

## **Pregnant Women and Risk Assessments**

The Management of Health and Safety at Work Regulations 1999 require all employers to carry out an assessment of workplace risks that could harm employees and to do whatever is 'reasonably practicable' to control these risks. In particular, Regulation 16 requires that where women of childbearing age are employed and the work is of a kind which 'could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes or working conditions, or physical, biological or chemical agents', the assessment must include risks specific to new and expectant mothers.

In *O'Neill v Buckinghamshire Council*, one of the claims made by Mrs O'Neill, a junior school teacher, was that the head teacher of the school where she worked had failed to carry out an assessment of the risks her job entailed after she was informed of Mrs O'Neill's pregnancy and that this constituted pregnancy-related sex discrimination.

The Employment Tribunal (ET) found that the employer had not failed in its duty to carry out a risk assessment as there was no need for one because the Regulations did not apply to Mrs O'Neill's work. Mrs O'Neill appealed, contending that the specific health and safety requirements with regard to new or expectant mothers meant that the Sex Discrimination Act 1975 (SDA) required a regime of positive discrimination regarding possible adjustments to a woman's work similar to that contained in the reasonable adjustment provisions of the Disability Discrimination Act 1995. She argued that in her case, once it was known that she was pregnant, a disciplinary procedure instigated on account of various aspects of her work should have been stopped. However, the Employment Appeal Tribunal (EAT) held that this claim sought to apply a model of law which the SDA does not support.

Mrs O'Neill further claimed that a risk assessment should have been carried out because of the potential risk to her health and safety from stress and the additional risk of catching coughs and colds. The EAT found, however, that no evidence was produced to the ET from which it could have been concluded that Mrs O'Neill's work involved a risk of harm or danger to her as a pregnant worker as defined by the Regulations.

The EAT agreed with the argument put forward for Buckinghamshire Council that there is no general obligation to carry out a risk assessment with regard to all pregnant employees so that a failure to do so amounts to discrimination per se. Whilst it is clearly prudent for employers to carry out a risk assessment for all pregnant workers, the obligation to do so will only be triggered in certain circumstances. These are where:

- the employee notifies the employer in writing that she is pregnant;
- the work is of a kind which could involve a risk of harm or danger to the health and safety of the expectant mother or her baby; and

- the risk arises from either the processes or working conditions or from physical, biological or chemical agents in the workplace.

Furthermore, there is nothing in the relevant law to indicate that the employer must hold a meeting with the pregnant worker in order to satisfy the duty to carry out a risk assessment. The employer must, however, inform the worker of the results of the risk assessment. Where risks to the health and safety of a pregnant worker have been identified, the employer must provide comprehensive and relevant information concerning these and must do all that is reasonably practicable to remove or prevent exposure to them.

“Employers are advised to make sure they are aware of and fulfil their legal obligations in this regard. We can advise you to make sure you act in accordance with the law and are not open to claims of unlawful sex discrimination.”

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