

## Royal College of Nursing response to Department for Business and Trade consultation on Make Work Pay: enhanced dismissal protections for pregnant women and new mothers

### About the Royal College of Nursing

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector.

The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

### About You

Please indicate whether you are responding as:

A trade union or staff association (trade union and professional body)

### Question 9

In general, when do you think pregnant women and new mothers are at most risk of unfair treatment? (Please select all that apply)

- A. During pregnancy.
- B. During Maternity Leave.
- C. Soon after they have returned to work (e.g. within six months of returning).
- D. Some time after they have returned to work (e.g. after six months of returning).
- E. Other.
- F. Don't know.

If relevant, please explain your answer and provide any supportive data/evidence.

### Response:

Current RCN data shows that the majority of legal cases taken up take place during pregnancy, but before maternity leave is taken. Issues include failure to carry out or abide by a risk assessment, refusing to make adjustments to allow an employee to continue working whilst pregnant, trying to change their duties/location against their wishes, and verbal abuse and harassment.

RCN data also shows discrimination during maternity leave, with the predominant issue being the failure to pay maternity pay in full. Issues on return to work are also prevalent, with employers refusing requests for flexible working, and not allowing employees to return to their role.

*EHRC's large-scale study found one in nine mothers felt forced out and over three-quarters reported negative or possibly discriminatory experiences, including sidelining and pressure to leave. These patterns commonly intensify around maternity return and flexible working requests.*

*Acas guidance also emphasises the 'protected period' and warn that unfavourable treatment because of pregnancy, maternity leave or pregnancy-related illness is unlawful.*

#### **Question 10**

In general, when do you think pregnant women and new mothers are at most risk of dismissal? (Please select all that apply)

- A. During pregnancy.
- B. During Maternity Leave.
- C. Soon after they have returned to work (e.g. within six months of returning).**
- D. Some time after they have returned to work (e.g. after six months of returning).
- E. Other.
- F. Don't know.

#### **Response:**

*The RCN view is that dismissal risk appears highest during maternity return and the months following, when capability or 'fit' is wrongly judged and redundancy exercises are run.*

*EHRC research has identified that dismissal, alongside harassment and adverse career impacts, is linked to pregnancy and maternity.*

*Recent tribunal statistics also show rising claims and backlogs, making early resolution and fair process vital.*

*For RCN members, internationally recruited nurses are at risk of employers not having their work permits renewed when their maternity leave ends, thereby leading to termination of employment.*

*Clear procedures, robust consultation and suitable alternative roles can prevent dismissals and avoid costly litigation.*

#### **Question 11**

What impact have the 2023/24 extended redundancy protections for pregnant women and new mothers had on how pregnant women and new mothers are treated in the workplace?

- A. Positive.**
- B. Negative.
- C. Negligible.
- D. Don't know

**Response:**

*The 2023/24 extension of redundancy protections has been positive. EHRC's updated employer toolkit (April 2024) clarifies priority offers of suitable alternative employment for pregnant women and those on maternity, adoption and shared parental leave, reducing unfair selection and loss of skilled staff.*

*In nursing services, we see better redeployment conversations and fewer 'selection by absence' decisions. Continued enforcement and clear HR communication are essential, but the direction of travel supports retention and fairness.*

**Question 12**

What kind of test should be used to decide whether a pregnant woman or new mother was fairly dismissed during the protected period?

- A. Replace the current 'range of reasonable responses' test for fairness with a new stricter standard that employers must meet, alongside proving a fair reason.
- B. Narrow the scope of the existing five fair reasons, and/or remove some of them altogether.
- C. Other
- D. Don't know.

**Response:**

*RCN supports a stricter fairness test during the protected period. In addition to proving a potentially fair reason, employers should show dismissal is necessary to avoid serious harm (for example, immediate patient-safety risks or substantial business detriment) and that no suitable alternative role or adjustment exists.*

*This aligns with the Equality Act framework on unfavourable treatment and good practice from ACAS and CIPD. It also reflects the lived reality of clinical settings where performance can be temporarily affected by pregnancy, recovery or caring responsibilities.*

*A heightened, evidence-based test would deter marginal or convenience dismissals while preserving the ability to act where risks are genuinely significant.*

**Question 13**

If 'A' to question 12, what should that new test be? (Please select all that apply)

- A. Continuing the employment of the pregnant woman or new mother would have a significantly detrimental effect on the business.
- B. Continuing the employment of the pregnant woman or new mother poses a health and safety risk to customers, staff, or the public.
- C. Continuing the employment of the pregnant woman or new mother has a serious negative impact on the wellbeing of others.
- D. Other.
- E. Don't know.

**Response:**

RCN favours the following test elements: (A) dismissal only if continuing employment would cause significantly detrimental effects to the service or patient safety, evidenced by risk assessment and senior clinical sign-off. (B) dismissal only if continued employment poses a demonstrable health and safety risk that cannot be mitigated. (C) dismissal where continuation has a serious negative impact on others' wellbeing (for example, sustained harassment created by the employee), again only after proportionate steps to resolve.

Alongside these four tests, there should also be provision for whether continued employment would have a detrimental effect on the pregnant or new mother. These thresholds should be applied alongside mandatory consideration of adjustments and redeployment.

This approach is consistent with ACAS guidance on protected periods and EHRC's emphasis on preventing discrimination and managing risks, not removing employment.

**Question 14**

When do you think it should be possible to dismiss a pregnant woman or new mother on grounds of conduct? (Please select all that apply)

- A. Employers should be able to dismiss them fairly for any kind of misconduct; the rules shouldn't be narrowed.
- B. They should be dismissed if they have committed an act of gross misconduct (e.g. theft, violence).
- C. They should be dismissed if their continued employment poses a health and safety risk to customers, staff, or the public.
- D. They should be dismissed if their continued employment has a serious negative impact on the wellbeing of others.
- E. They should be dismissed if their continued employment causes significant harm to the business.
- F. Other – please specify.
- G. Don't know.

**Response:**

Conduct dismissals should be rare in the protected period and confined to gross misconduct (for example, violence, serious safeguarding breaches or wilful clinical negligence).

Lesser misconduct should trigger warnings and support, not dismissal, given the Equality Act protections and the need to avoid pregnancy-related stereotyping.

Where behaviour threatens patient safety or amounts to harassment, employers must act, but only after a fair process and consideration of adjustments.

ACAS clarifies that unfavourable treatment because of pregnancy or maternity is unlawful, and EHRC recommends practical measures to prevent discrimination.

In RCN's experience, clear policies, training and early mediation resolve most issues without resorting to dismissal.

### **Question 15**

When do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of capability? (Please select all that apply)

- A. Employers should be able to dismiss them fairly for any kind of capability issue; the rules shouldn't be narrowed.
- B. Employers should still be able to dismiss fairly on capability grounds, but only if there's no suitable alternative role available, or one was offered and turned down.
- C. Dismissal should be allowed if continuing employment would seriously harm the business.
- D. Dismissal should be allowed if their continued employment poses a health and safety risk to customers, staff, or the public.
- E. Dismissal should be allowed if their continued employment has a serious negative impact on the wellbeing of others.
- F. Dismissal should be allowed if the employer can clearly show the employee won't be able to do the job after the protected period ends.
- G. Other - please specify.**
- H. Capability should not be a fair reason for dismissal during the protected period.
- I. Don't know.

### **Response:**

*Capability concerns during pregnancy or early motherhood are often temporary and responsive to adjustments.*

*RCN recommends redeployment to suitable duties, reasonable adjustments, supervised practice and clear objectives before any dismissal is contemplated. Only where the employer can show no suitable alternative role and that serious detriment would result if employment continued should dismissal be considered.*

*ACAS guidance and CIPD resources both emphasise managing performance fairly within the protected period, alongside health and safety and flexible-working duties.*

*Thoughtful rostering, mentorship and phased return frequently restore performance without harm to staffing or patient care.*

### **Question 16**

When do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of redundancy during the protected period? (Please select all that apply)

- A. Employers should be able to dismiss them fairly for any kind of redundancy, as long as they've been offered a suitable alternative vacancy if there is one; the rules shouldn't be narrowed.
- B. An employer should still be able to dismiss on redundancy grounds, where there is no suitable alternative vacancy, and where terminating her employment would mitigate any financial difficulties that were affecting – or were likely to affect in the immediate future – the employer's ability to continue the business

(or to perform its statutory functions, if it is a public sector employer with statutory duties).

C. Employers should still be able to dismiss on redundancy grounds where the business/organisation ceases to exist and the employee has been offered any suitable alternative vacancy available with the employer, or an associated employer.

**D. Other – please specify.**

E. Don't know.

**Response:**

*Redundancy during the protected period should be limited to genuine business closure or insolvency where redeployment is impossible.*

*EHRC's 2024 toolkit reinforces extended redundancy protections and priority offers of suitable alternatives. In the NHS and independent providers, fair pooling must exclude pregnancy-related absence metrics and ensure consultation reaches staff on leave.*

*Robust redeployment efforts reduce dismissals and retain scarce skills. Tribunal backlogs and costs underline the importance of getting this right first time.*

**Question 17**

When do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of statutory prohibition during the protected period? (Please select all that apply)

A. Employers should be able to dismiss them fairly for any kind of statutory prohibition issue; the rules shouldn't be narrowed.

**B. Employers should still be able to dismiss on statutory prohibition grounds, but only if there's no suitable alternative role available, or one was offered and turned down.**

C. Other – please specify.

D. Don't know.

**Response:**

*Where statutory prohibition applies (for example, a professional registration temporarily lapses), dismissal should be a last resort.*

*Offer suitable alternative duties (non-registered roles) or short unpaid leave first, with clear support to restore compliance. ACAS explains the protected period and unlawful unfavourable treatment and EHRC guidance stresses preventing discrimination and managing risk.*

*In nursing, brief redeployment to administrative or training tasks is often feasible and preserves continuity for patients and teams.*

**Question 18**

When do you think it should be possible to dismiss a pregnant woman or new mother on grounds of SOSR during the protected period? (Please select all that apply)

- A. Employers should be able to dismiss them fairly for any kind of SOSR issue; the rules shouldn't be narrowed.
- B. Employers should still be able to dismiss on SOSR grounds, but only if there's no suitable alternative role available, or one was offered and turned down.**
- C. Dismissal should be allowed if continuing employment would seriously harm the business.
- D. Dismissal should be allowed if their continued employment poses a health and safety risk to customers, staff, or the public.
- E. Dismissal should be allowed if their continued employment has a serious negative impact on the wellbeing of others.
- F. Other – please specify.**
- G. SOSR should not be a fair reason for dismissal during the protected period.
- H. Don't know.

**Response:**

*RCN supports tightly limiting SOSR dismissals in the protected period. Relationship breakdowns, reputational issues or conflicts of interest should trigger mediation, re-assignment or conflict-management plans as opposed to dismissal in the first instance, unless serious harm otherwise occurs and alternative roles are unavailable.*

*CIPD and EHRC guidance highlight legal risks and good practice by adopting a 'redeploy-first' approach that reduces litigation and protects workforce morale. Only well-evidenced, exceptional cases should proceed to dismissal.*

**Question 19**

When should employees be entitled to the enhanced dismissal protections?

- A. When the employment relationship begins (when they agree with an employer that they'll start work for them, e.g. when a contract is signed).
- B. From the day they start work.**
- C. After an initial period of employment of between 3- 9 months, aligned with a typical probation period.
- D. Other – please specify.

**Response:**

*Entitlement should be a day-one right. Pregnancy and maternity protections already apply from day one, and ACAS confirms 52 weeks' maternity leave entitlement and related rights irrespective of service.*

*Aligning enhanced dismissal protections with existing day-one protections avoids gaps for newly recruited staff and reduces discrimination risk. The GOV.UK employer guide similarly sets out statutory maternity rights and pay irrespective of length of service.*

### **Question 20**

At what point should the enhanced dismissal protections start for pregnant women?

- A. When the employee becomes pregnant.
- B. When the employee becomes aware that she is pregnant.
- C. When an employee informs her employer that she is pregnant.**
- D. Other - please specify. If relevant, please explain your answer.

**Response:**

*RCN supports protections commencing when the employee informs the employer she is pregnant, coupled with strong guidance against intrusive questioning.*

*EHRC explains the protected period and ACAS notes the law protects people during the 'protected period' and that an employer is liable once they know, or reasonably should know, of pregnancy.*

*Starting protection at notification is practical for workforce planning and avoids creating incentives to probe private medical information while still covering early pregnancy through Equality Act sex discrimination where relevant.*

### **Question 21**

When should the protection 'window' for new mothers entitled to maternity leave end?

- A. 18 months from the birth of the child – aligning with the 2023/24 redundancy protections.**
- B. Six months from the return to work (the 'return to work' being the end of the Maternity Leave period).
- C. Don't know.

**Response:**

*RCN recommends the protection window ends 18 months from birth, aligning with 2023/24 redundancy protections extended in law and reflected in EHRC's toolkit.*

*This gives mothers who take a full year of maternity leave an additional six months of protection on return, when risks of unfair treatment are most acute. It also creates a clear, uniform rule for employers and employees across sectors.*

*Some mothers who don't take the full one year entitlement of one year maternity leave and return to work earlier will still receive the full 18 months of redundancy protection overall.*

### **Question 22**

Should women who are not entitled to Maternity Leave have protection against dismissal for two weeks after the end of their pregnancy?

- A. Yes.**
- B. No – please explain your answer.
- C. Other – please explain your answer.
- D. Don't know.

**Response:**

*Women not entitled to maternity leave (for example, after miscarriage before 24 weeks) should have two weeks of enhanced protection to prevent dismissal linked to pregnancy loss.*

*ACAS guidance recognises the protected period and miscarriage scenarios, and EHRC stresses preventing unfavourable treatment connected to pregnancy and maternity.*

*Clinically and ethically, brief protection supports recovery and reduces the risk of punitive absence management immediately after loss.*

**Question 27**

Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave? (Please select all that apply):

- A. Adoption Leave.
- B. Shared Parental Leave.
- C. Neonatal Care Leave.
- D. Bereaved Partner's Paternity Leave.

**Response:**

*RCN supports extending enhanced dismissal protections to all categories listed. EHRC's April 2024 toolkit reflects extended protections and priority offers in redundancy for both adoption leave and shared parental leave.*

*Clinically, prolonged absences to bond, care and stabilise neonatal health are comparable to maternity leave, and families benefit from consistent safeguards.*

*Extending coverage to neonatal care leave and bereaved partner's paternity leave improves retention and equity across modern family structures.*

**Question 28**

Thinking about your answer to question 27, should the protection against dismissal start from the first day of the leave?

- A. Yes.
- B. No.
- C. Don't know.
- D. Other – please specify. If relevant, please explain your answer.

**Response:**

*Protection should start from the first day of the leave for eligible parents. That mirrors the maternity model and simplifies HR processes.*

*EHRC's updated toolkit highlights stronger protections across parental leave categories.*

*Applying a single start trigger avoids disputes about eligibility windows and supports safe reintegration to work after extended leave.*

### **Question 29**

Thinking about your answer to question 28, how long should the protection against dismissal last? (Please select all that apply)

- A. For Adoption Leave, it should follow on from the approach of the enhanced redundancy protections for Adoption Leave (i.e. 18 months from the birth of the child/placement for adoption or entry into Great Britain).**
- B. For Shared Parental Leave, Neonatal Care Leave and Bereaved Partner's Paternity Leave, it should follow on from the approach of the enhanced redundancy protections for Shared Parental Leave and Neonatal Care Leave (i.e. if the employee takes less than six weeks of continuous leave, the protection ends on the last day of the leave; if they take more than six weeks of continuous leave, the protection ends 18 months from the birth of the child/placement for adoption or entry into Great Britain).
- C. Other – please explain your answer.

#### **Response:**

*RCN recommends mirroring the redundancy-protection approach: 18 months from birth or placement for adoption (or entry into Great Britain), with the six-week continuous-leave threshold applied as in current enhanced redundancy rules.*

*Aligning timelines across leave types reduces confusion and ensures protection covers the vulnerable return-to-work period.*

### **Question 30**

How do we ensure women, including those from minority groups, are aware of the enhanced dismissal protections for pregnant women and new mothers? (Please select all that apply)

- A. Through intermediaries/trade unions/advice organisations (e.g. Pregnant then Screwed, Maternity Action, Working Families).**
- B. Clear information in onboarding and employee handbooks.
- C. Through government / regulatory/public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).
- E. Other - please specify. Please explain your answer – we welcome separate detail on how women from minority groups can be made aware as part of your answer.

#### **Response:**

*Awareness must be multi-channel: (1) clear onboarding and staff handbooks; (2) prominent links to EHRC's updated toolkit and ACAS pages; (3) union and professional body campaigns; (4) targeted outreach for minority groups.*

*EHRC advises employers to review policies in line with April 2024 changes, and Acas provides accessible, plain-English guidance on the protected period and rights. In RCN workplaces, short manager briefings and poster campaigns on antenatal rights and flexible working help reach under-represented groups.*

### **Question 31**

How do we ensure employers are aware of these changes?  
(Please select all that apply)

- A. Through intermediaries/advice organisations (e.g. business groups).
- B. Through government / regulatory/public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).
- C. Other - please specify. Please explain your answer

#### **Response:**

*Employers need concise legal updates and practical tools: This could include EHRC's toolkit (policy templates, checklists) and Acas guidance should be published via HR portals, webinars and safety briefings.*

*Oversight and audit of redundancy processes, return-to-work planning and flexible-working responses can embed compliance.*

*Where healthcare services operate 24/7, rostering systems should flag protected periods and antenatal time-off automatically.*

### **Question 32**

How can we best support businesses, including smaller businesses, through this change and to avoid disputes escalating to the Employment Tribunal? (Please select all that apply)

- A. Clear guidance.
- B. Awareness raising campaign.
- C. Employer training/webinars/workshops.
- D. Templates/model policies/checklists.
- E. Free advice routes.
- F. More information about dispute resolution (e.g. Acas early conciliation).
- G. Other - please specify. Please explain your answer.

#### **Response:**

*RCN recommends clear guidance and model procedures (EHRC toolkit, ACAS), manager training on equality law and flexible working, and early use of ACAS conciliation.*

*ACAS data shows that most notifications do not progress to tribunal when parties engage early and investing in templates and checklists cuts errors and avoids escalation.*

*In practice, simple redeployment and phased returns resolve many issues without legal risk.*

### **Question 33**

What unintended consequences, if any, do you think could arise from the enhanced dismissal protections? (Please select all that apply)

- A. Increased discrimination – hesitancy in or avoiding hiring women of childbearing age.
- B. Negative perception of workplace fairness/culture.

- C. Employers delay dismissal decisions until after protection period lapses.
- D. Negative impact on hiring generally.
- E. Legal uncertainty - employers avoid fair dismissal due to risk.
- F. Administrative burden ( e.g. additional documentation).
- G. Unsustainable or unrealistic asks on small businesses.
- G. Other - please specify.**
- H. None. Please explain your answer.

**Response:**

*The government's aim for this provision is to enhance dismissal protections, and the RCN view is that any unintended consequences that may offset this ambition can be mitigated with some or all of the steps and measures outlined throughout this submission.*

*This includes giving employers and managers clear guidance on the application of the enhanced protections, clear evidence of good practice examples, and emphasising the benefit to employers that enhancing the rights of their employees can bring. Further details on this are given in the answer to question 35.*

**Question 34**

What unintended consequences, if any, do you think could arise if the policy were to exclude capability and SOSR as fair reasons to dismiss a pregnant woman or new mother?

**Please explain your answer.**

**Response:**

*RCN is clear in our support for tightly limiting SOSR and capability dismissals in the protected period. The provision of clear guidance, good practice and oversight will help mitigate any unintended consequences that may arise from these enhanced protections.*

**Question 35**

What action(s) could be taken to mitigate against any unintended consequences?  
(Please select all that apply)

- A. Clear guidance.**
- B. Training and support for employers.**
- C. Other - please specify.
- D. None.

**Response:**

*Mitigation rests on practical tools and training. This could include publishing clear guidance, providing manager education on equality law and flexible working, and using checklists for redundancy, redeployment and return-to-work conversations.*

*EHRC's toolkit and ACAS resources supply templates and plain-English advice, and these materials should also be provided in accessible multi-lingual formats. Adopting them reduces inconsistency, supports competent practice and lowers dispute rates.*

### **Question 36**

What do you think are the main causes of pregnancy and maternity discrimination?  
(Please select all that apply)

- A. Lack of awareness.
- B. Negative attitudes or bias.
- C. Cost and operational pressures.
- D. Fear of legal risk or complexity.
- E. Poor communication (e.g. during Maternity Leave).
- F. Other - please specify. Please explain your answer

#### **Response:**

*Maternity Action and EHRC research finds that the main causes of discrimination include organisational culture, poor management, stereotyping and bias, a lack of suitable alternative roles, and a reluctance from some pregnant women to assert their rights.*

*EHRC's 2016 research found widespread negative experiences and highlighted information gaps and substandard employer practices. Its recommendations call for better guidance, health and safety management and access to justice.*

*ACAS reinforces that unfavourable treatment in the protected period is unlawful. Addressing causes needs policy clarity, training and proactive engagement.*

### **Question 37**

What other changes should the government prioritise to tackle pregnancy and maternity discrimination?

#### **Response:**

*Ahead of and during the implementation of these provisions, the RCN view is that embedding proactive employer guidance and monitoring should be a priority.*

*This should also conclude strengthening redeployment and flexible-working norms. The Women and Equalities Committee (2016-17) and EHRC recommendations both urge stronger protections and better access to justice, and that implementing these systematically would reduce discrimination and improve retention of skilled staff.*

*Time limit for most employment tribunal cases (including unfair dismissal and discrimination) to be brought is 3 months less one day.*

*We would encourage the extension of this provision to 6 months, to align it with current time limits for redundancy pay employment tribunals.*

#### **Other comments:**

*This is a key area for the RCN and its members, and we view these enhancements as a key driver in retaining nursing knowledge and expertise.*

*As a predominantly female workforce, these new provisions, implemented effectively, will protect that workforce significantly.*

*The introduction of these new provisions will require employers to engage in improved workforce and financial planning. That will require employers to be proactive in this space of employment rights and clearly understand their new legal responsibilities.*

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