

Response to the Economic Affairs Committee on Employment and COVID-19

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The Royal College of Midwives
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The Royal College of Midwives’ response to the Economic Affairs Committee inquiry into Employment and COVID-19

The Royal College of Midwives (RCM) is the professional organisation and trade union that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in professional leadership, representation, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our views are set out below.

What positive and negative trends in employment may have been accelerated as a result of COVID-19?

There is mounting evidence that women are more likely to have lost their job during lockdown. For example, in April, a cross-country study conducted by Cambridge, Oxford, and Zurich universities revealed that women in the UK were four percentage points more likely to have lost their job than men.¹ This gender gap in job losses persisted even when the researchers controlled for education, occupation and regional location within each nation. The researchers identified increased caring responsibilities, for example home-schooling, as a possible cause for the gender gap in job losses.

Another cause is likely to be pregnancy and maternity discrimination and the lack of effective protections against same. In May, analysis by the Institute for Fiscal Studies concluded that 'mothers are one-and-a-half times more likely than fathers to have either lost their job or quit since the lockdown began.'² They are also more likely to have been furloughed.' Further, the Trades Union Congress reports that based on a survey run in May, one in four pregnant women and new mothers have experienced unfair treatment or discrimination at work, including being singled out for redundancy or furlough, since the pandemic began.³

What steps should be taken to protect and create jobs over the next two years?

Even prior to the pandemic, pregnancy and maternity discrimination was rife in the United Kingdom. In 2016, the Equalities and Human Rights Commission (EHRC) revealed that approximately 1 in 9 mothers (11%) were dismissed; made compulsorily redundant; or treated so poorly they felt they had to leave their jobs.⁴ If this figure is scaled to match the population, this means as many as 54,000 women are being forced out of their jobs every year.

Given the likelihood that there will be a new wave of discrimination and unfair redundancies as the Government's COVID19 support schemes are wound down, there is an urgent need for more robust reform of redundancy protection for pregnant women and new mothers. This will take the onus off women to challenge unlawful practices by their employer and make it harder for employers to discriminate in the first place.

Fortunately, there is a simple fix. Together with Maternity Action and a range of additional organisations the Royal College of Midwives has repeatedly called on government to adopt the Pregnancy & Maternity (Redundancy Protection) Bill introduced by Maria Miller MP. Miller's Bill would

¹ Adams-Prassl, A et al. (2020) Inequality in the impact of the coronavirus shock: evidence from real time surveys. Available at: <https://www.inet.econ.cam.ac.uk/working-paper-pdfs/wp2018.pdf>

² Institute for Fiscal Studies (2020) How are mothers and fathers balancing work and family under lockdown? Available at: <https://www.ifs.org.uk/publications/14860>

³ Trades Union Congress (2020) Pregnant and precarious: new and expectant mums' experiences of work during Covid-19. Available at: <https://www.tuc.org.uk/research-analysis/reports/pregnant-and-precarious-new-and-expectant-mums-experiences-work-during>

⁴ Equality and Human Rights Commission (2018) Pregnancy and Maternity Related Discrimination and Disadvantage: Summary of key findings. Available at: <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

see the current, inadequate law replaced with a new framework of protection for pregnant women and new mothers.

Most notably, the Bill would prevent employers from making a woman redundant from the time she notifies them she is pregnant until six months after the end of her maternity leave, including those who experience stillbirth or miscarriage. This change would represent an enormous step forward when compared with the current system, under which women are forced to shoulder the burden of challenging an unfair dismissal at an Employment Tribunal – a process which often costs in excess of £10,000.

This comprehensive legal ban on redundancy from notification of pregnancy to six months after the woman's return to work, would provide clarity to employers on their legal obligations, and – by providing near certainty of success for any subsequent tribunal claim – provide much stronger *preventative* protection against unfair redundancy. Further information can be found on this Bill at Maternity Action's website.⁵

In addition, we support the recommendations made by both the Petitions Committee⁶ and Maternity Action⁷ to implement a range of protections for pregnant women, mothers and parents in the coming period. These include:

1. Additional guidance to employers

From March onwards, an unknown but substantial number of pregnant women were sent home on sick pay or unpaid leave or pressured to use paid holiday or start their maternity leave early, in breach of existing health & safety law. This law dictates that, if a pregnant employee cannot be provided with alternative safe work or work from home, she should be suspended on full pay. Guidance should make clear to employers that, if a pregnant employee cannot work safely or be provided with alternative safe work, she should be suspended on full pay.

2. Ensure Statutory Maternity Pay (SMP) is not impacted by the unlawful actions of employers

During the pandemic, a significant number of pregnant women were placed on 80% furlough pay, Statutory Sick Pay (SSP), or, in contravention of the aforementioned employment law, placed on unpaid leave during their eight-week Statutory Maternity Pay (SMP) earnings assessment period. This caused many women's SMP payments to be significantly lower than they would have been if based on their typical salary. The Government was able to amend the SMP calculations to disregard a lower

⁵ Maternity Action (2020) New and expectant mothers in the frontline. Available at:

<https://maternityaction.org.uk/wp-content/uploads/MaternityActionRedundancyJointBriefing2020.pdf>

⁶ Petitions Committee (2020) The impact of Covid-19 on maternity and parental leave. Available at:

<https://publications.parliament.uk/pa/cm5801/cmselect/cmcompetitions/526/526.pdf>

⁷ Maternity Action (2020) Overdue: six pain-free policy fixes to end six months of ministerial inaction on protecting pregnant women & new parents from the impact of COVID19. Available at:

<https://www.maternityactioncampaigns.org.uk/wp-content/uploads/2020/08/Overdue-August-2020.pdf>

income period where women were furloughed. However, this has not occurred where women were placed on SSP or unpaid leave. The Government should ensure that SMP assessments also disregard a period of lower income where women's incomes have fallen through no fault of their own, or because their employers have failed to follow the law.

3. Ensure Maternity Allowance is not considered as earnings when calculating Universal Credit awards

Under the Universal Credit Regulations 2013, Maternity Allowance is treated by the Department of Work and Pensions as 'unearned income' and is deducted pound for pound from Universal Credit. Conversely, SMP is treated as 'earnings' and largely disregarded under the Work Allowance and 63% taper. This inequitable treatment in the calculation of Universal Credit awards can result in women on Maternity Allowance losing out on Universal Credit altogether, leaving them up to £5,000 worse off than women in the same circumstances who qualify for SMP. The Government should reconsider whether Maternity Allowance should be considered as earnings in the same way as Statutory Maternity Pay.

4. Extend maternity and other parental leave

In the first half of this year over 260,000 parents in the UK signed a petition to extend maternity and other parental leave. The Government has said that it does not plan to extend maternity leave, arguing that the offering was already generous, and women could be furloughed where needed. However, many women are unable to access this option and are facing real hardship as a result. In these extraordinary circumstances, where the Government has taken exceptional action to support different groups of people, extending maternity leave would be a proportionate action to take.

5. Employment tribunal time limits

It is clear that, at such an unusually challenging time, pregnant women and new parents would benefit from having more time to prepare and submit legal challenges to discrimination and unfair treatment through the employment tribunal system. Government should extend the period in which pregnant women and new parents may bring claims before the employment tribunal to six months from dismissal on a temporary or permanent basis in light of current challenges posed by COVID19.

What barriers to entering employment could be removed to support the labour market recovery?

It is very likely that pregnant women will have concerns about returning to work. Employers of pregnant women should be encouraged to ensure they are able to stringently adhere to existing employment law and any active national guidance on social distancing. Risk assessments and suitable adjustments will vary from profession/ trade and from individual to individual. For staff in these categories, employers should be encouraged to make adjustments to enable this wherever possible. For pregnant women from 28 weeks' gestation, or with underlying health conditions such as heart or lung disease at any gestation, a more precautionary approach is advised as part of their individual risk assessment and national shielding guidance.

BAME persons are also likely to have concerns about returning to work. There is a large body of evidence which demonstrates that Black, Asian and minority ethnic (BAME) communities are disproportionately affected by COVID-19. Employers of BAME persons should be encouraged to ensure they are able to stringently adhere to existing employment law and any active national guidance on social distancing. Risk assessments and suitable adjustments will clearly vary from profession/ trade and from individual to individual. For vulnerable staff in these categories, employers should be encouraged to make adjustments to enable this wherever possible.

**The Royal College of Midwives
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