



Redundancy and Maternity Issues **& Bird & Bird**

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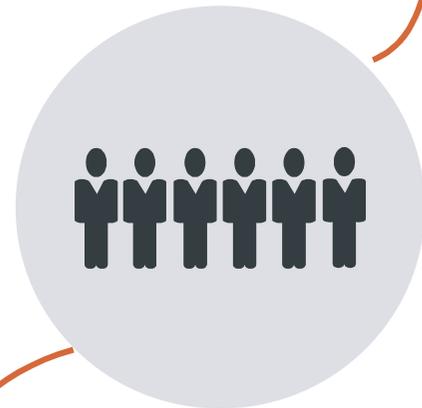
Can an employee on maternity leave be made redundant?

- No general bar
- General right to return to previous job unless not reasonably practicable
- Right to suitable alternative employment if redundancy
Regulation 10 Maternity and Parental Leave etc Regulations 1999 (MAPLE)
- Range of practical difficulties and risks
- ACAS/EHRC Guidance*
- Initial question – is the redundancy genuine or is root cause the taking of maternity leave?

*Managing redundancy for pregnant employees or those on maternity leave

Selection issues

- Typical criteria include **skills, qualifications, performance, attendance record, disciplinary record, client feedback**
 - Assessment can be difficult where long period away from work
 - Adjustments may need to be made
- *Eversheds Legal Services Ltd v De Belin 2011*



Consultation

- Consultation during OML and AML is still required
- Concern for employee's feelings is not a valid defence
- Don't make assumptions about how the employee may feel
- Agree process with employee
- May need to use a KIT day and/or meet off site
- Don't forget expiry of fixed term contract is a dismissal
- Include in process of electing representatives for collective consultation



Suitable alternative employment

- Regulation 10 MAPLE *
 - Where an employee on ordinary or additional maternity leave is potentially redundant, she is entitled to be offered any suitable available vacancy with the employer, its successor or any associated employer in priority to other potentially redundant employees. The offer must be of a new contract taking effect immediately on the ending of her previous contract and be such that:
 - The work is **suitable and appropriate for her to do**
 - The **capacity, place of employment and other terms and conditions are not substantially less favourable than under the previous contract**

* Equivalent provisions for adoption and shared parental leave (Reg 23 Paternity and Adoption Leave Regs 2002 and Reg 39 Shared Parental Leave Regs 2014)

Suitable alternative employment – points to note

- The right is automatic even if a better candidate – no interview process
- Extends to associated employers
- May apply on expiry of fixed term contract
- The role may need to be temporarily filled until the woman returns from maternity leave
- The right ceases when employment terminates
- 'Backwards v forward' selection
- *Simpson v Endsleigh Insurance Services Ltd 2009*
Sefton Borough Council v Wainwright 2015



Practicalities on termination of employment



- All remaining SMP needs to be paid
- Any contractual maternity pay only has to be paid insofar as relates to the notice period
- Sections 87 and 92 Employment Rights Act 1996 (payment of salary during notice and written statement)
- Don't forget Alabaster
- Statutory redundancy payment calculated on basis of full pay (not SMP rate)
- Holiday pay
- Consider settlement agreement – claims of ordinary unfair dismissal, automatic unfair dismissal, discrimination

Thank you & Bird & Bird

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