



A Pregnant Pause

An MPs report finds that maternity discrimination is on the rise with NDAs being abused

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Pregnancy for most is a happy and exciting time, but often also brings with it feelings of stress and worry. Being fully prepared, financial considerations and health worries can all take a toll. Concerns about how work may react to an announcement can leave some women feeling uneasy. The Equality Act 2010 offers protections against being treated unfairly due to pregnancy, breastfeeding or when you've recently given birth. However, there has been an alarming rise in the number of women who have claimed that they have experienced discrimination due to pregnancy.

In 2018 the Department for Business Energy and Industrial Strategy (BEIS) and the Equality and Human Rights Commission commissioned a programme of research to investigate the prevalence and nature of pregnancy discrimination and disadvantage in the workplace, for which they conducted interviews with 3,034 employers and 3,254 mothers. The report stated that 11% of women reported that they were either dismissed; made compulsorily redundant, where others in their workplace were not; or treated so poorly they felt they had to leave their job. One in five mothers said they had experienced harassment or negative comments related to pregnancy or flexible working from their employer and/or colleagues and 10% of mothers said their employer discouraged them from attending antenatal appointments.

Furthermore, when managers were interviewed about their attitudes towards pregnancy, 36% of private sector employers stated that they believe it is reasonable to ask women about their plans to have children in the future during their recruitment process; 59% agreed that a woman should have to disclose whether she is pregnant during the recruitment process; almost half believed that it is reasonable to ask women if they have young children; 44% of employers agreed that women should work for an organisation for at least a year before deciding to have children, 40% of employers claimed to have seen at least one pregnant woman in their workplace 'take advantage' of their pregnancy; a third stated their belief that women who become pregnant and new mothers in work are "generally less interested in career progression" when compared to other employees in their company; 41% of employers agreed that

pregnancy in the workplace puts 'an unnecessary cost burden' on the workplace; just over half of employers surveyed agreed that there is sometimes resentment amongst employees towards women who are pregnant or on maternity leave; and finally, 36% of employers disagreed with the idea that it is easy to protect expectant or new mothers from discrimination in the workplace.

NDAs and Discrimination

One would hope that the situation would improve, but worryingly it would appear that employers are simply getting better at covering their tracks. A report published 11 June by the Commons' Women and

being traded for things that employers should be providing as a matter of course, such as references and remedial action to tackle discrimination.

"After signing an NDA, many individuals find it difficult to work in the same sector again. Some suffer emotional and psychological damage as a result of their experiences, which can affect their ability to work and move on. There is also the financial penalty of losing a job and bringing a case against an employer.

"Organisations have a duty of care to provide a safe place of work for their staff and that includes protection from unlawful discrimination."

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Equalities Committee, found that allegations of unlawful discrimination are being routinely covered up by employers through secret non-disclosure agreements (NDAs).

The report highlighted the fact that financial barriers often prevent women from pursuing claims through employment tribunals, instead leaving them feeling that they have little choice but to reach a confidential settlement prohibiting them from speaking out against the unlawful practices.

The use of NDAs to cover up criminal activity has frequently been in the headlines, particularly in the wake of the #MeToo movement, and allegations that high-profile men have used them to cover up sexual harassment. The use of NDAs to prevent women from providing evidence to police inquiries or court proceedings was specifically condemned by MPs with the report stating that: "There is clearly potential for NDAs to be negotiated, drafted, and/or enforced in ways which may amount to perverting the course of justice."

There is an argument to be made that NDAs allow women to move on quickly without the stress of a tribunal, however, it is often the case that this type of logic ultimately results in employers getting away with bad, or illegal behaviour. As the Conservative former culture secretary, Maria Miller, who chairs the committee, said: "It is particularly worrying that secrecy about allegations of unlawful discrimination is

Future Protections

There does, however, appear to be some desire to improve matters, even if it's not coming from employers. As well as the published report highlighting the issue, in January of this year the Government published a consultation on extending redundancy protection for pregnant women and new parents once they have returned to work. What the consultation proposed may provide additional protections for pregnant employees and those on (or those who have recently been on) maternity leave.

The intentions of the Government is laudable and the right noises are being made, however, there's a huge amount of resistance to overcome. The most recent report shows that even with legislation in place to protect expectant mothers, employers will find a way to abuse the system, particularly when financial barriers prevent people from accessing the mechanisms put in place to offer protection from discrimination. Extending protections and increasing access to tribunals is arguably an important step to ensuring protections for the vulnerable, but as long as employers view maternity leave as a burden to endure, these abuses will continue to happen. By the government putting provisions in place to ease financial concerns, particularly for SMEs, attitudes towards pregnancy may just improve, affording a better workplace for both employers and employees. [n](#)