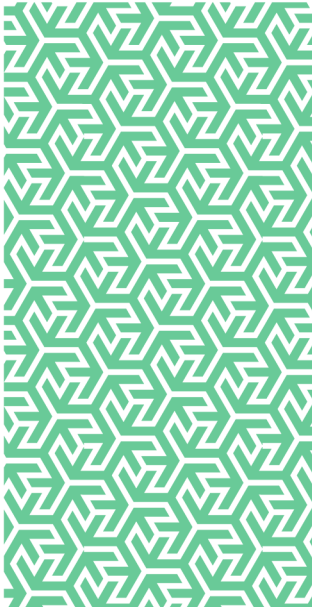


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Risk control

New and Expectant Mothers at Work



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New and Expectant Mothers at Work

Introduction

Many women work while they are pregnant and may return to work while they are still breastfeeding. Some hazards in the workplace may affect the health and safety of new, expectant mothers and their child.

In most cases pregnancy can go undetected for the first 4-6 weeks. Employers have a duty to identify hazards and risks for all female employees of childbearing age. Also, as the pregnancy progresses some hazards can present more of a risk and risk controls will need to be reviewed.

Employers are responsible for providing a safe working environment while effectively managing risks to the health and safety of all workers, including women of a childbearing age.

This means that employers must ensure that an individual risk assessment¹ for pregnant workers and new mothers is undertaken. This applies to workers who are pregnant, have given birth in the last 6 months, or are currently breastfeeding.

Once the worker **has informed the employer in writing**, the employer must complete an individual risk assessment and make any necessary changes to support the worker.

It is important to note that the Equality Act 2010² makes it unlawful to dismiss or discriminate against a worker because they are pregnant, a new mother or are breastfeeding. Breaches of health and safety law may also be considered as discrimination under the Act, depending on the circumstances.

Women of Childbearing Age

There is no statutory requirement for women of childbearing age to give their employer details of their pregnancy until 15 weeks before the baby is due, to ensure the health of them and their baby.

The Management of Health and Safety at Work Regulations 1999¹ have always required employers to make a suitable and sufficient assessment of the health and safety risks of both employees and those not employed but affected by the way they carry out their undertaking.

In the assessment of risk an employer must consider who is at risk from specific hazards. It is important to involve workers, or their representatives, in the production of these assessments as they may know pertinent information that the employer is unaware of.

To enable the employer to make a suitable and sufficient assessment they should make advice on health and safety risks easily available to workers wishing to become pregnant, trying for a baby or believe they may be pregnant, to bring it confidentially to the attention of the employer.

Gig Economy, Agency and Temporary Workers

If gig economy, agency or temporary workers are employed who are pregnant workers or new mothers, for health and safety purposes they should be treated no differently to other workers.

Individual Risk Assessment

Once a worker has informed the employer in writing, the employer must complete an individual risk assessment for the work they do and the effect on the unborn child and make any necessary changes to support them. This includes when the new mother returns to work and may be nursing the child.

A starting point is a review of the existing general risk management and controls for the pregnant worker or new mother. This will involve a discussion with them to see if there are any conditions or circumstances with their pregnancy that could affect their work. This also allows them to **discuss any concerns they have** about how their work could affect their pregnancy³.

Where the employee thinks they are at risk but the employer does not agree, the employee may seek to involve their safety representative or trade union if they have one.

An employer must take account of any medical recommendations⁴ provided by the individuals' doctor or midwife.

The significant workplace hazards to be considered are detailed below.

Physical Hazards

Some work carries the risk of physical injury, and the consequences for pregnant workers and new mothers can be more serious.

Employers should check whether they need to provide extra control measures, for example to protect them when:

- **Working at height.** Due to the physical and physiological changes which occur during pregnancy it is hazardous for pregnant women to work at heights, for example using ladders.
- **Working alone.** The pregnant worker may face additional difficulties raising an alarm in the event that they require assistance. This may potentially lead to further injury or harm. This includes accidents, spills, fire or other incidents which require support.
- **At risk of work-related violence.** The potential for violence at work should be identified and removed as physical assault during pregnancy can result in placental detachment, miscarriage, premature delivery and it may impair a mother's ability to breastfeed.
- **Exposed to whole body vibration** and / or blows to the body. Whole-body vibration (WBV) is transmitted through the seat or feet of employees who drive mobile machines, or other work vehicles, over rough and uneven surfaces as a main part of their job, e.g. while driving off-road vehicles. Large shocks and jolts may cause health risks including back-pain. Exposing the entire body to vibrations over time can increase the risk for premature birth or low birth weight.

Chemical and Biological Hazards

Many chemical and biological agents can cause harm to pregnant workers or new mothers. They can also be passed on to their child during pregnancy or breastfeeding. Both chemical and biological agents are covered by the Control of Substances Hazardous to Health Regulations 2002⁵ (COSHH) and a COSHH Assessment would be required.

A review of substances used in the workplace is also relevant. There are about 200 substances labelled with these hazard statements⁶.

- H340: May cause genetic defects
- H341: Suspected of causing genetic defects
- H350: May cause cancer
- H351: Suspected of causing cancer
- H360: may damage fertility or the unborn child
- H361: suspected of damaging fertility or the unborn child
- H362: may cause harm to breast-fed children

In addition there are also specific regulations for substances such as Lead⁷ and Ionising Radiation⁸ that require a more specialist and focussed assessment.

Concern about chemical agents can include exposure to:

- **Cytotoxic drugs** are used widely in healthcare settings as well as in the community in the treatment of cancers as well as other diseases
- **Pesticides** can result in absorption from localised contamination, e.g. a splash on the skin, or from exposure to high atmospheric concentrations of vapour
- **Carbon monoxide**, in situations involving operating engines or appliances in enclosed areas
- **Lead** when stripping of old lead paint from doors and windows, or lead-acid battery breaking and recycling
- **Ionising radiation** from a radioactive material or a generator such as an X-ray set, or by inhaling or ingesting radioactive substances
- **Mercury** when handling broken fluorescent lights, or damaged batteries in recycling centres

Concern about biological agents can include exposure to:

- **Hepatitis B and C, HIV, Herpes, Syphilis, Chickenpox and Typhoid** which can affect the unborn child if the mother is infected during pregnancy. These may be picked up in a clinical setting and transmitted across the placenta while the child is in the womb or during or after birth e.g. if the child is breast-fed
- **Ovine Chlamydiosis** which is very rare in humans in the UK but is generally only seen in people who have very close contact with infected sheep⁹ or goats, such as during lambing, or handling such animals while visiting a city farm or on an educational visit
- **Toxoplasma Gondii** is a parasite that can affect most mammals and birds. Cats are the main reservoir of infection. It is a moderately common disease¹⁰, although most people show mild or no symptoms. Infection during pregnancy can lead to serious complications including stillbirth, miscarriage or birth defects, including visual impairment and brain damage. Infection in the early stages of pregnancy is more likely to cause adverse effects to the unborn child. Possible exposure can occur in a home care situation

Ergonomic Hazards

Pregnant workers and new mothers can be more prone to injury, which may not become apparent until after birth.

Postural problems can occur at different stages of pregnancy, and on returning to work, depending on the individual and their working conditions.

Employers should make sure pregnant workers and new mothers are not:

- **Lifting, pushing, pulling or carrying heavy loads** as hormonal changes can affect ligaments, increasing susceptibility to injury and postural problems that can increase as the pregnancy progresses. Those who have recently given birth by caesarean section are likely to be temporarily limited in their lifting and handling capability
- **Sitting or standing for long periods**, especially in late pregnancy, may cause back pain and discomfort in legs. It may also reduce the flow of blood to the foetus affecting that baby's growth reducing the availability of oxygen and nutrients to the foetus¹¹.
- **Using a workstation** that causes posture issues as the back, neck, and shoulder strain may also become an issue for someone sitting all day

Psychosocial Hazards

Long hours and shift work can have a significant effect on the health of pregnant workers, new mothers and their children. They may also be particularly vulnerable to work-related stressors. High workloads, tight deadlines and a lack of control of the work and working methods can increase the stress experienced by a pregnant worker or new mother.

Psychosocial risk factors¹² can lead to musculoskeletal disorders. For example, there can be stress-related changes in the body such as increased muscle tension that can make people more susceptible to musculoskeletal problems; or individuals may change their behaviour, for example going without rest breaks to try and cope with deadlines.

Night Work

The pregnant worker should be offered suitable alternative day work¹³, on the same terms and conditions, when:

- The worker's individual risk assessment has identified a risk from night work
 - A doctor or midwife has provided a medical certificate stating the pregnant worker should not work nights
- If it is not possible to provide alternative day work, the employer must suspend them from work on paid leave for as long as necessary. This is to protect their health and safety and that of their child.

Rest and Breastfeeding

Not all workers will be affected in the same way, but mental and physical fatigue generally increase during pregnancy and following birth.

Pregnant workers and breastfeeding mothers are entitled to more frequent rest breaks. Employers should talk to them so that the timing and frequency can be agreed.

Employers must provide a suitable area where they can rest¹⁴. It should:

- Include somewhere to lie down if necessary.
- Be hygienic and private so they can express milk if they choose to – toilets are not a suitable place for this.
- Include somewhere to store their milk, for example a fridge.

Taking Action

The guidance from the Health and Safety Executive is summarised in the following three actions:

If employers cannot control or remove the risk to pregnant workers and new mothers, they must do the following:

- **Action 1 – Adjust the working conditions or hours to avoid the risk.**
If that is not possible:
- **Action 2 – Give the worker suitable alternative work.**
If that is not possible:
- **Action 3 – Suspend the worker on paid leave for as long as necessary to protect their health and safety and that of their child.**

The expectation is that employer must act.

Risk Assessment Review

Employers must regularly review the worker's individual risk assessment and make any necessary adjustments, as the pregnancy progresses and if there are any significant changes to the workers' activity or workplace.

Working conditions could present a risk to mother and / or child at different stages. As the pregnancy progresses, it may affect the worker's dexterity, agility, coordination, speed of movement and reach.

Employment Tribunals

The law says that it is pregnancy discrimination¹⁵ to treat a woman unfavourably because of her pregnancy or pregnancy-related illness. An example of pregnancy discrimination could include failure to remove risks at work and take action to protect the pregnant worker's health and safety during pregnancy.

To show pregnancy / maternity discrimination a person does not have to compare themselves to a woman who is not pregnant but needs to show that the treatment was *because* of their pregnancy or absence on maternity leave.

Employees are also protected against detrimental (unfair) treatment¹⁶ or automatic unfair dismissal because of pregnancy¹⁷.

There have been several cases^{18 19} where the absence of a pregnancy risk assessment has been raised.

An important element of any tribunal case is demonstrating that they have followed a fair and consistent process when dealing with pregnant workers.

Summary

It has always been a requirement on employers to assess the risks to women of childbearing age and follow the principles of prevention. The modern guidance places more emphasis on individual assessment of risk once notified by the expectant or new mother to take more positive action earlier to prevent both mother and child from foreseeable risks in the workplace.

References

1. The Management of Health and Safety at Work Regulations 1999, available at: <https://www.legislation.gov.uk/ukxi/1999/3242/contents/made>
2. The Equality Act 2010, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents>
3. HSE, Pregnant workers and new mothers: your health and safety, available at: <https://www.hse.gov.uk/mothers/worker/index.htm>
4. The Management of Health and Safety at Work Regulations 1999, available at: <https://www.legislation.gov.uk/ukxi/1999/3242/contents/made>
5. The Control of Substances Hazardous to Health Regulations 2002, available at: <https://www.legislation.gov.uk/ukxi/2002/2677/contents/made>
6. MSDS Europe, Hazard Statements, available at: <https://www.msds-europe.com/h-statements/>
7. Control of Lead at Work 2002, available at: <https://www.legislation.gov.uk/ukxi/2002/2676/contents/made>
8. Ionising Radiation Regulations 2017, available at: <https://www.legislation.gov.uk/ukxi/2017/1075/contents/made>
9. HSE, Ovine Chlamydiosis, available at: <https://www.hse.gov.uk/agriculture/assets/docs/ovine-chlamydiosis.pdf>
10. HSE, Toxoplasmosis, available at: <https://www.hse.gov.uk/agriculture/assets/docs/toxoplasmosis.pdf>
11. Stanford Medicine, Work and Pregnancy, available at: <https://www.stanfordchildrens.org/en/topic/default?id=work-and-pregnancy-85-P01244>
12. HSE, What are psychosocial risk factors? Available at: <https://www.hse.gov.uk/Msd/Mac/psychosocial.htm>
13. The Employment Rights Act 1996, available at: <https://www.legislation.gov.uk/ukpga/1996/18/contents>
14. The Workplace (Health, Safety and Welfare) Regulations 1992, available at: <https://www.legislation.gov.uk/ukxi/1992/3004/contents/made>
15. The Equality Act 2010, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents>
16. WalesOnline, Pregnant care home worker called, available at: <https://www.walesonline.co.uk/news/uk-news/pregnant-care-home-worker-called-24362426>
17. The Employment Rights Act 1996, available at: <https://www.legislation.gov.uk/ukpga/1996/18/contents>
18. Mrs L Herring v J Lovric & Son: 3200293/2019, available at: <https://www.gov.uk/employment-tribunal-decisions/mrs-l-herring-v-j-lovric-son-3200293-2019>
19. Ms Katarzyna Jachacz v Egg Free Cake Box Walthamstow Ltd: 3200248/2019, available at: <https://www.gov.uk/employment-tribunal-decisions/ms-katarzyna-jachacz-v-egg-free-cake-box-walthamstow-ltd-3200248-2019>

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