen Equipment) Regulations 1992
- ▶ Control of Asbestos Regulations 2012
- ▶ Electricity at Work Regulations 1989
- ▶ Lifting Operations and Lifting Equipment Regulations 1998
- ▶ Safety Representatives and Safety Committee Regulations 1977
- ▶ Health and Safety (Consultation of Employees) Regulations 1996
- ▶ Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013
- ▶ Ionising Radiation Regulations 2017

**Regulation in Northern Ireland (NI)**

- ▶ The Health and Safety at Work (Northern Ireland) Order 1978
- ▶ Management of Health and Safety at Work Regulations (NI) 2000
- ▶ Workplace (Health Safety and Welfare) Regulations (NI) 1993
- ▶ Control of Substances Hazardous to Health Regulations (NI) 2003
- ▶ Manual Handling Operations Regulations (NI) 1992
- ▶ Personal Protective Equipment at Work Regulations (NI) 1993
- ▶ Provision and Use of Work Equipment Regulations (NI) 1999
- ▶ Health and Safety (Display Screen Equipment) Regulations (NI) 1992
- ▶ Control of Asbestos Regulations (NI) 2012
- ▶ Electricity at Work Regulations (NI) 1991
- ▶ Lifting Operations and Lifting Equipment Regulations (NI) 1999
- ▶ Safety Representatives and Safety Committee Regulations (NI) 1979
- ▶ Health and Safety (Consultation of Employees) Regulations (NI) 1996
- ▶ Reporting of Injures Diseases and Dangerous Occurrences Regulations (NI) 1997
- ▶ Ionising Radiation Regulations (Northern Ireland) 2017