

# Redundancy and Dismissal Conference

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- How do you do the right thing when faced by maternity related dismissals due to redundancy?
- What are your practical options and how do you avoid the further complications of automatic slotting?



# The Law

- *Regulation Maternity and Parental Leave etc. Regulations 1999 (SI 1999/3312)*
- 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

# The Statistics – EHRC Findings

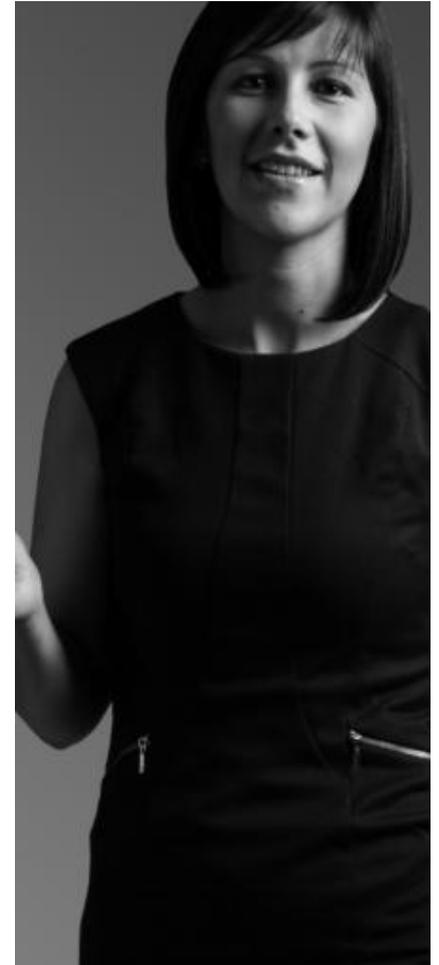
- 28% of employers said that enhanced protection from redundancy during Ordinary Maternity Leave was unreasonable
- 77% of mothers said they had a negative or possibly discriminatory experience during pregnancy, maternity leave, and/or on return from maternity leave.
- In public administration mothers were less likely to have felt forced to leave their job (3% compared to 11% average)

# The basics – ACAS Code

- Must be a genuine redundancy situation, consultation etc. as with any redundancy scenario
- Consult with women on maternity leave even if you are concerned about worrying them
- Use previous performance assessments rather than one during pregnancy or maternity and may be lower than usual
- Agree least stressful methods of keeping in touch before employee goes on leave if possible

# Alternatives to redundancy

- Flexible working
- Career break
- Other roles/Re-training



# Right to suitable vacancy



*Secretary of State for Justice  
v Slee 2006*

- “pre-emptive right” to vacancies available at the time the employee is due to return but also which may arise during maternity leave

# Suitable alternative employment

## *Simpson v Endsleigh Insurance Services Ltd 2009*

- Employer assumed Miss Simpson would not wish to relocate or work weekends but was offered an opportunity to express interest (which she did not)
- EAT: must be a job which is suitable in terms of job content and comparability of T&C's including location; it is for the employer to judge the suitability of the job...however an objective assessment must be made

# Local authority restructuring

## *Sefton Borough Council v Wainwright 2015*

- Deletion of two posts with a new post created; suitable for female on maternity leave and one male
- Reg. 10 engaged as soon as there is a vacancy – not when notice of dismissal is given
- Consider other options for transfer

# Sex Discrimination

## *Eversheds Legal Services Ltd v De Belin 2011*

- The retention of an employee because she is on maternity leave in preference to a male employee who has better scores in the selection exercise is likely to be sex discrimination against that employee
- EAT: rejected the argument that they were required to act as they did to avoid unlawful disadvantage of the female. Was not proportionate

# Redundancy pay

- If an employee is made redundant during maternity leave she must not be disadvantaged in the calculation of pay
- Use weeks where she received full pay to calculate redundancy pay

# Sex discrimination

## Breastfeeding

- No legal requirement to give time off/provide facilities

### **BUT...**

- Roster practices found to be indirectly discriminatory
- Initial failure to offer suitable alternative work
- No objective justification
- McFarlane & another v easyJet Airline Company Limited

# Conclusions

- How do you do the right thing when faced by maternity related dismissals due to redundancy?
- What are your practical options and how do you avoid the further complications of automatic slotting?

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questions?

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