

Employment Bulletin

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PREGNANT WORKERS AND RISK ASSESSMENTS

In the recent case of *O'Neill v Buckinghamshire County Council*, the EAT looked at the issue of risk assessments for pregnant workers. The EAT concluded, that whilst it may be prudent for employers to carry out risk assessments for all pregnant workers, in order for the employer to fall under a **specific duty** to conduct a risk assessment for a pregnant worker, three conditions must be met:

1. That employee notifies the employer in writing that she is pregnant
2. That the work is of a kind which could involve a risk of harm or danger to the health and safety of a new or expectant mother or to that of her baby and
3. That the risk arises from either processes or working conditions or physical, chemical or biological agents in the workplace at the time specified in a non-exhaustive list set out in the Pregnant Workers Directive.

This case follows on from case law in 2007 *Madarassy v Nomura International plc* which held that the employer's duty to conduct a risk assessment only arises where the work is of a kind which could involve special risk to a new or expectant mother or her baby. The *O'Neill* case has gone further to set out specific criteria.

Both the *Madarassy* case and the above *O'Neill* case strengthen the proposition (set out in the *Harman v Mallon* case) that if such a duty to conduct a risk assessment has arisen, failure to conduct the appropriate risk assessment could be held to be direct sex discrimination.

Further, remember that if risks to a pregnant worker's health and safety (or the health and safety of her baby) are identified, the employer is under a duty to do all that is reasonable to remove or prevent exposure to any significant risk that has been found.

👉 Practical Tip

Make sure that you have conducted suitable and sufficient risk assessments for all of your employees as to the risks to health and safety they are exposed to at work. Whilst there is no automatic requirement to conduct a specific risk assessment for all pregnant employees we would recommend that this is done as a matter of best practice and to minimise any potential for a sex discrimination claim.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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