



Institute of Directors

116 Pall Mall

London

SW1Y 5ED

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Women's Workplace Protections & Support

Employment Rights Directorate

Department for Business and Trade

Old Admiralty Building

Admiralty Place

London

SW1A 2DY

IoD response to Make Work Pay: Enhanced dismissal protections for pregnant women and new mothers

About the IoD

The IoD is an independent, non-party political organisation representing 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.

The IoD welcomes the opportunity to respond to this consultation on enhanced dismissal protection for pregnant women and new mothers. Striking an appropriate balance between worker protections and labour market flexibility is of considerable interest to the IoD and its membership, and we are therefore pleased to present our views.

Question 11: What impact have the 2023/24 extended redundancy protections for pregnant women and new mothers had on how pregnant women and new mothers are treated in the workplace?

If relevant, please explain your answer and provide any supportive data/evidence.

D. Don't know.

With less than two years passed since the introduction of the extended redundancy protections for pregnant women and new mothers, it is too soon to be able to draw definitive conclusions as to its effects. Thorough evidence collection to assess the measure's efficacy before introducing additional measures would have been a preferable approach to policymaking.

Question 12: What kind of test should be used to decide whether a pregnant woman or new mother was fairly dismissed during the protected period?

If relevant, please explain your answer.

C. Other

Neither of the options presented should be pursued; the test used to decide whether a pregnant woman or new mother was fairly dismissed during the protected period should not differ from other employees.

First, the case for change outlined in the consultation document is weak. The 2016 ECHR report's finding that 11% of recent mothers interviewed left their jobs (9% citing poor treatment as the reason, 1% experiencing dismissal, and 1% being made compulsorily redundant when others in their workplace were not) is not a case for change unless further data demonstrates that those figures are consistently higher than for the workforce on average and that the poor treatment took place despite compliance with existing law.

Policy intervention to address pregnancy and maternity discrimination where it exists despite legal compliance is welcome. However, it is unclear how the measures proposed in this consultation will in reality address such discrimination. The ECHR report cited as evidence of maternity discrimination that 2% of mothers were dismissed or made compulsorily redundant, while 9% voluntarily left their jobs. Even if the entirety of that 2% were dismissed *because of* their pregnancy or recent motherhood – which is highly unlikely given that redundancies and dismissals are a standard part of the employment landscape – then changes to the legal test for dismissal would not address the vast majority of the 'problem' identified in the evidence section. That is, changes to the legal test will do nothing to address the issue of 9% of women feeling forced out of their jobs, while running the significant risk of making women of childbearing age a much higher employment risk across the board.

Furthermore, additional changes to employment law should only be considered when evidence suggests that despite current law being enforced and followed, harm persists, that is, that existing legal mechanisms are clearly deficient. In this case, strict legal protections against discrimination on the basis of pregnancy and new motherhood already exist and the vast majority of employers follow them. The harm which the measures in this consultation aim to tackle – pregnancy and new motherhood discrimination – would be better addressed by focusing on improving enforcement mechanisms for existing protections than by impeding the ability of employers to dismiss underperforming employees. If evidence of harm persists, a significantly better approach would be to shift the burden of proof in determining whether a pregnant woman or new mother has been unfairly dismissed. Requiring an employer to establish with certainty that a woman was not made redundant for reasons connected with pregnancy or Maternity Leave would provide additional protection to pregnant women and new mothers while being significantly less onerous for employers than the current proposals.

The degree to which the option to introduce a new legal test is damaging would naturally depend on the nature of test. Of the options suggested in Question 13, “A. Continuing the employment of the pregnant woman or new mother would have a significantly detrimental effect on the business” would likely be the easiest for employers to align with the reasons they typically have for making redundancies or dismissals. The options suggesting that the test may require an employer to prove that continued employment poses a health and safety risk, or a serious negative impact on the wellbeing of others, would likely make redundancy or dismissal all but impossible. Ultimately, however, any additional test would introduce unwelcome ambiguity and complexity to what is already a difficult dismissal process.

The option to narrow the scope of and/or remove some of the fair dismissal reasons would be the least preferable of the options presented. The existing five potentially fair reasons for dismissal each reflect situations where businesses should be able to dismiss any employee. Creating a system whereby employers cannot dismiss pregnant women or new mothers for entirely reasonable business reasons would hugely increase the risk to employers of hiring women of childbearing age.

Question 14: Thinking about the fictional examples above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother on grounds of conduct?

If relevant, please explain your answer.

A. Employers should be able to dismiss them fairly for any kind of misconduct; the rules shouldn’t be narrowed.

The suggestion that employers’ ability to dismiss a pregnant woman or new mother for reasons related to conduct could be limited to gross misconduct, health and safety risks, and negative impact on the wellbeing of others will cause serious concern among employers.

The consultation’s references to employers not being able to dismiss pregnant women and new mothers for, for example, “minor issues like lateness or poor attitude”, “poor performance”, and “conflicts of interest or breakdowns in working relationships” are deeply concerning. All of the examples cited are valid and important reasons for the employment of an individual no longer being tenable. To suggest otherwise suggests a serious lack of understanding of the challenges associated with running a business. For many businesses, particularly SMEs, working with fine margins in an already difficult trading environment, “lateness or poor attitude” among employees is by no means a “minor” issue. Staff performance is a key ingredient in determining a business’ viability and any attempt to restrict the ability of employers to dismiss employees on the grounds of conduct would be highly damaging to business confidence in hiring.

Question 15: Thinking about the fictional examples above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of capability?

If relevant, please explain your answer.

A. Employers should be able to dismiss them fairly for any kind of capability issue; the rules shouldn’t be narrowed.

Making employers effectively unable to dismiss a person who is not capable of performing their job would significantly increase the risks involved in employing staff. Applying this to one group of workers would concentrate that risk into the employment of that specific group. Instead of protecting pregnant women or new mothers, therefore, measures to make it difficult to dismiss them for capability reasons would discourage employers from hiring women of childbearing age by making them an inherently riskier hire.

“The easier you make it to let employees go, the more confident in hiring individuals that may not normally get a chance” – 50-99 employees, Manufacturing, London

“Businesses do not take decisions to dismiss lightly, sometimes it is necessary and forcing businesses to retain an employee/employees will only make them less willing to hire, particularly women of childbearing age” – 0-1 employees, Professional, scientific and technical activities, East of England

Question 16: Thinking about the fictional examples above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of redundancy during the protected period?

If relevant, please explain your answer.

A. Employers should be able to dismiss them fairly for any kind of redundancy, as long as they’ve been offered a suitable alternative vacancy if there is one; the rules shouldn’t be narrowed.

Redundancies are already only permitted in specific circumstances which reflect genuine business need; curtailing the ability of employers to make a subset of workers redundant for genuine business reasons would both reduce the ability of businesses to respond to rapidly changing business conditions – potentially putting other jobs at risk – and, as above, make the employment of pregnant women and new mothers an inherently riskier proposition.

Furthermore, the enhanced redundancy protections available for pregnant women and new mothers introduced in 2023/24 already provide additional legal protections in this space. These reforms should be given time to embed, and their efficacy assessed, before further changes are considered.

Question 17: Thinking about the explanation above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of statutory prohibition during the protected period?

If relevant, please explain your answer.

A. Employers should be able to dismiss them fairly for any kind of statutory prohibition issue; the rules shouldn’t be narrowed.

Employers should retain the ability to dismiss any employee who is legally incapable of performing the job for which they are employed. A requirement to offer a suitable alternative role where available would be inappropriate; whereas redundancies arise from circumstances outside of an individual’s control, dismissals on the grounds of statutory prohibition arise from the legal inability of an individual to perform the job for which they were hired.

Question 18: Thinking about the explanation above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother on grounds of SOSR during the protected period?

If relevant, please explain your answer.

A. Employers should be able to dismiss them fairly for any kind of SOSR issue; the rules shouldn't be narrowed.

The ability of employers to dismiss employees for SOSR is a crucial safeguard which provides operational flexibility in complex, real-world situations which do not neatly fit the other four fair reasons for dismissal. Issues like a breakdown in working relationships, conflict of interest, and reputational risk are for many employers, particularly SMEs, not minor; if unaddressed, they can significantly undermine staff morale, profitability, and ultimately business survival. Curtailing the scope of SOSR for one group would both undermine the ability of businesses to respond to such challenging situations but would, as with the other proposed changes to the tests, serve to make hiring women of childbearing age riskier.

Question 19: When should employees be entitled to the enhanced dismissal protections?

C. After an initial period of employment of between 3-9 months, aligned with a typical probation period.

An IoD survey of over 500 business leaders in December 2025 found that 8 in 10 (79%) believe that employees should be entitled to any enhanced dismissal protections after an initial period of employment.

Feedback from IoD members emphasised the importance of employers being able to assess an employee's fitness for a role before receiving enhanced dismissal protections. Introducing additional protections on day one of employment, or when the employment relationship begins, would act as a strong disincentive to hiring women of childbearing age because of the risk to employers of being unable to dismiss an employee who demonstrated unsuitability for the role during the first few months of employment.

“Enhanced dismissal protections should follow a meaningful probationary period, such as nine months, to allow employers to assess role fit fairly.” – 2-9 employees, Manufacturing, North East England

This qualifying period should be aligned with the six-month qualifying period for unfair dismissal being introduced via the Employment Rights Act.

Figure 1: IoD Policy Voice results: December 2025, 532 responses

The Bill also makes it unlawful to dismiss pregnant women, mothers on Maternity Leave, and mothers who return to work for at least a six-month period after they return – except in specific circumstances.

When do you think employees should be entitled to these enhanced dismissal protections?

When the employment relationship begins (when they agree with an employer that they'll start work for them, e.g. when a contract is signed)	4%
From the day they start work	4%
After an initial period of employment of between 3-9 months, aligned with a typical probation period	78.6%
Other	13.5%

Question 20: At what point should the enhanced dismissal protections start for pregnant women?

C. When an employee informs her employer that she is pregnant.

Options A and B would be unworkable from an employer perspective. Legally requiring employers to treat pregnant women differently before they have been told that an employee is pregnant – or even, under option A, before the employee themselves is aware that they are pregnant – would be impossible to comply with.

An employer regularly asking employees if they were pregnant during any dismissal processes – an approach which would clearly be undesirable due to its intrusiveness and likely illegality – would only work for employees aware that they were pregnant *and* willing to disclose the fact, thus it would not guarantee compliance with option A. Even for option B, it would be unclear how often an employer would need to ask this question and to which workers in order to guarantee compliance.

Aligning the enhanced dismissal protections with existing enhanced redundancy protections, which apply when an employee informs her employer that she is pregnant, would be both more consistent and more workable.

Question 21: When should the protection ‘window’ for new mothers entitled to maternity leave end?

A. 18 months from the birth of the child – aligning with the 2023/24 redundancy protections.

Any additional protections should align where possible with the 2023/24 changes where possible.

Question 22: Should women who are not entitled to Maternity Leave have protection against dismissal for two weeks after the end of their pregnancy?

A. Yes.

Any additional protections should align where possible with the 2023/24 changes where possible.

Question 27: Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave?

If relevant, please explain your answer and provide any supportive data/evidence.

A. Adoption Leave.

The case made in the consultation for extending the additional protections to all other types of long family leave appears weak. The evidence section refers to discrimination against pregnant women and new mothers but does not cite evidence of discrimination against parents taking other types of long family leave. It is therefore unclear what problem this proposal aims to tackle.

An IoD survey of 532 business leaders in December 2025 found that a majority (60%) of respondents believed that enhanced dismissal protections should cover none of the other types of long family leave (Figure 2). This finding likely reflects widespread employer disagreement with the policy as a whole.

Figure 2: IoD Policy Voice results: December 2025, 532 responses

Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave? Please select all that apply.

Adoption Leave	24.81%
Bereaved Partner's Paternity Leave	26.69%
Neonatal Care Leave	27.82%
Shared Parental Leave	24.25%
None of the above	60.15%

However, if enhanced dismissal protections are put in place, then there may be a rationale for extending them to employees who take Adoption Leave, given that adoption leave is a direct statutory analogue to maternity leave.

The case for extending the protections to the other types of long family leave, meanwhile, is weaker. Shared Parental Leave is typically taken for a much shorter period than 50 weeks and often taken in discontinuous blocks, Neonatal Care Leave involves a much shorter entitlement period, and Bereaved Partner's Paternity Leave does not have the parallels with Maternity Leave that Adoption Leave does.

Question 28: Thinking about your answer to question 27, should the protection against dismissal start from the first day of the leave?

If relevant, please explain your answer.

A. Yes.

Any additional protections against dismissal for employees taking Adoption Leave should start from the first day of the leave.

Question 29: Thinking about your answer to question 28, how long should the protection against dismissal last?

A. For Adoption Leave, it should follow on from the approach of the enhanced redundancy protections for Adoption Leave (i.e. 18 months from the birth of the child/placement for adoption or entry into Great Britain).

Aligning the approach to Adoption Leave with the enhanced redundancy protections would simplify the process for employers.

Question 31: How do we ensure employers are aware of these changes?

- A. Through intermediaries / advice organisations (e.g. business groups).
- B. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).
- C. Other - please specify.

All established communication methods with employers should be utilised. Where possible, information about upcoming employment law changes should be presented coherently; the volume of changes which employers will need to implement is unprecedented and fragmented communications would be counterproductive.

Question 32: How can we best support businesses, including smaller businesses, through this change and to avoid disputes escalating to the Employment Tribunal?

Please explain your answer.

- A. Clear guidance.
- D. Templates / model policies / checklists.
- E. Free advice routes.
- F. More information about dispute resolution (e.g. Acas early conciliation).
- F. Other - please specify.

All of the above factors would help to reduce the number of disputes which escalate to Tribunal. However, two key factors should be added: first, implementing the reforms in line with the recommendations outlined in our consultation response, so as to make the reforms more workable for employers. Secondly, Acas must be better resourced so that as many employees and employers as possible benefit from early conciliation services.

Furthermore, it is crucial that where cases do reach Tribunal – there is no doubt that this policy, in addition to the other 27 changes in the Employment Rights Act, will significantly increase the number of Tribunal cases – they are processed quickly. Waits for Tribunal cases are already at unacceptable levels; significant government investment in the system is urgently required to avoid these reforms worsening the existing backlog.

Question 33: What unintended consequences, if any, do you think could arise from the enhanced dismissal protections?

- A. Increased discrimination – hesitancy in or avoiding hiring women of childbearing age.
- B. Negative perception of workplace fairness/culture.
- C. Employers delay dismissal decisions until after protection period lapses.
- D. Negative impact on hiring generally.
- E. Legal uncertainty - employers avoid fair dismissal due to risk.

F. Administrative burden (e.g. additional documentation).

G. Unsustainable or unrealistic asks on small businesses.

H. Other - please specify

An IoD survey of 532 business leaders in December 2025 found that each of the seven potential risks listed were considered likely by at least 40% of respondents (Figure 3).

Figure 3: IoD Policy Voice results: December 2025, 532 responses

What unintended consequences, if any, do you think could arise from the enhanced dismissal protections? Please select all that apply.

Unsustainable or unrealistic asks on small businesses	72.9%
Negative impact on hiring generally	69.17%
Increased discrimination - hesitancy in or avoiding hiring women of childbearing age	67.86%
Administrative burden (e.g. additional documentation)	53.01%
Legal uncertainty - employers avoiding fair dismissal due to risk	51.13%
Employers delaying dismissal decisions until after protection period lapses	40.79%
Negative perception of workplace fairness/culture	40.23%
Other	5.3%
None	2.26%

The research suggests that business leaders consider certain risks as much more likely to come to fruition than others. Small businesses being burdened by unrealistic asks was cited by almost three quarters (73%) of respondents. SMEs, particularly those without in-house HR capacity, are more likely to find compliance challenging and be dissuaded from hiring and expanding as a result:

“While the intention to strengthen protections is understandable, the cumulative effect risks discouraging hiring, particularly for small and growing businesses, and increasing administrative and legal complexity” – 2-9 employees, Manufacturing, North East England

Perhaps of most concern is that 68% of respondents stated that the policy would lead to greater employer hesitancy in or avoiding hiring women of childbearing age. Wider IoD research on the Employment Rights Act’s provisions on protections against unfair dismissal found a consistent theme in employer sentiment: that any policies which make it harder for employers to dismiss underperforming employees, especially new employees, would increase the risk of hiring generally and more acutely for

groups considered higher risk (such as people with limited work experience or without the desired qualifications).

The same logic applies to any policies which make it more difficult to dismiss a particular group for valid business reasons. If an employer cannot be confident that they can dismiss pregnant women or new mothers who, for instance, demonstrate persistent poor conduct or a lack of capability to perform the role for which they were hired, then the employment of that group will constitute a greater risk to the business. Greater hesitancy to hire individuals from that group therefore becomes a rational response to a risk manufactured by government policy.

“[This policy] is likely to produce unintended consequences, including greater caution in recruitment, rather than improving workplace fairness in practice” – 2-9 employees, Manufacturing, North East England

An additional risk identified in our research was to UK economic growth and productivity more widely, particularly against the backdrop of wider employment rights reforms:

“Disciplining and dismissing a wayward employee is already a high-risk activity. With odds seriously stacked against employers this will reduce employment opportunity and therefore UK productivity.” – 10-49 employees, Information and communication, South West England

“Not a single aspect of this new Bill supports Mission #1 – Growth” – 250+ employees, Manufacturing, South West England

Question 34: What unintended consequences, if any, do you think could arise if the policy were to exclude capability and SOSR as fair reasons to dismiss a pregnant woman or new mother (paragraph 36)? Please explain your answer.

Excluding capability and SOSR as fair reasons to dismiss a pregnant woman or new mother would significantly increase the risk to employers of hiring women of childbearing age. The ability to dismiss an employee incapable of performing the job for which they were hired is critically important for employers, particularly SMEs and/or those operating with fine profit margins. Being forced to retain an employee who is incapable of doing their job, or who is increasing business risk through, for example, a conflict of interest, has the potential to be highly disruptive to business operations and stability.

Question 35: What action(s) could be taken to mitigate against any unintended consequences?

- A. Clear guidance.
- C. Other - please specify.

Clear guidance may go some way to mitigating the risks related to legal uncertainty and administrative burden.

Ultimately, however, better policy design is needed to effectively mitigate the unintended consequences referred to in Q.33 and Q.34. As a general principle, employment and progression opportunities for pregnant women and new mothers would be more effectively improved by policies which derisk, rather than increase the risk of, employing them.

“One way to help would be to make pregnancy of employees less onerous for businesses (especially small businesses) with a statutory insurance arrangement to support employers to pay for maternity cover” – 2-9 employees, Professional, scientific and technical activities, London

If government decides to pursue the less optimal approach of enhancing dismissal protections then it should do so by shifting the burden of proof in Tribunal cases so that employers are required to prove that any dismissal was not due to pregnancy or new motherhood, rather than by reforming the five tests for unfair dismissal.

I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,



Alex Hall-Chen

Principal Policy Advisor for Employment

Email: Alexandra.Hall-Chen@iod.com