

**WRITTEN QUESTION TO THE MINISTER FOR SOCIAL SECURITY
BY DEPUTY S.Y. MÉZEC OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 14th JULY 2015**

Question

“Would the Minister explain what the logic is behind section 22 of the Discrimination (Sex and Related Characteristics) (Jersey) Regulations 2015 allowing for employers to suspend pregnant women without pay if there is deemed to be a health and safety risk?

Would the Minister undertake to put in place provisions to ensure women do not end up losing their income as a consequence of getting pregnant?”

Answer

The Deputy is referring to Regulation 8 of the Discrimination (Sex and Related Characteristics) (Jersey) Regulations 2015 - adopted by the States six weeks ago - which would insert a new exception into the Discrimination (Jersey) Law 2013 at paragraph 22, Schedule 2.

Although this creates an exception under the Law, this provision taken in conjunction with all of the other changes that will come into force on the 1 September will improve the position considerably for pregnant and breastfeeding women.

An employer may currently be able to fairly dismiss a pregnant woman on capability grounds where there is a health and safety issue. From 1 September, it will be automatically unfair from day one of employment for an employer to dismiss an employee for reasons connected with her pregnancy.

In addition, if an employer is considering suspending a pregnant employee without pay for reasons relating to health and safety, there is currently no requirement to first consider allocating the employee to other duties. This exception will provide that such an act would not be an act of discrimination **only** if the following three circumstances apply;

1. It must not be reasonably practicable for the employee to continue working in her usual employment according to a risk assessment undertaken in accordance with the Health and Safety at Work (Jersey) Law 1989, and
2. It must not be reasonably practicable for the employer to allocate the employee to other duties, alter her duties or make appropriate changes to the working environment, and
3. The employer would not have treated another employee (without the characteristic of pregnancy/maternity) more favourably. If a man would have been suspended on full pay, for example, then this will be sex discrimination.

The purpose of this exception is to allow an employer to act within its established policies in relation to paid and unpaid suspension, or assignment to alternative duties on health and safety grounds. The strict tests that are applied mean that the exception will not apply if an employer has not actively considered what could be done in the workplace to control or reduce any risks, which in many cases would be minimal. An employer that wishes to rely on this exception would be expected to produce a written risk assessment.

There are few instances in Jersey of businesses or occupations that bring specific and direct risks to a pregnant or breastfeeding woman that would require significant action to protect the health and safety of the woman and/or the foetus. This is different from a situation in which a woman is unfit to work because of a pregnancy-related condition, in which case a woman is likely to be on sick leave in any case.

In the experience of the Jersey Advisory and Conciliation Service (JACS), instances of pregnancy-related suspension simply do not arise in Jersey and very few women are likely to be affected. JACS does not anticipate that this legislation will prompt employers to consider unpaid suspension given the hurdles that the employer must jump in order to meet the strict requirements of the exception. Where there is a health and safety issue relating to pregnancy (such as work with ionising radiation), JACS expect that most employers will be able to find alternative duties for the employee or will be able to control the risks to acceptable levels for a pregnant woman (such as by reducing the level of exposure to ionising radiation).

As well as being protected against detriment and dismissal on grounds of pregnancy and maternity under the Employment (Jersey) Law 2003, a woman would continue to be employed during the period of suspension and would continue to benefit from any other statutory and contractual employment rights. There is currently no statutory right to pay during any period of suspension from work, but an employee may be entitled via her terms of employment to pay during any period of suspension.

The legislation does not make provision to require employers to pay employees during any period of suspension from work and employment rights in relation to paid and unpaid suspension from work have not previously been consulted upon. If a statutory right to pay during periods of suspension is wanted, the Minister considers that this could be included in the consultation on a second phase of family friendly rights.