Managing the health and safety of pregnant employees in the retail sector

For positively managing and supporting pregnant employees, in conjunction with IBEC Guidelines

Managers training module

Funded by the Equality Mainstreaming Unit which is jointly funded by the European Social Fund 2007-2013 and by the Equality Authority

Investing in your future

2012
Managing the health and safety of pregnant employees

Background

• Research from the ESRI was published by the Equality Authority and HSE Crisis Pregnancy programme (June 2011)
• Majority of women felt their employer was supportive during pregnancy (71%) and most were satisfied with their treatment at work during pregnancy
• A minority of women in employment during pregnancy reported that they experienced problems
• The reporting of unfair treatment was most pronounced in the retail sector (36%)
• Health and safety risk assessment throws up specific issues for the retail sector because of periods of standing/ lighting/ manual handling/ lifting

Aim of project

• Develop best practice guidelines and a training module for managers on how to carry out a risk assessment and manage pregnant workers in retail
• Designed to support a planned and systematic approach to managing pregnant employees in the Irish retail sector
• The guidelines are a tool for managers on how to implement best practice maternity support and minimize health and safety and discriminatory risks for pregnant employees in the retail sector
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Economic context

- Retail sector has traditionally attracted a high female participation
- Generally a positive supportive approach towards pregnancy in the workplace
- Low number of pregnancy related cases referred under Employment Equality legislation
- 65% of decisions issued under employment equality and pensions cases were successfully defended by employers
- No evidence of ‘culture of fear’

Figures

- ESRI report figures, June 2011
  - 92% of women took paid maternity leave
  - 41% of women took unpaid maternity leave, mostly taking it in addition to paid leave
  - 48% of women received a top-up payment from their employer in addition to state maternity benefit
  - Only 18% of women who had returned to work had requested to take any parental leave
  - Most women had returned to work by the time of the survey (71%), usually to the same employer and a further 22% intended to return to work within 2 years
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Main findings of the project

- Retail employers are very active and vigilant towards dealing with pregnancy in the workplace
- There is a knowledge gap in terms of the legislation
- We advise all employers to review their policies and procedures
- The role of the line manager is extremely important
- Employers being informed earlier about pregnancy
- Need to demystify the traditional ‘risk assessment’
- Clearer guidance needed on health and safety leave
- Focus on securing an employee’s return to work

Categories and types of risks

<table>
<thead>
<tr>
<th>Physical agents</th>
<th>Chemical agents</th>
<th>Biological agents</th>
<th>Working conditions</th>
<th>Common general risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Movements and postures – including standing and lifting</td>
<td>Cleaning agents</td>
<td>Infectious diseases</td>
<td>Facilities (including rest rooms) Awareness regarding passive smoking</td>
<td>Tiredness/Other general medical conditions</td>
</tr>
<tr>
<td>Noise</td>
<td>Toxic chemicals</td>
<td>Mental and physical fatigue, working hours</td>
<td>Seating – need to move more, need time away from cash registers/ counters.</td>
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<tr>
<td>Shocks and vibrations</td>
<td>Perfumes</td>
<td>Stress (including postnatal depression)</td>
<td>Normal illness and coughs and colds—pregnant women still get usual sicknesses.</td>
<td></td>
</tr>
<tr>
<td>Manual handling</td>
<td>Pesticides</td>
<td>Temperature</td>
<td>Toilet breaks</td>
<td></td>
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<tr>
<td></td>
<td>Carbon monoxide</td>
<td>Working alone</td>
<td>Back pain</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lead</td>
<td>Working at height</td>
<td>Gestational diabetes</td>
<td></td>
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</tbody>
</table>
Managing the health and safety of pregnant employees

Aim of the training module

- By the end of this workshop you will:
  - Know how to appropriately manage a pregnant employee
  - Understand the legal basis for pregnant employee health and safety risk assessments
  - Understand the process of completing a pregnant employee risk assessment
  - Be able to identify within your workplace potential problems that could lead to risk to pregnant employees
  - Understand an employer’s responsibilities to reduce the risks to pregnant employees (including discriminatory risks)

Contents of the guidelines

- Section 1: Background to the best practice guidelines
- Section 2: Contemporary issues concerning pregnant employees
- Section 3: Relevant employment legislation
- Section 4: Managing the pregnant employee
- Section 5: Health and safety leave
- Section 6: Managing the return to the workplace
- Section 7: Resources
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Risk assessment overview

What is the relevant legislation?

- Maternity Protection Acts 1994 and 2004
- Safety Health and Welfare at Work (General Application) Regulations 2007 – Protection of Pregnant, Post Natal and Breastfeeding Employees
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Maternity Protection Acts 1994 and 2004

- Key provisions
  - Maternity leave
  - Leave for fathers
  - Leave on health and safety grounds
  - Ante-natal and post-natal care
  - Employment protection

Maternity Protection Acts 1994 and 2004

- Entitlement
  - 26 weeks leave (paid by social welfare)
  - 16 weeks additional leave (unpaid)
- Notice requirements
  - 4 weeks written notification
  - Notice required for
    - maternity leave
    - additional maternity leave
    - return to work
Commencement and postponement

- Maternity leave must begin at least 2 weeks in advance and end not earlier than 4 weeks after due date

- Subject to the employer’s agreement
  - Additional maternity leave can be terminated in the event of illness of the mother
  - Maternity leave or additional maternity leave can be postponed if the child is hospitalised
    - At least 14 weeks of maternity leave must be taken before any postponement

Natal care leave and classes

- Employee entitled to time off for ante/post natal care, without loss of pay
  - Medical or related appointments
  - Two weeks notice of appointments, except for the first appointment (notice within a week after)

- Entitlement to time off without loss of pay for classes
  - Mother - one set of classes (except last three)
  - Father - last two classes before one birth (once off basis)
Breastfeeding

- At the option of the employer, employees are entitled to either
  - Paid breaks where facilities are provided in the workplace
  - Reduction in working hours without loss of pay

- This applies for 26 weeks after the date of confinement
- Any alterations should give rise no more than a nominal cost to the employer

Employment protection

- Statutory and contractual rights are protected (except remuneration and superannuation)
- Leave reckonable for the purposes of annual leave, public holidays and service
- Right to return to same job or suitable alternative
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Protection of Pregnant, Post-natal and Breastfeeding Employees - General Application Regulations 2007

- Definitions
  - “Employee” means a pregnant employee, an employee who is breastfeeding or a post-natal employee
  - “Employee who is breastfeeding” means an employee who, having given birth not more than 26 weeks previously, is breastfeeding
  - “Post-natal employee” means an employee who gave birth not more than 14 weeks preceding a material date
  - “Pregnant employee” means an employee who is pregnant

Legislation covers

- All female employees whom:
  - are pregnant
  - have recently given birth (within 14 weeks of giving birth)
  - are breastfeeding within 26 weeks following the birth
    - And have informed their employer
- Employer must make sure employees are aware of the need to inform the employer
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General Application Regulations 2007 - Protection of Pregnant, Post-natal and Breastfeeding Employees

- Key focus
- Protection from occupational hazards during pregnancy, postnatal and while breastfeeding
- Identifies and lists conditions known to affect pregnant and breastfeeding women or the developing child
- Requirement for risk assessment to be completed for every employer and every pregnancy

When are actions required from the employer?

- Risk assessment
  - Once the employer has been advised of the pregnancy - employer may request medical or other appropriate certification confirming the condition
  - Employee returning to work who has recently given birth - 14 weeks after the birth
  - Employee returning to work who is breastfeeding – up to 26 weeks after the birth
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Notification - risk assessment

- Risk Assessment
  - Assess the risk to employee from exposure to any agent, process or working condition
    - Nature
    - Degree
    - Duration
  - Risk assessment is conducted in conjunction with the company safety statement

Hazards – Schedule 8 General Application Regulations 2007

- Pressurisation chambers
- Rubella – unless adequately immunised
- Toxoplasma (parasite from eating undercooked meat or handling cat litter or soil)
- Lead and lead substances
- Underground mine work
- Certain physically demanding tasks – heavy lifting, for instance
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Hazards – Schedule 8 General Application Regulations 2007

- Manual handling of loads
- Abrupt or severe movement and postures giving rise to excessive fatigue
- Physical shocks
- Working at heights
- Vibration
- Noise
- Non-ionising electromagnetic radiation
- Ionising radiation
- Extremes of temperature
- Chemicals
- Biological agents
- Working in hyperbaric atmospheres

Manual handling

- As the pregnancy progresses, especially after 28 weeks, a pregnant worker is at greater risk from manual handling injury. This is due to hormonal relaxation of the ligaments and the postural problems of advancing pregnancy
- There can also be risks for those who have recently given birth, for example after a caesarean section there is likely to be a temporary limitation on lifting and handling capability
- There is no evidence to suggest that breastfeeding mothers are at greater risk from manual handling than any other employee
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Manual handling

- It may be possible to alter the nature of the task so that risks from manual handling are reduced for all employees including new or expectant mothers
- It may be necessary to address the specific needs of the employee and reduce the amount of physical work, or provide aids for her to reduce the risks she faces
- Manual handling training and re-instruction should also be considered

Movements and posture

- Fatigue from heavy work and long shifts may be associated with miscarriage, premature birth and low birth weight
- Excessive physical or mental pressure may cause stress and can give rise to anxiety and raised blood pressure
- Pregnant workers may experience problems in working at heights, platforms and in working in tight fitting workspaces or with workstations which do not adjust sufficiently to take account of increased abdominal size, particularly during the later stages of pregnancy
- This may lead to strain or sprain injuries. Dexterity, agility, coordination, speed of movement, reach and balance may also be impaired, and an increased risk of accidents may need to be considered
- Have to manage the situation
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Noise

- The womb is believed to offer an approximate 15 dB attenuation (quieting). This means if a pregnant employee is being exposed to 85 dB’s the foetus will still be exposed to approx. 70dB’s.
- Pregnant women should avoid any exposure to noise greater than 100dBA, unless absolutely essential for quickly moving through a high noise area.

Vibration

- Low frequency, whole body vibration can be problematic for a developing pregnancy.
- This is the type of shaking vibration one might experience if operating a jackhammer or driving off road vehicles at speed.
- It is to be avoided during pregnancy.
Non-ionising radiation

- Non-ionizing radiation includes electromagnetic fields emitted from computers, microwave communication systems, microwave ovens, power lines, cellular phones, household appliances, heating pads and warming blankets, airport screening devices for metal objects, and diagnostic levels of ultrasound.

- The reproductive risk of non-ionizing radiation is minimal if even existent.

Ionising radiation

- Examples – x-rays, gamma rays, ultraviolet, radon.

- For information on the statutory ionising radiation dose limits currently applying to pregnant employees see the Radiological Protection Institute of Ireland website [www.rpii.ie](http://www.rpii.ie)
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Hazards - biological

- Biological Agents Regulations 1994
  - Agents of risk group 2 - E coli, streptococcus
  - Agents of risk group 3 - Brucella abortis
  - Agents of risk group 4 - Lassa virus, ebola
- Toxoplasma
- Rubella virus

Hazards - chemical

- Substances labelled R40, R45, R46, R61, R63, and R64
- Carcinogens regulations 1993
- Carbon monoxide
- Mercury and mercury derivatives
- Antimitotic (cytotoxic) drugs
- Chemical agents of known and dangerous percutaneous absorption
- Lead and lead derivatives
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Hazards – chemicals containing the following risk phrases

- R40 - possible risk of irreversible effects
- R45 - may cause cancer
- R46 - may cause heritable genetic damage
- R61 - may cause harm to the unborn child
- R63 - possible risk of harm to the unborn child
- R64 - may cause harm to breast fed babies

Additional aspects of pregnancy that may affect work

<table>
<thead>
<tr>
<th>Risk</th>
<th>Alert</th>
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<tbody>
<tr>
<td>Morning sickness</td>
<td>Early shift work</td>
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<td>Smells</td>
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<td>Backache</td>
<td>Standing</td>
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<td>Manual handling</td>
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<td>Posture</td>
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<td>Varicose veins</td>
<td>Standing</td>
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<td>Sitting</td>
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<td>Toilet visits</td>
<td>Difficulty in leaving job</td>
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<td>Increased size</td>
<td>Personal melodrone equipment</td>
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<td>Confined spaces</td>
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<td>Tiredness</td>
<td>Overtime</td>
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<td>Evening work</td>
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<td>Driving</td>
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<tr>
<td>Balance</td>
<td>Slippery surfaces</td>
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<tr>
<td>Comfort</td>
<td>Tight fitting workspaces</td>
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Risk assessment controls

- Adjust working conditions
- Eliminate risk
- Adjust working hours
- Offer alternative work
- Health and safety leave
  - Maternity Protection Acts
- Review night work
- Provide information

Risk assessment - HSA Model

Identify hazards ➔ Evaluate risk

Monitor ➔ Control
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Risk assessment - hierarchy of control

Having assessed the risk, implement control measures

- **Control at Source**
  - Eliminate
  - Substitute

- **Engineer**
  - Enclose/ Contain
  - Distance/ Isolate
  - Procedures, reduce exposure, permits, training, supervision

- **Admin controls**
  - Head, foot, hand, body Protection

- **PPE**

Implementing control measures

- Manual handling of loads
- Abrupt or severe movement and postures giving rise to excessive fatigue
- Physical shocks
- Working at heights
- Vibration
- Noise
- Non-ionising electromagnetic radiation
- Ionising radiation
- Extremes of temperature
- Chemicals
- Biological agents
- Working in hyperbaric Atmospheres
- Others as applicable
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Health and safety leave

- If, following the conducting of a comprehensive risk assessment, a significant health and safety risk is identified for a new or expectant mother, employers must take the following actions:
  - **Action 1**: Temporarily adjust her working conditions and/or working hours; or if that is not possible
  - **Action 2**: Offer her suitable alternative work (at the same rate of pay) if available; or if that is not possible
  - **Action 3**: Suspend her from work on health and safety leave for as long as necessary to protect her health and safety, and that of her child

Health and safety leave

- An employee will remain on health and safety leave until:
  - the employee becomes entitled to maternity leave; or
  - 14 weeks after the date of the birth, for women who have recently given birth and are at risk; or
  - 26 weeks following the date of the birth, in the case of breastfeeding mothers who are at risk; or
  - the date on which a fixed-term contract expires; or
  - the risk no longer exists; or
  - the employee is no longer vulnerable to the risk; or
  - suitable alternative work becomes available
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**Adjusting working conditions or hours**

- Can the individual take frequent short breaks if needed?
- Can her hours by altered or could she work from home some days, to avoid travelling during peak periods?
- Can her workstation be made more comfortable?
- Can the work be done sitting down, to avoid continuous standing?
- Can a less harmful chemical be used?
- Can using a trolley take the strain out of moving loads?
- Can exposure times be reduced—job rotation?
- Can additional assistance be given to eliminate the need for manual handling?

**Alternative work**

- Review available positions within the organisation and seek alternative position for the employee in question
- Ensure that new position risk is assessed
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Health and safety leave

- If adjusting the working conditions and or hours does not remove the risk and where alternative duties cannot be offered employee must be placed on health and safety leave

- Section 18 of the Maternity Protection Act 1994
  - paid her usual wage by her employer for the first twenty-one days of her leave – 3 weeks
  - thereafter, health and safety leave is paid by the Department of Social Protection subject to her PRSI contributions

Review night work

- Night work, means between the hours from 11pm on any day and 6am on the following day where an employee works at least 3 hours in that period as a normal course or at least 25% of the employee’s monthly working time is performed in that period

- If an employee has a medical certificate stating that for health and safety reasons she is not fit to perform night work during the pregnancy or for fourteen weeks afterwards, the employer must remove her from night work by either transferring her to daytime duties, or if this is not feasible, grant the employee health and safety leave

- It should be noted that an employee transferred to day work would not retain her night shift premium
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Provide information to the employee on

- the risks she is exposed to – copy of the risk assessment,
- the control measures being implemented,
- alternative duties being offered,
- health and safety leave (if applicable)
- review dates

Employee should be advised to discuss the findings of the risk assessment with her GP / Consultant

Guidelines- managing the pregnant employee (Section four)

- Role of the line managers and promotion of a positive culture
- Methodology to carry out a health and safety risk assessment
- Day to day management of pregnant employee
- Hints and tips for line managers when employees go on maternity leave
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Role of line manager

- Line manager role and training
- Policies, procedures and paper trail
- Promotion of a positive environment

Health and safety risk assessment

- Ensure notification procedure is applied
- Conduct risk assessment in line with the company safety statement
- Carry out in conjunction with pregnant employee
- Active communication with pregnant employee
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Day to day management of pregnant employee

- Time off from the workplace
- Performance management
- Crisis pregnancy

Hints and tips for line managers when employees go on maternity leave

- Keeping in touch
- Remuneration and benefits
- Planning cover and manpower provision
- Return to work
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Support resources in Guidelines

- Sample pregnancy and maternity protection policy

- General resources
  - Uniforms
  - Rest and relaxation room
  - Night-work
  - Noise
  - Temperatures
  - Chairs

- Risk assessment form
  - Template provided in guidelines

Managing the return to the workplace

- Return to the workplace
- Provision of alternative work
- On her return to work
- Should the employee choose not to return to work
Pregnant employees – putting the guidelines into action

Typical FAQs

- What should an employer do when he/she becomes aware that an employee is pregnant?

Once an employer becomes aware that an employee is pregnant, they must assess the specific risks to that employee and take action to ensure that she is not exposed to anything, which will damage either her health or that of her developing child.
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Pregnant employee – FAQs

- What hazards are specific to pregnancy?

  Unless the risk assessment indicates that there will be no injury to the employee or the developing child, pregnant employees must not work with:
  - Pressurization chambers
  - Rubella – unless adequately immunised
  - Toxoplasma
  - Lead and lead substances
  - Underground mine work

Pregnant employee – FAQs

- What hazards are specific to breastfeeding?

  Unless the risk assessment indicates there will be no injury to the employee or the developing child, employees who are breastfeeding must not work with
  - Lead and lead substances
  - Underground mine work
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Pregnant employee – FAQs

- **Employee works for long periods on VDU’s – is this harmful to the unborn child?**

  In light of scientific evidence pregnant women do not need to stop working with VDUs

  The provisions of the Safety, Health and Welfare at Work (General Application) Regulations, 2007 (Visual Display Units) apply to all users of VDUs

- **Can extremes of heat and cold affect the unborn baby?**

  When pregnant, women tolerate heat less well and may be liable to heat stress and faint easily. Breast-feeding may be impaired by heat dehydration. Pregnant workers should take great care when exposed to prolonged heat at work, for example when working near furnaces. Rest facilities and access to water help

  No specific problems arise from working in extreme cold but warm clothing should be provided.
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Pregnant employee – FAQs

- Employee works in a noisy environment - can it harm the hearing of the unborn child?

There are no specific risks to new or expectant mothers or to the fetus, but prolonged exposure to loud noise may lead to increased blood pressure and tiredness. There are no particular problems for women who have recently given birth or who are breastfeeding.

Compliance with the Safety, Health and Welfare at Work (Control of Noise at Work) Regulations, should be sufficient to meet the needs of new or expectant mothers.

- An employee is breastfeeding – what are her rights?

The Maternity Protection (Amendment) Act 2004 provides that breastfeeding mothers are entitled to one hour paid time off per day for the purposes of breastfeeding or expressing milk in the workplace, where facilities are provided by the employer, or a similar reduction in working hours (on full pay) to facilitate breastfeeding where facilities are not provided.

Entitlement is up to six months after the birth.

The employer can provide facilities where this does not give rise to more than a nominal cost. These are measures to encourage breastfeeding and not health and safety provisions.
Does an employer need to provide a rest room for pregnant employees?

Regulation 24 of the Safety, Health and Welfare at Work (General Application) Regulations, 2007 states that an employer shall ensure that pregnant, post natal and breastfeeding employees are able to lie down to rest in appropriate conditions, so far as is reasonably practicable.