

WORKPLACE SUPPORT FOR BREASTFEEDING EMPLOYEES

Introduction

While returning to work following maternity leave will often be a cause for celebration among teams and management, where the woman plans to continue breastfeeding aided by expressing milk there needs to be support from employers, so she can do so.

Survey evidence

A recent survey by a respected law firm has shed light on the reality faced by many returning mothers. The results revealed that 56% of female employees were required to express milk in inappropriate places such as their desk, in their car or even a staff room. Because of the lack of support provided to breastfeeding employees, 30% of respondents suffered problems when attempting to express milk, and the same percentage stopped doing so much earlier than they had wished to.

The law

The Workplace (Health, Safety and Welfare) Regulations 1992 impose a statutory requirement on employers to provide breastfeeding employees with rest facilities which allow the employee the opportunity to lie down.

The duty to carry out regular risk assessments to identify workplace risks under the Management of Health and Safety at Work Regulations 1999 does not contain a specific requirement for an additional risk assessment to be carried out when the employer becomes aware that a returning employee will be breastfeeding or expressing milk.

However, sensible employers will ensure there are no risks present for breastfeeding employees, and if necessary will carry out an additional risk assessment for returnees. The protections created for an employee under the Equality Act 2010 (EQA) continue to apply when a breastfeeding employee returns to work. In particular, certain workplace practices or policies have the risk of being indirectly discriminatory on the grounds of sex where they apply to all members of staff but have a negative impact on breastfeeding employees – see EQA/02 the definition and consequences of indirect discrimination.

Providing workplace support

It is quite possible that, at some stage, reps will be dealing with a member who is breastfeeding or expressing

milk at work. Within the limits of the legal protection, it is good practice for the employer to provide suitable support for them. After all, the success of their return to the professional environment will often directly relate to how they are managed over this initial returning period.

Reps may wish to ensure returning mothers are introduced back into the workplace with an initial discussion regarding various aspects of their return, in a similar fashion to any employee that had been on long- or medium-term sick leave, in order that their line manager understands their needs and concerns, and that any questions can be answered. Raising the question of breastfeeding or expressing milk can be uncomfortable for some returnees – especially in the male dominated transport sector - and so reps can usefully facilitate this conversation and ensure the necessary provisions or facilities are provided and confirmed by the employer.

Providing suitable facilities

The need to provide breastfeeding employees with resting facilities that allow them to lie down clearly shows that toilets, desk spaces and cars are inadequate and inappropriate places. Instead, employees must, as far as possible, be provided with a private, secure and hygienic place where expressing milk can take place. It will often be the case that employers will not have a clear designated space available for breastfeeding employees, but areas such as a lockable office that can be temporarily made private by covering windows and doors may be

suitable. Again, talking through the available spaces with the employee – perhaps on a KIT day prior to return – can help to smooth the return to work. A further consideration will be the provision of storage facilities for expressed milk. While most workplaces will have a communal fridge in a staff room, it may be the case that the employee does not feel comfortable using this so openly. Possible options include providing a separate fridge area or allocating a space within the communal fridge using a sealable container or cool box which contains hygienic storage space.

Rest breaks and working arrangements

Employees may need to request additional rest breaks to provide time to express milk. While there is no requirement to provide additional time off, employers should review the impact of each request as it is received. In some cases there will be no detriment by allowing additional short breaks, but in other situations there may be an impact on the need to meet service demands.

As a policy of refusing additional rest breaks for breastfeeding may be `classed as indirect discrimination, employers will need to be able to objectively justify such a refusal. Where this request cannot be accommodated reps will need to seek alternative arrangements for members, such as moving or extending current break entitlements or allowing current breaks to be split into shorter periods spread out over the working day or shift.

Flexible working requests

All employees with 26 weeks' continuous service have the right to request flexible working – and to have such a request handled in a reasonable manner. However, it will be unnecessary, and quite possibly unreasonable, for such a request to result in a permanent change to the terms and conditions of the woman returnee, unless she wishes it to become so. Refusal of a flexible working request is only allowed on eight specific legal grounds:

- burden of additional costs
- inability to reorganise work among existing staff
- inability to recruit additional staff
- change will have a detrimental impact on quality
- change would have a detrimental impact on ability to meet customer demand
- detrimental impact on performance
- planned structural changes would be impacted.

Since the request for flexibility would be time limited, it is unlikely that an employer could reasonably argue that any of the above reasons applied to a short-term change would justify refusal.

Should an employer refuse a request the decision must be given to her in writing.

Reps action

Reps may wish to review their company policies and agreements relating to family friendly measures to

ensure breastfeeding returners' needs are covered and being adequately met.

Where existing policies are silent or insufficient, then the matter can be raised as a company council or health and safety committee agenda item.

Acknowledgments and further information

More information on this and other employment rights matters is available from:

- Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- TSSA Helpdesk – 0800 328 2673