

## **Introduction**

This is the response from the Universities and Colleges Employers Association (UCEA) to the consultation on extending redundancy protection for women and new parents. The response is based on views provided by 18 of our member higher education employers.

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 163 HEIs in the UK, in addition to eight sector associate members. Our purpose is to support our member HE employers in delivering excellent and world-leading higher education and research by representing their interests as employers and facilitating their work in delivering effective employment and workforce strategies.

HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore there is a variety of HR practices in place in the sector. Whilst HEIs are not public sector employers they are subject to the public sector equality duty.

## **Extending redundancy protection for women**

### **1. To what extent do you agree that protections against redundancy for a period following return to work should be aligned with those already in place during maternity leave?**

The majority of HEI respondents (71%) agreed or strongly agreed that protections against redundancy for a period following return to work should be aligned with those already in place during maternity leave. A small number of respondents (23%) neither agreed or disagreed and 6% strongly disagreed.

### **2. Please give reasons for your answer.**

The respondent HEIs made various comments in support of their preferred options.

- To protect individuals against maternity-related discrimination – this is important particularly given the research referred to in the consultation paper that discrimination against women returning to work is still prevalent and that women who are parents are disadvantaged in work.
- A wider cultural change is needed to tackle maternity discrimination and strengthening legal protection is a good first step. However, given the evidence that discriminatory practices are still prevalent there is a risk that the proposed extension will have little impact, for example, it will still be possible to make single roles redundant.
- To provide greater security for new mothers at a time when they may otherwise feel vulnerable.

Whilst it was felt that the disadvantage the proposed extension is seeking to address is not an issue in the higher education (HE) sector, respondents made a number of points below:

- It will support and encourage mothers to return to work and enable them to settle back into their role as the period following maternity leave inevitably involves some re-orientation and the extended protection supports the individual to demonstrate their full capabilities in the role.
- The proposed extension complements HEIs' work on Athena SWAN, the HE sector's charter which recognises work undertaken to address gender equality more broadly, including barriers to progression that affect women.
- It will provide employers with the benefit of consistency of protection for women before, during and after maternity leave.
- It will help to retain engaged and motivated staff, which is essential for the long-term success of HEIs.
- Concern was raised by one HEI about making a redundancy decision based on maternity status rather than suitability for the role.

### **3. What costs do you believe the extension would bring?**

The majority of (67%) respondents indicated that extending redundancy protection would not result in any additional costs for individuals and that there would be limited or no costs for businesses. HEIs identified a number of potential disadvantages which include:

- Where it is essential to restructure and/or make redundancies increased protection for maternity returners adds inflexibility as those individuals would have to be offered alternative employment when they may not be the most suitable person out of those at risk.
- Businesses may need to retain staff on the basis of protection rights rather than business needs.
- Some businesses are already reluctant to recruit women of childbearing age and extending redundancy protection may increase this.
- The consultation does not address making wider cultural changes.
- There will be initial hidden costs related to the review and update of policies, training HR staff and managers and increased complexity in identifying eligibility for protection.
- It's not clear whether the extended protection would apply to the routine cessation of fixed-term posts which are technically redundancies. If so, there will be an additional cost.

### **4. What benefits do you believe the extension would bring?**

Respondent HEIs cited a wide range of benefits for individuals and businesses which are summarised below:

#### **a) For individuals**

- Increased protection against discrimination and the knowledge that they have some protection in law and job security at a vulnerable time.
- Increased opportunities for progression.
- An increase in the use of the various family-friendly policies already available in businesses which in turn contributes to a shift in culture towards greater gender equality.

#### **b) For businesses**

- A more committed and engaged workforce.
- Businesses will be able to retain talent and encourage investment in those returning from maternity leave.
- Extended redundancy protection will support the progression of women.

- Improved returner rates will help address gender imbalances in the workforce, for example, discrimination against women contributes to gender pay gaps (GPGs) and extending redundancy protection may have a positive impact on GPGs.
- Consistency of protection for women before and after their maternity leave as well as during it.
- It will contribute to a shift of culture towards gender equality.

**5. Do you agree that 6 months would be an adequate period of “return to work” for redundancy protection purposes?**

The majority of HEI respondents (80%) agreed that six months would be an adequate period of return to work for redundancy purposes with 20% disagreeing.

**6. Please give reasons for your answers.**

Respondent HEIs made a number of comments about the proposed six-month return work period as follows:

- Six months is a practical timeframe which can be managed in terms of internal systems. A longer period would make it more difficult to track who is in scope of protection.
- Six months is a sufficient length of time for individuals to settle back into work, arrange childcare and re-establish and re-orientate themselves in a potentially revised role, for example to update on new systems and changes to the role or work.
- Six months aligns with the protection offered to research active staff by one HEI on their return in relation to a reduced teaching load.

**7. If you think a different period of “return to work” would work better, please say what that should be and explain why?**

Respondent HEIs (20%) suggested a number of different return to work periods which are summarised below:

- It might be more effective to extend the return to work period of redundancy protection to a year.
- Research staff returning to work from maternity leave might benefit from a longer period of protection to enable them to catch up with the latest developments in rapidly evolving research fields.
- Four months would be a more suitable period of return to work and would be sufficient for an individual to re-establish themselves in the workplace.

**8. Should pregnancy for redundancy protection purposes be defined as starting at the point a woman informs her employer that she is pregnant in writing?**

The majority of respondent HEIs (69%) agreed or strongly agreed that pregnancy should be defined as starting at the point that a woman informs her employer that she is pregnant in writing with 6% of respondents neither agreeing nor disagreeing and 25% disagreeing or strongly disagreeing.

A number of HEIs commented that clarity is needed as to what informing an employer means in practice, for example, whether it includes informing a colleague or occupational health.

### **9. Do you think a different reference point should be used?**

The majority of respondent HEIs (67%) indicated that the reference point should remain as it is i.e. the point at which a woman informs her employer that she is pregnant in writing with 33% indicating that a different reference point should be used.

### **10. If yes, please say what that should be and explain why.**

The respondent HEIs who indicated that a different reference point should be used made the following comments:

- Protection for pregnant women should commence from the point that the employer first becomes aware of the pregnancy which might be verbally from the woman or by another member of staff.
- Employers have a duty of care towards pregnant women at the point of notification regardless of the notification process.
- The reference point should start with the issuing of form Mat B1.

### **Other Groups**

### **11. Do you agree that the most direct equivalents to return to work from statutory maternity leave (on the basis that they are forms of leave that can potentially be taken by parent of either gender for longer periods) are:**

The responses of HEIs by percentage are given below:

#### **a) adoption leave**

Yes **94%**  
No **6%**

#### **b) shared parental leave**

Yes **88%**  
No **12%**

#### **c) longer periods of parental leave\***

Yes **27%**  
No **73%**

One respondent HEI considered that including parental leave would be open to manipulation because the notification period for parental leave is shorter than that for maternity or adoption leave therefore parental leave can be requested at any point by individuals looking for an advantage over others during a redundancy process. Others commented that parental leave can only be taken in blocks of four weeks a year and is most commonly used as a short-term solution to make arrangements for the child's care or welfare. There is, therefore, no equivalence to maternity leave if the intention is to ensure parity and a level playing field or to extend protection to anyone taking leave for family and/or care related reasons.

#### **d) Other?**

### **12. If other, please explain your reasons.**

An HEI suggested that redundancy protection should be offered to any employee absent for family or care reasons for a period of time and considered that the need to support family

and care arrangements will increase in future years as the demographic mix of the UK continues to change. It would be sensible to offer wider protection to staff of any gender and in the spirit of inclusion.

**13. Supposing that the additional redundancy protection afforded by the Maternity and Parental Leave etc Regulations (1999) (MAPLE) is extended to mothers returning to work after maternity leave, to what extent do you agree that the same protection should be extended to the groups above e.g. adoption leave, shared parental leave, longer periods of parental leave?**

The majority of respondent HEIs (81%) indicated their agreement or strong agreement to extending the additional redundancy protection afforded by MAPLE to other groups, for example, those returning from adoption leave or shared parental leave.

**14. Please explain the reasons for your answer.**

Respondent HEIs made a number of comments as follows:

- Extension of protection to other groups should be afforded in the interests of openness, fairness, transparency and to encourage parity in care giving.
- A number caveated their positive response to question 13 by stipulating that the additional redundancy protection should apply to adoption and shared parental leave only, as parents who take adoption or shared parental leave are likely to experience the same challenges and bias on return to work so should be protected.
- Extending the protection may encourage men to apply for shared parental leave.
- There may be a case to offer protection for shared parental leave which extends over a certain duration, for example, four months but not for all cases as some employees may only take small blocks of shared parental leave.
- As shared parental leave can be taken in blocks this raises an issue in determining when a period of protection begins and the administrative burden in recording this.

Parental leave was viewed differently by HEIs and comments are summarised below:

- Protection should not be extended to parental leave as it is limited to four weeks block and is not equivalent to maternity leave – to extend protection to parental leave would be disproportionate.
- Protection should not be afforded to parental leave because it is unlikely to be long enough to impact on an individual's career and cause a detriment.

### **Awareness of rights and obligations**

**15. How effective have these steps\* been in achieving their objective of informing:**

The responses of HEIs by percentage are given below:

**i) pregnant women and new mothers of their employment rights?**

Very effective/fairly effective      **39%**

not at all effective                      **15%**

don't know                                  **46%**

**ii) employers of their rights and obligations in relation to pregnant women and new mothers?**

Very effective/fairly effective      **54%**

not very effective	15%
don't know	31%

#### **16. Please give your reasons.**

The respondent HEIs made various comments in support of their views about the effectiveness of the steps the Government has taken so far to inform pregnant women, new mothers and employers of their rights and obligations and these are summarised below:

- Respondent HEIs confirmed that they both use and refer to the the Gov.UK website and Acas guidance in their own policies, procedures and information for pregnant employees.
- One respondent confirmed that pregnant employees are always offered an appointment with a member of the HR department to discuss their maternity leave, maternity pay, options and initial plans.
- Whilst pregnant women and new mothers may be aware of their rights, research shows that intentional or unintentional discrimination against pregnant women and returning mothers is still prevalent. Only a very small number of those discriminated against make claims against their employer which suggest a deeper cultural problem than a lack of awareness of their rights.
- The obligations of employers are not well known and could be more clearly set out, for example, the right of pregnant women to rest.
- Organisations generally facilitate maximum entitlements to maternity leave and usually accommodate flexible working on return.

#### **17. Is there anything further that the Government or others could do to improve the guidance to employers and employees about the rights of pregnant women and new mothers and employers' obligations towards them?**

Respondents provided a range of suggestions to improve the guidance to employers and employees including the following:

- Run specific advertising, guidance and awareness campaigns.
- Engage advisers specifically focused on the rights/options for individuals.
- Simplify the criteria and options for maternity, shared parental and adoption leave.
- Provide paperwork on the legal rights of workers for GPs and midwives to hand out at pregnancy related medical appointments.
- Simplify the legal framework.
- Provide tools to support employers to communicate the rights and entitlements of employees.

**UCEA**  
**2 April 2019**