

ADVICE

RECENTLY The Times reported a tribunal case in which a sales executive named Louise Manning was awarded £37,100 for injury to feelings and £20,509 for loss of earnings after a tribunal found that her employers, Kent-based Safetell, and their managing director had discriminated against her after learning about her pregnancy.

On learning that she was expecting her first child, MD Nick Medlam sent her a memo saying: 'Feel betrayed.... Tempted to dismiss and take the consequences.' Mr Medlam cancelled training that she needed to join the board of directors, referring to her maternity leave as her period of confinement.

While this behaviour was certainly unacceptable, it does highlight the strong emotions that surround the whole pregnancy at work issue. Maternity leave has long been a contentious issue for small businesses and there is no doubt that an employee becoming pregnant can cause immense problems for smaller companies and, as a result, it can be very tempting to ignore the rules.

Although employers are generally well aware that it is against the law to refuse a woman a job because she would be taking time off for maternity leave soon after starting work, or to subject an employee to a detriment because

Women employees and pregnancy ...

Clare Waller, a partner at solicitors Hawkins Russell Jones, looks at an issue that has long been a contentious one in business.

she has become pregnant, it continues to happen.

Matters are more difficult for employers, especially smaller ones, as a result of rule changes in 2007. Following the changes, a woman who was pregnant when interviewed for a job can insist on taking a full year off work, not 26 weeks as previously, even if the baby is expected soon after the start of the new job and regardless of whether the employer has only a couple of staff or is a multinational corporation.

And of course, if she doesn't get the job and thinks the reason had something to do with her pregnancy or maternity leave rights she can claim unlawful sex discrimination.

From an employer's point of view, one of the few possible let-outs is where refusal to employ a pregnant job applicant, or discrimination against a pregnant employee, is necessary to ensure compliance with health and safety regulations. In that case, the law

recognises that it is in the woman's own interest to allow the employer to take steps which otherwise would be unlawful. However, if it is impossible for the employer to reduce an unacceptable level of risk posed to a pregnant employee, they will be obliged to suspend the employee on medical grounds (and full pay) until the risk is reduced to an acceptable level or the employee has started maternity leave.

In practice there is also some modest protection for employers as a result of the Government's desire to protect public finances. Although a new employee can now take 52 weeks maternity leave shortly after starting work, she will not be entitled to state-funded Statutory Maternity Pay for the full period. For the time being, the period for which SMP is payable is 39 weeks.

However the Government does have plans to extend SMP entitlement to 52 weeks — probably for women whose babies are due in



Clare Waller.

or after April 2010. This is likely to put more strain on small businesses: however, employers of all sizes must remember to follow the law or face expensive penalties.

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Hitchin Office, 7/8 Portmill Lane, Hitchin, Hertfordshire SG5 1AS
Tel: 01462 628888 | Fax: 01462 631233

Welwyn Garden City Office, Gate House, Fretherne Road, Welwyn Garden City, Hertfordshire AL8 6RD
Tel: 01707 887700 | Fax: 01707 887701

www.hrjlaw.co.uk