



## **Health & Safety and Pregnancy in Clinical Imaging and Radiotherapy Departments: A Guide for pregnant women, breast feeding women**

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### **Summary**

The Society of Radiographers has updated this advice and guidance document on the subject of health, safety and pregnancy in response to questions and concerns raised by our members, representatives and managers. This guidance also gives advice on current health and safety legislation relating to pregnancy. Finally there is a section on legal rights of pregnant employees including benefits and extracts from the Agenda for Change staff terms and conditions handbook

### **Introduction**

The Society of Radiographers has updated this advice and guidance document on the subject of health, safety and pregnancy in response to questions and concerns raised by our members, representatives and managers.

Because pregnancy usually goes undetected for the first few weeks, employers should identify hazards and risks for all female employees of child bearing age, not only those they know are pregnant.

The last thing that a pregnant woman needs is to be concerned that the health of either herself or her future baby could be made worse by working. While pregnancy is not an illness, and many women choose to work up to the baby's due date of delivery, there are changes which take place both physical and hormonal during pregnancy and lasting for a number of months after the birth.

The employer has a number of responsibilities. The employer needs to assess hazards and risks to new/expectant mothers to enable them to protect their baby/unborn child. After the birth, an employee has the right to choose to return to work while they are still breastfeeding. The Society of Radiographers supports the right of SoR members to breast feed for as long as they wish to do so. The employer will again need to assess the hazards within the workplace in order to ensure that breast milk will not be contaminated by any workplace hazards.

In Diagnostic Imaging, Radiotherapy and Oncology departments there will be a heightened awareness of the risks to a pregnant mother and her unborn child. This updated guidance not only addresses the obvious radiation hazards and potential risks to employees but also the less obvious hazards such as fatigue and working hours.

Department of Trade and Industry research in 2006 showed that there are around 350,000 pregnant

women at work each year. 240,000 / 69% return to work within a year of giving birth.

The Health and Safety Executive received nearly 300 complaints from new or expectant mothers in the last 5 years. Subsequently employers have been issued with a stark warning: *"Employers who fail in their duties will be prosecuted"*.

Supporting this stance, the Equal Opportunities Commission stated that employers could face substantial compensation pay outs from employment tribunals if they fail to comply with the law. The EOC found in 2007 that out of 1434 potential tribunal cases involving pregnancy or maternity related discrimination – over 95% involved a breach of health and safety legislation.

Worryingly, despite regulations and guidance documents produced on new and expectant mothers, a recent "Workplace Report" (Labour Research Department: Workplace Report, 2009) (v) found that employers are still not complying with the legislation. Only 58% of safety reps surveyed said that the risk assessments carried out in their workplace included the risks to new and expectant mothers.

This guidance also gives advice on current maternity rights and benefits and extracts from the Agenda for Change Staff Terms and Conditions handbook.

## Section 1: Health and safety legislation

### Health and safety legislation

The aim of the EU Pregnant Workers Directive (1992, updated 2010) was to improve the protection offered to pregnant workers and workers who had recently given birth or were breast feeding.

The directive went further and extended the minimum length of maternity leave from 14-18 weeks and improved the rights of pregnant workers.

Pregnancy should not be regarded as ill health. It is part of everyday life and its health and safety implications can be adequately addressed by effective management and health and safety procedures.

Many SoR members will work while they are pregnant and choose to return to work while they are breast feeding. Some hazards in the workplace may affect the health and safety of new and expectant mothers and their child, in which case working conditions which were once considered normal become no longer acceptable during pregnancy and while breast feeding.

Pregnancy can sometimes go undetected for the first four to six weeks or more. It is important for employers to identify the hazards and risks for all female employees of childbearing age. Employers should also take into account that some hazards can present more of a risk at different stages of the pregnancy.

### The Health and Safety at Work Act (HASAWA) 1974

The Health and Safety at Work Act (1974) was introduced to ensure that virtually all workers in all occupations are protected by health and safety legislation. It provides a broad framework within which health and safety is regulated.

The act is written in very general terms and the duties on employers are qualified with the words as "so far as reasonably practicable". The SoR is concerned as employers will try and use the phrase 'reasonably practicable' to say that it will cost too much money to instigate the changes identified in a risk assessment. However, the Health and Safety Executive have said that employers cannot put workers health at risk, just because they cannot afford to make the required changes.

Section 2 of the Act places a **general duty on employers** to ensure the safety, health and welfare of their employees at work.

## Management of Health and Safety at Work Regulations 1992

The 1992 Pregnant Workers Directive has been incorporated into the Management of Health and Safety at Work Regulations which contain specific provisions for women of childbearing age in the workplace.

### Regulation 3: Risk Assessment.

Employers are legally required to conduct a risk assessment.

While carrying out the risk assessment, employers should take into account:

- women of child bearing age (**Regulation 16 (1) (a)**)
- work of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes or working conditions, or physical, biological or chemical agents including those specified in Annexes I and II of the Council Directives 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (**Regulation 16 (1) (b)**)
- not waiting until a woman has advised them of her pregnancy to conduct a risk assessment. When the risk assessment has identified a risk, employers must tell all female employees of child bearing age about the potential risks if they are, or could be in the future, pregnant or breast feeding. Where risks have been identified, the risks should be either reduced or removed if possible.

When employers receive written notification from an employee that she is pregnant, has recently given birth within the previous six months, or is breastfeeding, the employer must carry out a specific risk assessment. The assessment must take into account any advice provided by the women's doctor or midwife about her health.

### Risk assessments require employers to:

- make a suitable and sufficient assessment of risks
- identify measures needed to comply with legal requirements
- review the risk assessment
- record the assessment where there are five or more employees.

### Risk assessments must pay particular attention to:

- women who are pregnant
- women who have recently given birth or have miscarried women who are breastfeeding
- women who may be exposed to any process, working condition or physical, chemical or biological agent which may damage their health and safety or that of their unborn or newborn baby.

Employers must take action to remove, reduce or control any risks identified. If the risk cannot be removed, employers must:

- temporarily adjust her working conditions and/or hours of work or if that is not possible (Regulation 16 (2))
- offer her suitable alternative work (at the same rate of pay) if available. Section 67 of the

Employment Rights Act 1996 (as amended by the Employment Relations Act 1999) requires employers when offering alternative work to a pregnant woman to ensure that the work is suitable and appropriate for her to do in the circumstances and on terms and conditions no **less favourable** than her normal terms and conditions

- suspend her from work on paid leave when this cannot reasonably be achieved for as long as necessary to protect her health and safety and that of her child.

## Regulation 16:

States that any risk assessment must take account of how hazards may affect the health and safety of new or expectant mothers.

The risk assessment needs to be reviewed regularly (as the risks of damage to an unborn child as a result of a hazard will vary at different stages of the pregnancy), paying particular attention to:

- dexterity
- agility
- posture
- co-ordination
- speed of movement

as these may all become impaired due to increased size during pregnancy.

### Good practice

A care worker notified her employer of her pregnancy. The employer looked back at the outcome of the initial risk assessment, which had identified that a possible risk for pregnant women was exposure to acts of violence (eg difficult patients).

The employer then conducted a specific risk assessment for the pregnant worker, who dealt with patients who were difficult and on occasion violent. As a result the employer offered the care worker suitable alternative work at the same salary and reviewed the assessment at regular intervals.

The employee accepted the alternative work and had a risk free pregnancy. Following her maternity leave the employee returned to work.

### Bad practice

On notifying her employer of pregnancy, a sales worker was given extra work and put under pressure to exceed her sales targets prior to going on maternity leave.

The pregnant worker suffered a miscarriage and was signed off from work due to stress.

The employer was taken to an Employment Tribunal where the judgment found that they were in breach of health and safety legislation for not conducting a specific risk assessment. They were also found to be in breach of the Sex Discrimination Act and the Employment Rights Acts.

Much time and expense could have been saved if the employer had conducted a risk assessment

From New and expectant mothers at work A guide for employers HSE books 2002 also <http://www.hse.gov.uk/mothers/index.htm> updated 2010

## Regulation 17:

States that new or expectant mothers may also be suspended from night work where they have a signed certificate from a medical practitioner or midwife stating that this is necessary in the interests

of their health and safety. Again alternative hours of work should be offered subject to Section 67 of the Employment Rights Act 1996 (as amended by the Employment Relations Act 1999)

## **Regulation 18: Notification by new or expectant mothers**

An employer must be notified in writing by the employee that she is pregnant; only then shall the employer be required to take action.

### **Approved code of Practice:**

(94) Where a risk assessment identifies risks to new and expectant mothers and these risks cannot be avoided by the preventative and protective measures taken by an employer, the employer will need to:

- alter her working conditions or hours of work if it is reasonable to do so and would avoid the risks or, if these conditions cannot be met;
- identify and offer her suitable alternative work that is available, and if that is not feasible;
- suspend her from work. The Employment Rights Act 1996 (which is the responsibility of the Department of Trade and Industry) requires that this suspension be on full pay. Employment rights are enforced through the employment tribunals.

## **Workplace (Health, Safety and Welfare) Regulations 1992**

Regulations which cover welfare of the new or expectant mother.

### **Regulation 25:**

Facilities for rest and to eat meals.

### **Regulation 25 (4)**

Suitable facilities should be provided for any person at work who is a pregnant woman or nursing mother to rest.

Approved Code of Practice (ACOP): 237 Facilities for pregnant women and nursing mothers to rest should be conveniently situated in relation to sanitary facilities and, where necessary, include the facility to lie down.

## **Other key legislation for the protection of new or expectant mothers**

Manual Handling Operations Regulations 1992 The Control of Substances Hazardous to Health Regulations 1994 The Display Screen Equipment Regulations 1992, amended 2002. Ionising Radiation Regulations 1999

These regulations are looked at in greater detail in Section 2: "Hazards, risks and how to avoid them".

## **Employment Rights Act 1996**

(As amended by the Employment Relations Act 1999)

- Requires employers when offering "**suitable alternative work**" to a pregnant
- woman to ensure the work must be both suitable and appropriate for her to do in the circumstances and on terms and conditions "**no less favourable than her normal terms and conditions**".
- An employee is entitled to make a complaint to an Employment Tribunal if there is suitable

alternative work available which her employer has failed to offer her before suspending her from work on the grounds of maternity.

- If an employee has a medical certificate stating that night work could affect her health or safety, she has a right to be offered suitable alternative daytime work on terms and conditions "**no less favourable than her normal terms and conditions**".
- An employee suspended from work on these grounds is entitled to be paid remuneration (wages or salary) at her full normal rate for as long as the suspension continues. The only exception is where she has unreasonably refused an offer of suitable alternative work, in which case remuneration is payable for the period during which the offer applies. If an employee has both statutory and contractual rights to remuneration during maternity suspension, these entitlements can be offset against each other.
- The employee continues to be employed during the maternity suspension period, so this counts towards her period of continuous employment for the purposes of pension rights.
- If an employer fails to pay an employee some or all of the remuneration due for any day of maternity suspension, she is entitled to make a complaint to an Employment Tribunal

## Sex Discrimination Act 1975 amended 1986:

- It has been established in law that discrimination that is substantially because of a woman's pregnancy is automatically unlawful sex discrimination.
- This principle has been extended to include the failure to conduct a risk assessment for women under the health and safety regulations. Women who have experienced a detriment arising from a failure to comply with these health and safety regulations can bring a tribunal claim under the Sex Discrimination Act as well as exercising their rights under the Employment Rights Act.

Rights under the Act apply from the first day of employment and it gives protection to a broad range of employees including self-employed, agency workers, apprentices and voluntary workers depending on the nature of their contract.

Although the Sex Discrimination Act prohibits discrimination on the grounds of sex, the legislation provides that any action taken by the employer **to comply with existing health and safety legislation will not amount to unlawful discrimination**.

## Breast feeding.

External radiation sources cannot contaminate the body and pass into breast milk, however, radioactive material can be taken into the body through swallowing, inhalation and inoculation.

Risk assessments should be carried out on new mothers returning to work in jobs where they are exposed to radioactive material and any necessary precautions taken (for example – have local rules in place that ensure the pregnant employee does not deal with spillages).

Employers should assume that employees are breastfeeding for six months unless they indicate otherwise. Employees working with radioactive materials are advised to inform their employer formally by letter of their intention to breastfeed.

Employers should ensure local rules are in place, which include details on the measures in place to protect pregnant or breastfeeding employees.

***These measures must be adhered to at all times.***

### **Bad practice**

A female employee was told by her employer that she should use the toilets to express breast milk for her baby.

Using toilets for this purpose is totally unsuitable and unhygienic.

Employers are required to provide suitable rest facilities for pregnant and breastfeeding mothers to

rest.

The Health and Safety Executive (HSE) recommends that it is good practice to provide a private, healthy and safe environment for nursing mothers to express and store milk.

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

## SoR reps' checklist:

- Ensure that employers have carried out prior risk assessment for the radiation work in which a pregnant member of staff is involved;
- Ensure that employers have Local Rules which include members working in radiography when pregnant;
- Ensure that all members are aware of and understand the Local Rules; Ensure that pregnant staff are not made to work with radioactive implant patients;
- Ensure that your employer has Local Rules which include members that may be breastfeeding who may be working with radioactive material;
- Where members remain anxious about the risks from ionising radiation, they should be given the option to discuss their concerns with their manager and/or SoR safety representative and, if they are still anxious, the member must be given the option to avoid all radiation. The Radiation Protection Supervisor/Radiation Protection Advisor should also be consulted.

## Section 2: Hazards, risks and how to avoid them

[Download the list of risks PDF](#).

## Section 3: Maternity rights and benefits

All pregnant employees are able to access statutory benefits as a minimum from their employer in addition to the Health and Safety legislation already set out. These can be important in having an impact in the health of the mother and child. The minimum statutory entitlements change from time to time and it is vital to ensure that you access the most up to date information.

Please follow the links below to access the current level of payments and entitlements.

NHS employees should go to Section 4 of this document for information on entitlements under Agenda for Change.

Other employees should look carefully at their contracts of employment, staff handbooks or other sources of employer-based information for details of their entitlements. Remember that you cannot receive less than the statutory minimum.

## **Statutory maternity Pay (SMP)**

<https://www.gov.uk/maternity-pay-leave/eligibility>

Maternity allowance (may be payable to employees NOT entitled to SMP, those self employed or very recently employed): <http://www.dwp.gov.uk/healthcare-professional/benefits-and-services/stat...>

## **Ordinary statutory paternity pay**

<https://www.gov.uk/paternity-pay-leave>

## **Time off for pregnancy related reasons**

Remember that, as well as financial help, you have a legal right to time off for certain purposes, such as antenatal classes.

**The SoR can assist with issues, which you may have relating to your employment during your pregnancy and afterwards as long as you remain a member and have been in continuous paid membership for past 12 months. Please visit this page <https://www.sor.org/being-member/my-profile/maternity-leave> for further details on suspending your payments whilst you are on maternity leave.**

## **Section 4: AFC agreements on maternity leave and pay**

NHS employees will of course be subject to all the legal rights and protections contained in the legislation but these are enhanced by the provisions of Agenda for Change and also by local agreements and arrangements. Section 15 of the Agenda for Change Terms and Conditions handbook covers all the terms and conditions relating to pregnancy, childbirth and the return to work for NHS employees.

Some employers will also have their own explanatory leaflet to assist mothers; there are a number of key dates which employees will be expected to observe and it is helpful to have a time line as a reminder.

Section 15 can be accessed with the following link to where the most up to date version can be found. <http://www.nhsemployers.org/PayAndContracts/AgendaForChange/TermsAndCond...>

## **Some key points**

### **Section 15, paragraph 15.11 et seq**

Keeping in touch days. These are intended to assist mothers in keeping in touch during their absence and enabling an easier transition back to work. There are provisions for how these will happen and this will be supplemented by local discussions.

### **Section 15, paragraph 15.34**

This refers to the risk assessment which an employer will be expected to undertake for employees who are pregnant, have recently given birth or who are breastfeeding. If this identifies that normal duties cannot be undertaken safely, then suitable alternative work should be found. This will be at the normal rate of pay. It is important that this should include average earnings where on call work is affected, in the same way that this is included for absences due to sickness or leave. If suitable alternative work cannot be found, the woman may be suspended on full pay. This is not in any way to be regarded as a detriment but as a way of protecting the woman and her child.



### **Section 15, paragraph 15.38-15.39**

Should a woman wish to return to work on a changed working hours pattern, there is an expectation that the employer will facilitate this wherever possible.

### **Section 15, paragraph 15.53-15.55**

Employers will carry out a risk assessment for breastfeeding mothers and provide appropriate facilities and support. This may also include providing adjustments to working hours or other duties if necessary.

It is important to remember that all terms and conditions remain unchanged during maternity leave, including accrual of sick leave and annual leave, incremental progression etc.

## **Annex A: Resources**

[Download Pregnancy risk assessment checklist PDF.](#)

## **Annex B: Tribunal cases**

### **Day 'v' T Pickles Farms Limited 1999.**

Held that an employer has an obligation to undertake a risk assessment where an employee is of child bearing age not just once it is known that an employee is actually pregnant.

It is therefore clear that an employer has an obligation to carry out a risk assessment for all female employees of child bearing age.

Failure to by an employer to conduct such an assessment could result to sex discrimination.

Source: <http://www.emplaw.co.uk/lawguide?startpage=data/09400603.htm>

[Day v T. Pickles Farms Ltd \[1999\] IRLR 217, EAT](#)

### **British Airways Limited 'v' Moore 2000.**

Two pregnant employees from British Airways were removed from flying duties and placed on ground duties without an appropriate flying allowance. The employees challenged the removal of the entire allowance especially as in certain situations non-pregnant employees on ground duties were sometimes given compensation for the loss of this allowance.

The EAT upheld the claim that pregnant employees have a right to be offered suitable alternative work and that under section 67(2) (b) of the Employment Rights Act 1996, the terms and conditions **“must not be substantially less favourable”**.

Source: Thompsons Solicitors: *British Airways (European Operations at Gatwick) Ltd v Moore* [2000] IRLR 296

## **Annex C: References and bibliography**

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## Annex D: Further information

### ACAS

(For details on maternity rights)

[www.acas.org.uk](http://www.acas.org.uk)

## **BIS: Department for Business, Innovation and Skills:**

(Pregnancy – what you need to know as an employee)

[bis.gov.uk](http://bis.gov.uk)

## **Equal Opportunities Commission:**

(For information on maternity leave and allowance)

<http://www.eoc.org.hk/eoc/GraphicsFolder/default.aspx>

## **Health and Safety Executive:**

(For information on health and safety for new and expectant mothers)

[www.hse.gov.uk](http://www.hse.gov.uk)

## **NHS Employers:**

(For information on Improving Working Lives including family friendly policies, child care and flexible working)

[www.nhsemployers.org](http://www.nhsemployers.org)

## **TUC**

(For information on maternity rights and health, safety and pregnancy)

[www.tuc.org.uk](http://www.tuc.org.uk)

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