Risk Assessments - Women of Childbearing Age and Sex Discrimination

Under the Management of Health and Safety at Work (Amendment) Regulations 1994 (SI No. 2865) each Chair/Head of Department is required to assess health and safety risks to which employees are exposed at work and to identify measures needed to remove these risks. (This is normally a responsibility, which is delegated to the Departmental Safety Officer). Within this risk assessment, the Chair/Head of Department (or representative) must assess any working conditions that could jeopardise the health and safety of a new or expectant mother, or baby. Once a member of staff has notified the Head of Department that she is pregnant, or a new mother, the Head of Department must take action to prevent her being exposed to any risk, which has been identified. In the unlikely event that the risk cannot be avoided, she must be suspended her from work, on full pay. Though any suspension should be actioned in consultation with the Safety Officer and the Personnel Office, of course.

The legal requirements outlined above were highlighted in the case of Day –v- T Pickles Farms Ltd considered by the Employment Appeals Tribunal, EAT. The EAT established that the requirement to carry out an assessment of the risks to new or expectant mothers does not only arise when the employer employs a pregnant woman but arises with the employment of any woman of childbearing age. The employer should not delay carrying out such an assessment until an employee has become pregnant. Since a woman will not normally be aware that she is pregnant immediately, the only way to ensure that risks to her pregnancy are avoided is to carry out the risk assessment in advance. The EAT concluded that an employer’s failure to do so could lead to a finding of sex discrimination if a new or expectant mother has suffered a detriment. The potential financial award where sex discrimination is found to have occurred is unlimited.

Each Chair/Head of Department (or representative) should arrange (via the Departmental Safety Officer) to carry out regular assessments of health and safety risks to which employees in their department are exposed at work, including an assessment of any risks to/for women of childbearing age, and identify measures to remove these risks. Each Chair/Head of Department (or representative) should ensure that their Department complies with the requirement to carry out an assessment of risks to new or expectant mothers, which arises with the employment of any woman of childbearing age. Any risk assessment should be undertaken with reference to the University Safety Policy. General guidance on risk assessment is given in the ‘Safety in the University’ (SITU) handbook, part 1, section 3.2. SITU Part 2, section 7.6, provides guidance on risk assessment for and the health and safety of women of childbearing age. Attached is a copy of a memo of 24 March 1995 from the University Safety Officer to all Chairs/Heads of Departments, which includes guidance on the health and safety of new and expectant mothers. The Safety Office will of course be pleased to advise and assist with risk assessments.

The Health and Safety Executive issue guidance on risk assessments for new and expectant mothers which you may find useful. There is a general guide, “New and Expectant Mothers at Work” (HSG122, ISBN 0-7176-0826-3, £6.25) and a more specialised guide, “Infection Risks to New and Expectant Mothers in the Work Place” (ISBN 0-7176-1360-7, £10.50). Both documents can be borrowed for short periods from the Safety Office or purchased through the University Bookshop.
Some examples of relevant risks for women of childbearing age and/or pregnant employees and/or new mothers include manual handling, vibration, excessive noise, handling of food which results in nausea where the person is unfit to work, ionising radiation, extremes of cold and heat, fatigue, infectious agents, work with chemicals where there is a risk of irreversible effects, exposure to lead, mercury, cytotoxic drugs etc.

In summary, the case law means that an employer’s failure to carry out risk assessments where a woman of childbearing age may be employed may amount to sex discrimination if a pregnant woman, or new mother, suffers a detriment. The implications of this are as follows:

1. Each Chair/Head of Department (or representative) should be carrying out an assessment of risks to new or expectant mothers when the Department employs any woman of childbearing age, and taking action to prevent such employees being exposed to any risk which has been identified.

2. As soon as a Chair/Head of Department (or representative) becomes aware that a member of staff in their department is pregnant, they (or their representative) should immediately check/ensure that an assessment of risks to new or expectant mothers has been undertaken in relation to the pregnant employee’s working conditions. The Chair/Head of Department (or representative) should also check/ensure that action has been taken to prevent exposure to any identified risk. If a risk assessment and/or action to prevent exposure to an identified risk has not been undertaken, the Chair/Head of Department (or representative) should arrange for the necessary steps to be taken immediately, in conjunction with the Departmental Safety Officer and/or the University Safety Officer. The Chair/Head of Department (or representative) may decide it is prudent to undertake a new risk assessment when they become aware an employee in their department is pregnant.

Note: The Chair/Head of Department (or representative) should take the action outlined above as soon as they are aware a member of staff in their department is pregnant. They should not wait to check/ensure that either a risk assessment has been undertaken and/or action has been taken to prevent exposure to an identified risk until the employee has provided formal notification of their pregnancy.

Whenever a member of staff in a department notifies the Personnel Office that she is pregnant, the Personnel Office will send the Chair/Head of Department a memo reminding them of their legal obligations in relation to risk assessments and appropriate action thereafter.