

Your Rights at Work

In the UK breastfeeding employees do have some basic legal protection and rights relating to health and safety protection, rest facilities, protection against indirect sex discrimination and harassment, and the right to request flexible working. The Health and Safety Executive (HSE)¹ provides information on your rights, as does Maternity Action.² This guide provides an over view of your rights at work if you wish to continue breastfeeding upon return to work.

Health and Safety Protection

Your employer must carry out an individual risk assessment, that covers your specific needs, when you have informed them in writing that you are breastfeeding. Mother Guide 10 provides information on communicating with your employer. Your employer has a duty to ensure you return to a 'healthy, safe and stable environment'². This risk assessment should be regularly reviewed. The HSE focuses on risks³ relating to posture and position, working conditions (long hours, shift and night work) – including work-related stress, noise and temperature - , physical injury and harmful substances (e.g. chemical and biological agents) that could be passed through to the child during breastfeeding and ensuring personal protective equipment is safe and comfortable (e.g. avoiding tight clothing).

The HSE does not directly refer to risks relating to engorgement / mastitis or reduced breast milk supply, or fatigue if a mother feeds overnight. However, if your working conditions put you at risk of engorgement / reduced breast milk supply you may be able to argue this is putting you and your child's health at risk (which the employer has an obligation to protect).

If the risk assessment identifies a significant risk that puts you and / or your child at risk of harm then in these circumstances employers are obliged to adjust your working conditions/arrangements to remove / control the risk. If this is not possible they must provide you with alternative work or suspend you on full pay if they cannot offer you alternative work, for as long as is necessary to protect you and your child's health and safety.

Rest Facilities

The **Health and Safety Executive (HSE) Guidance**¹ states that breastfeeding employees *must* (a legal obligation) be provided with a place to rest, which *should* (strong recommendations) include a place to lie down if needed, a hygienic and private space to express milk if they choose to do so and somewhere to store expressed milk. Toilets are mentioned as being unsuitable. We discuss workplace facilities in Mother Guide 7.

Right to Request Flexible Working

You have the right to request flexible working from day 1 of your job.⁴ It applies to all organisations, regardless of their size but is only a right to 'request'. Hence, whilst employers must consider requests in a 'reasonable manner' and must do so in a reasonable time (within

2 months), there are 8 grounds (on the basis of business needs) upon which a request can be rejected. These grounds include the burden of additional costs and impact on work quality. You have the right to appeal if your employer refuses a request. We discuss the use of flexible working in Mother Guide 8.

Protection Against Indirect Sex Discrimination and Harassment

If an employer's policy / practice disadvantages one sex more than the other than this is classed as indirect sex discrimination. Therefore if your employer rejects a flexible working request without good reason or fails to put in measures to protect your and/or your child's health and safety then this may be indirect sex discrimination. You are also protected against harassment as a result of breastfeeding. **If you have concerns regarding indirect sex discrimination or harassment you should seek legal advice.**

Examples of successful employment tribunals:

McFarlane & Ambacher v Easyjet Airline Co. Ltd (2016):⁵ In a case involving two cabin crew members, an employment tribunal found that EasyJet had indirectly discriminated on the basis of sex and breached health and safety obligations by not offering more flexible rosters to accommodate breastfeeding. Although the company had offered temporary ground duties, the tribunal determined that appropriate support should be ongoing for as long as breastfeeding continues.

Mellor v MFG Academies Trust (2021):⁶ A teacher won her case after being left with no option but to express milk in unsuitable places, including school toilets and the car park. Despite her repeated requests, no proper space was provided, and the tribunal found she had experienced harassment related to sex.

Gibbins v Cardiff and Vale University Local Health Board (2024):⁷ A healthcare worker won her case after not being provided a private space (the room had no lock) to express breastmilk. The tribunal found she had experienced harassment related to sex.

References

1. <https://www.hse.gov.uk/mothers/worker/index.htm>
2. [https://maternityaction.org.uk/advice/continuing-to-breastfeed-when-you-return-to-work/#Your legal rights if you are breastfeeding](https://maternityaction.org.uk/advice/continuing-to-breastfeed-when-you-return-to-work/#Your%20legal%20rights%20if%20you%20are%20breastfeeding)
3. <https://www.hse.gov.uk/mothers/employer/rest-breastfeeding-at-work.htm>
4. <https://www.gov.uk/flexible-working>
5. [McFarlane & Ambacher v Easyjet Airline Co. Ltd \(2016\) ET Case No: 1401496/2015 3401933/2015](#)
6. [Mellor v MFG Academies Trust \(2021\) ET Case No: 1802133/202](#)
7. [Gibbins v Cardiff and Vale University Local Health Board \(2024\) ET Case No: 1602976/2023](#)