

# Pregnancy Sickness and Employment - Information for Employers

We are often contacted by employers seeking advice on how to deal with employees who are suffering from nausea and vomiting in pregnancy (NVP) or the extreme form of this known as hyperemesis gravidarum (HG). Although many employers are sympathetic to women suffering from severe NVP or HG, we find equally that some employers are unaware of the wide spectrum of NVP and the significant impact that severe NVP and HG can have on a woman's ability to carry out simple daily tasks, let alone carry out her usual paid employment.

The purpose of this page is to provide information and assistance to employers of women who require time off work because of NVP or HG.

The page sets out:

- General information on NVP and HG.
- Information on NVP- and HG-related absence from work.
- Your legal obligations to pregnant employees, specifically in the context of NVP and HG.
- What you should do if one of your employees is suffering from NVP/HG.
- Where you can go for more information.

## General information

Nausea and vomiting in pregnancy is very common. It is often referred to as morning sickness which is a very misleading and unhelpful description. Pregnancy sickness can occur at any time of the day and in the worst cases can last all day (and night) long. On average NVP affects 70-80% of pregnant women to a greater or lesser extent, with about 40-45% suffering nausea and vomiting.

Any form of NVP is an unpleasant experience for the woman concerned. HG is a condition at the severe end of the pregnancy sickness spectrum which requires medical treatment to ensure the health and wellbeing of the mother and the baby. With HG, the nausea and vomiting is so severe that the woman loses a considerable amount of weight and becomes dehydrated and depleted of nutrients. One in 100-150 pregnant women will need to be admitted to hospital because they have HG.

Severe NVP and HG can have a profound effect on the woman's ability to function in carrying out even the simplest of daily tasks and it is not uncommon for women suffering from HG to need help caring for themselves. Unrelenting retching and vomiting over a prolonged period is a very traumatic experience. It is both mentally and physically debilitating and can lead to feelings of isolation and depression as women are effectively housebound for the duration of their illness.

## Pregnancy sickness and employment

It is estimated that approximately 30% of women in paid employment need time off work due to NVP.

The key for anyone suffering from NVP or HG is rest. HG is an episodic condition with frequent periods of recovery and relapse. It is important that a woman does not return to work too soon, although this may be the temptation if she starts to feel a bit better. Employers should be aware that there is a significant risk of relapse if a woman returns to normal activities before she is physically ready to do so.

# Employers' legal obligations

## Pregnancy discrimination

Under the Equality Act 2010, it is unlawful discrimination for an employer to treat a woman unfavourably because of her pregnancy or an illness relating to her pregnancy or because she is exercising, has exercised or is seeking or has sought to exercise her right to maternity leave. This special protection applies from when a woman becomes pregnant and continues until the end of her maternity leave, or until she returns to work if that is earlier. This is referred to as "the protected period".

Anyone who has suffered discrimination can bring a claim for compensation before an employment tribunal.

## What is unfavourable treatment?

Unfavourable treatment could be demotion, dismissal or the denial of training or promotion opportunities because an employee is pregnant or on maternity leave. An employer is not permitted to take into account any pregnancy-related absences during the protected period for the purposes of attendance management or when deciding whether to dismiss an employee. This would also be unfavourable treatment. For this reason, employers should record separately any sick leave taken for a pregnancy-related illness.

Unlike some other types of discrimination there is no need for the woman to show that she has been treated less favourably than any other workers such as a man, or a woman who is not pregnant.

By way of example, unfavourable treatment for any of the following reasons will amount to pregnancy discrimination:

- any absence due to pregnancy-related illness;
- a woman's inability to attend a disciplinary hearing due to pregnancy sickness or other pregnancy-related conditions; or
- performance issues due to pregnancy sickness or other pregnancy-related conditions.

## Unfair dismissal

It is also unlawful for an employer to dismiss a woman because of her pregnancy regardless of how long she has worked for the employer or how many hours she works. This is unfair dismissal and would also enable the woman to bring a claim for compensation before an employment tribunal.

## Sick pay

If an employee takes sick leave for a pregnancy-related reason, you must pay her the same sick pay that you would pay to employees who are off sick for other reasons. If she qualifies, she will be entitled to Statutory Sick Pay (SSP). If you normally pay contractual sick pay, over and above SSP, she should be entitled to that in the usual way.

The employee can get £109.40 a week Statutory Sick Pay (SSP) for up to 28 weeks.

They can get SSP from the fourth day they are off sick.

If they are eligible, they'll be paid SSP for all the days they're off sick that they normally would have worked, except for the first 3.

You have to pay SSP for the first 3 working days they are off sick if either of the following apply:

- the period you were away from work started before 25 March 2022 and you were off sick because of COVID 19.
- you received SSP within the last 8 weeks, and that already included a 3-day waiting period before you were paid SSP

You are entitled to require evidence from the employee of incapacity to work. This will normally take the form of "self-certification" for absence of seven calendar days or less (i.e. a signed statement from the employee giving the dates and brief description of the incapacity). For longer periods a doctor's note is

usually required.

In theory, it is up to the employer to decide what medical evidence is required from employees and at what stage. However, for the purposes of administering statutory sick pay, you are not allowed to insist on a doctor's certificate for at least the first seven days.

## **What you should do**

If one of your employees is off sick because of a pregnancy-related illness, here are some tips on what you should do:

### **Obtain medical evidence**

As with any other illness, you are entitled to require the employee to provide medical evidence of her incapacity to work and to follow your sickness absence procedures.

### **Be supportive**

You should be as sympathetic and supportive as you can towards a woman who is suffering from severe NVP or HG. It is likely that she will already be feeling very low and it is important not to add to her stress.

Aside from the legal risks highlighted above, in the long run this approach is also better for your business. A woman who feels she is believed and is treated sympathetically by her employer is much more likely to return to work after maternity leave as a happy and loyal employee.

### **Allow the woman to rest**

Rest is a crucial element in managing NVP and HG. It is important to allow a woman to take the rest she needs. If a woman starts to feel a little better and does too much too soon then this can set her back and delay her recovery. So, do not put pressure on her to return to work too soon.

### **Keep in contact**

It is a good idea to keep in touch with an employee who is absent long term in a sensitive, non-intrusive manner.

### **Consider a phased return to work if appropriate**

If and when the woman is able to return to work during pregnancy, consider whether there are any measures you can take to help her. For example, a sensible option is for the woman to have a phased return to work involving shorter days initially, rather than an immediate return to full time hours. Consider also whether it would help the woman to work from home for some of the time, if this is feasible, so as to avoid the additional effort of travelling to work.

# Further information

## Acas

Information on employment law - [www.acas.org.uk](http://www.acas.org.uk)

## Gov.uk

Information on employers' legal obligations, including those relating to discrimination, unfair dismissal and sick pay - [www.gov.uk/browse/employing-people](http://www.gov.uk/browse/employing-people)

## Equality and Human Rights Commission

Information on equality and discrimination - [www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers](http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers)

## Maternity Action

Advice and information sheets on maternity rights and benefits - [www.maternityaction.org.uk](http://www.maternityaction.org.uk)

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This information has been produced with the assistance of employment lawyers at SGH Martineau LLP – [www.sghmartineau.com](http://www.sghmartineau.com), 0800 763 1000. Pregnancy Sickness Support would like to thank them for their assistance.



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Contact us for more information

[www.pregnancysicknesssupport.org.uk](http://www.pregnancysicknesssupport.org.uk)  
[office@pregnancysicknesssupport.org.uk](mailto:office@pregnancysicknesssupport.org.uk)