

Pregnancy Sickness and Employment - Information for Employees

We are frequently contacted by women who are unable to work because they are suffering from nausea and vomiting in pregnancy (NVP) or the extreme form of this known as hyperemesis gravidarum (HG). Although many employers are sympathetic to women suffering from severe NVP or HG, we find equally that some employers are unaware of the wide spectrum of NVP and the impact that severe NVP and HG can have on a woman's ability to carry out simple daily tasks, let alone her usual paid employment.

The purpose of this Page is to provide information and assistance to women who require time off work because of NVP or HG.

The page sets out:

- General information on NVP and HG and related absence from work.
- Your employment rights when you are pregnant, specifically in the context of NVP and HG.
- What you can do if you are experiencing problems with your employer.
- Where you can go for more help.

General information

Any form of NVP is an unpleasant and traumatic experience for the woman concerned. HG is a condition at the severe end of the pregnancy sickness spectrum which requires medical treatment to ensure the health and wellbeing of the mother and the baby. With HG, the nausea and vomiting is so severe that the woman loses a considerable amount of weight and becomes dehydrated and depleted of nutrients. It can have a profound effect on the woman's ability to function in carrying out even the simplest of daily tasks and it is not uncommon for women suffering from HG to need help caring for themselves.

It is estimated that approximately 30% of women in paid employment need time off work due to NVP and 1 in 100-150 women will be admitted to hospital due to the severity of their condition.

Your employment rights

Pregnancy discrimination

Under the Equality Act 2010, it is unlawful discrimination for an employer to treat a woman unfavourably because of her pregnancy or an illness relating to her pregnancy or because she is exercising, has exercised or is seeking or has sought to exercise her right to maternity leave. This special protection applies from when a woman becomes pregnant and continues until the end of her maternity leave, or until she returns to work if that is earlier. This is referred to as "the protected period".

Anyone who has suffered discrimination can bring a claim for compensation before an employment tribunal.

What is unfavourable treatment?

Unfavourable treatment could be demotion, dismissal or the denial of training or promotion opportunities because an employee is pregnant or on maternity leave. An employer is not permitted to take into account any pregnancy-related absences during the protected period for the purposes of attendance management or when deciding whether to dismiss an employee. This would also be unfavourable treatment. For this reason, any sick leave taken for a pregnancy-related illness should be recorded separately by your employer.

By way of example, unfavourable treatment for any of the following reasons will amount to pregnancy discrimination:

- any absence due to pregnancy-related illness;
- a woman's inability to attend a disciplinary hearing due to pregnancy sickness or other pregnancy-related conditions; or
- performance issues due to pregnancy sickness or other pregnancy-related conditions.

Does the employer need to know I am pregnant?

Unfavourable treatment will only be unlawful if the employer is aware the woman is pregnant. The employer must know, believe or suspect that she is pregnant – whether this is by formal notification or through the grapevine.

Although you are under no obligation to inform your employer that you are pregnant until 15 weeks before your baby is due, telling your employer triggers the legal protection. It is therefore in your interests to notify your employer of your pregnancy.

Do I need to show a comparator?

Unlike some other types of discrimination there is no need to compare the way a pregnant worker is treated with the treatment of any other workers such as a man, or a woman who is not pregnant. However, evidence of how others have been treated may be useful to help determine if the unfavourable treatment is in fact related to pregnancy or maternity leave.

Unfair dismissal

It is also unlawful for an employer to dismiss a woman because of her pregnancy regardless of how long she has worked for the employer or how many hours she works. This is unfair dismissal and would enable the woman to bring a claim for compensation before an employment tribunal.

What you can do

If you are unable to work because of NVP or HG there are some practical steps you can take:

- Do not beat yourself up. You are not alone in needing time off for pregnancy-related sickness. It is important that you rest and you cannot do this properly if you are working.
- Ask your doctor to give a sick note indicating that you are unfit for work because of a pregnancy-related illness which you can then give to your employer.
- If you feel that your employer does not fully understand the impact that NVP/HG is having on your daily life, and your ability to work, it may be helpful to print off some information from the PSS website and give this to your employer. Many employers may never have come across women with severe NVP or HG and so providing some information may help them to understand what you are going through.
- If you feel you have been treated unfavourably because of your pregnancy, the first step is to explain this to your employer and try to resolve the issue informally. Tell your manager what has happened or, if it is your manager who has treated you unfavourably, tell someone more senior. Keep a record of what has happened, when and where it happened and whether there were any witnesses.
- If the informal approach fails then you may wish to make a formal complaint under your employer's grievance procedure. Your employer would then be under an obligation to investigate the matter.
- The final step, if all else fails, would be to bring a claim before an employment tribunal. There is a three month time limit for bringing a claim from the date of the last time you were treated unfavourably. So it is important to get advice early on.

Sick pay

If you take sick leave for a pregnancy-related reason you are entitled to receive the same sick pay as other employees. If you qualify, you will be entitled to Statutory Sick Pay (SSP). If your employer normally pays contractual sick pay, over and above SSP, you should be entitled to that in the usual way.

To qualify for SSP you need to earn at least £109 a week (April 2013-2014) on average during the eight weeks before you fall ill. SSP is paid by your employer once you have been off work for four days in a row (including non-working days). SSP is payable for up to 28 weeks. SSP is currently £86.70 per week (April 2013-April 2014).

Can my employer make me start maternity leave if I am ill?

It is normally up to you when you start your maternity leave. However, if you are off sick with a pregnancy-related illness in the last four weeks of your pregnancy, your maternity leave will normally start, unless your employer agrees otherwise.

Where can I get more information?

The Citizens' Advice Bureau has a number of fact sheets on employment rights including ones on pregnancy and maternity discrimination and unfair dismissal. These are available on their website - www.adviceguide.org.uk. You may also wish to contact CAB for advice if you are experiencing problems at work as a result of your NVP/HG.

Maternity Action is a charity which provides advice and information sheets on maternity rights and benefits - www.maternityaction.org.uk. They also have a helpline **0845 600 8533**.

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Pregnancy
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Support

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