

Russell Jones & Walker, (Solicitors) - Discrimination Seminar "Protecting the Future", on Maternity and Family Care issues

23rd November 2005

Report of presentations from the Convener

RJW hold annual briefings for TU Officials, and this year the programme was focussed on Maternity and Family care issues.

Speakers included:-

Wendy Hewitt, Equal Opportunities Commission (EOC)

Prof. Vivette Glover, Imperial College, London

Speakers from RJW on legal aspects of Maternity, Health & Safety and Discrimination

Of specific interest was a presentation on the effects of workplace safety and well-being on the pregnant mother and specifically on the unborn child. *Stress levels in the mother translate into potential difficulties for the foetus and the developing child, thus emphasising the need for effective Maternity Risk Assessments.*

Wendy Hewitt, EOC, focussed on the fact that despite much legal remedy being available most women at work and in pregnancy *suffer in silence* and allow themselves to be appallingly treated.

- ❑ The EOC has carried out its own detailed investigations and has made recommendations to the DTI as a result.
- ❑ Of the 1,000 women surveyed some 45% showed discrimination in respect of pregnancy and maternity needs in the workplace [*extrapolated out to over 200,000 nationally pa*], often exemplified by inappropriate comments, breakdown in communications, and withdrawal of support.
- ❑ As a result many left their employment and the retail sector was the most vulnerable with many young mothers to be often in their 1st year of employment losing any chance of gaining employment rights also often affecting their rights to maternity benefits.
- ❑ Maternity absence is not covered under sickness absence insurance and many employers find it easier to have a reason to dismiss or to encourage the employee to leave.
- ❑ The survey also identified that most H&S Risk Assessments related to pregnancy were ignored, often due to ignorance on the part of employee and employer. Much of the assessment that did take place was felt to be of poor quality.
- ❑ 70% of women make no complaint about discrimination issues at work, with only 8% taking formal action. Less than 1 in 20 seek advice and there are few complaints about risk assessments or unsafe working practices for pregnant workers made to the HSE.
- ❑ The current law on pregnancy was felt not to be working. There were too many obstacles to the resolution of disputes, a reluctance to take cases to ET and in deed too many barriers to that route. It was questionable whether UK law complies with the requirements of Article 10 of EU Directive provisions.

As a result of this work the EOC has made recommendations to the DTI towards:-

- ✓ Increased awareness
- ✓ Better planning and dialogue
- ✓ Improved H&S
- ✓ Making the legal and advice systems more effective

- ✓ Changing the culture related to work and pregnancy
- ✓ Commencing from next Autumn (2006) at the 1st antenatal detailed information on work and pregnancy should be provided to all mothers with a duplicate copy for employers and additional information for fathers.
- ✓ This concept is endorsed by DTI, supported by TUs and is also being looked at in Wales and Scotland.

An information and support Toolkit for employers will become available supported by financial and HR assistance for the very small enterprises.

Prof. Vivette Glover outlined issues related to 'Maternity in the Workplace and the effects of work on pregnancy and the unborn child'.

It was noted that from within just 3 weeks of conception the foetal brain is already developing and quite susceptible to some work-related effects. Pre-term deliveries inevitably have shortened developmental periods.

The presentation focussed on two aspects of pregnancy:-

Work & pre-term delivery

- ❑ Pre-term delivery brings increased risk of major problems including cerebral palsy and neurological problems. Additionally more subtle problems such as behavioural disorders, learning difficulties and co-ordination difficulties are common
- ❑ This in turn brings additional care demand in many families also additional costs to medical and other support services
- ❑ Risk Factors include Social class, working & travelling conditions, standing at work and high stress levels
- ❑ Some studies show that working posture, physical exertion, mental stress, environmental stress and working with industrial machines increase occupational fatigue and can prompt pre-term premature rupture to membranes
- ❑ Whilst pregnancy is not an illness and work is not bad for pregnant workers, some aspects of work-related activity and behaviours do result in pre-term delivery
- ❑ Women who are required to work *contrary to their own wishes* during pregnancy, stress *increased the risks of pre-term delivery 8-fold*
- ❑ Other studies also show that in general there is no difference between housewives and working women for premature labour, although those with higher levels of dissatisfaction at work showed higher premature birth rates
- ❑ A study carried out on employment and job-strain related to pre-term delivery in North Carolina, US showed that during pregnancy chronic exposure to high demand work and low control was associated with pre-term delivery
- ❑ In summary:-
 - Work during pregnancy is not in itself a risk
 - High physical demand, e.g. heavy lifting, standing for more than 2 hours a day is linked to pre-term delivery
 - Working when the woman does not wish to, when she is dissatisfied with her work or where there is high demand and low control does create a risk of pre-term delivery
 - Fatigue or extreme tiredness at the end of a working day leads to more emergency hospital visits
 - Perceived job-related stress was found to be linked with raised blood pressure and associated pregnancy problems, including increased risks of pre-eclampsia
 - Increased pelvic pain was often preceded by physically and psychologically demanding work

- Fixed night work, often doubled the risk of late foetal loss
- As in any working situation, different people react differently to the same external pressures, during pregnancy however social support is vital both at home and at work
- There is some evidence that short leave is a higher risk factor, particularly if combined with other risk factors and together contributes to personal and matrimonial distress

Antenatal Stress and the child – Foetal Stress Syndrome

- Evidence shows that foetal heart rates increase when mothers are asked to undertake unpleasant tasks, reaching high anxiety levels than normal
- In-utero environments can be affected by work and can change the future development of the foetus and have permanent effects on the child after birth
- In the US further research shows that diseases which were once thought to arise near the time of their manifestation in adult life are now known to have roots in early-post-natal life
- Research work using monkeys shows that where pre-natal stress levels are high, the offspring have lower attention rates, show increased anxiety levels and have greater Cortisol responses to new stressors
- Mothers in the top 15% stress or anxiety-affected groups during pregnancy have double the risk of children:-
 - with behavioural problems (attention deficit and hyperactivity);
 - they are also prone to emotional problems including anxiety and depression; and
 - the rate of these problems increases from 5% to 10% in these cases
- Maternal Stress & anxiety during pregnancy has a broad spectrum of adverse effects on the developing foetus:-
 - Impaired cognitive and language development
 - Increased behavioural and emotional problems
- The magnitude of these problems is clinically significant, although most children are not affected, probably related to genetic vulnerability
- In cases of maternal high stress/anxiety levels, there is:-
 - Low uterine blood flow
 - Trans-placental passage of Cortisol
 - Resulting in increased levels of foetal Cortisol and Noradrenalin (*both impacting on general health and well-being where experienced in excessive and continuous quantities*)
 - Which in turn reduces foetal growth
- In conclusion
 - Benefits can be gained during pregnancy for mothers and babies by reduced stress levels both at home and at work

There is a short 20 question self-evaluation questionnaire on anxiety state attached. It is used to measure anxiety levels and high scores can lead to the requirement for intervention and recommendations related possibly to working conditions and to life-style.

Emma Hawksworth, Solicitor with RJW considered the factors related to maternity and Health & Safety, she noted that in the EOC survey almost 50% of women were unaware of their entitlement to specific risk assessments, 15% of those assessment that were undertaken

failed to identify all risks and that only 85 of employers had appropriate guidance on maternity risk assessments.

She highlighted existing law and guidance available via:-

www.europe.eu.int/eur-lex/en/com/cnc2000/com2000_0466en02.odf

www.hse.gov.uk/pubns/indg373.pdf

www.ilo.org/ilolex/cgi-lex/convde.pl?R191

For the purposes of the law and risk assessments the following definition applies:-

- ❑ A new or expectant mother is either pregnant or has given birth in last 6 months or is breastfeeding
- ❑ There is a statutory duty to carry out risk assessments under the usual procedures recording and informing employees of steps taken.
- ❑ This assessment should cover physical, biological, chemical, work conditions/processes, current knowledge and be reviewed on an ongoing basis.
- ❑ The duty is triggered by notification of pregnancy by employee, on any new mother in employment, on joining or returning to work, as required during the various stages of pregnancy.
- ❑ Specific assessments must look at hours and times of week, fatigue and stress, lifting and manual handling, posture, sitting and standing, extremes of temperatures etc. Follow up actions must be taken and recorded, including variations and changes in working hours conditions and requirements as necessary.
- ❑ Suitable alternative work must be offered and consideration of the need for maternity suspension on full pay taken and to acknowledge that the employee is still treated as if at work.

ET cases of interest include:-

Day vs Pickles – work-related nausea

Tapp vs Chief Constable of Suffolk – probationer taken of her course

BA vs Moore & Bottrill – alternative work and loss of regular employment benefits

NW Health Board and McKenna – sick pay losses

Iske vs P&O Ferries – alternative work

Williams vs MOD – breastfeeding

Julie Morris also of RJW gave a detailed presentation on Protection for Carers, again referring back to the EOC study showing that 45% of pregnant women suffer discrimination; 21% lose out financially as a result; 5% were pressured into resignation and 70% who suffer do not speak out.

RJW experiences were that there was frequent failure to comply with the law; a general lack of awareness rights; employers have concerns regarding advisers publicity and that most cases settle (quite generously) to avoid the publicity factor.

The standard maternity benefits and rights were outlined.

In all a very useful session, but the specific focus on stress-related aspects of pregnancy during work are worthy of examination.

Ian Draper, Network Convener

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