



## Advice on Breastfeeding Legal Rights - Factsheet

### Your Legal Rights

- You can breastfeed your child **up to any age**.
- You can **continue to breastfeed** your child on **returning to work**. This can include:
  - expressing and storing your breast milk,
  - arranging for your child to come to you (unless there are restrictions on children accessing your workplace) or,
  - if your child is close-by, going to your child.
- Your employer **must** provide somewhere for you to '**rest**', and, where necessary, lie down, if you are breastfeeding. This 'rest facility' must be conveniently situated in relation to sanitary facilities.<sup>1</sup>
- Your employer **may** provide a private, healthy, and safe environment for you to breastfeed and/or express and store milk, but there is **no** legal requirement for them to do so. However, it is likely the 'rest facilities' will be suitable for breastfeeding or expressing milk. A toilet is **not** a healthy place to breastfeed or express milk.
- There are no statutory rights to breastfeeding breaks at work, but your employer **must** meet their obligations to you under:
  - Health and Safety Law,
  - Flexible Working Law and
  - Discrimination Law.
- To ensure your employer takes appropriate action you must inform them in **writing** of your intention to breastfeed and/or express milk.

### Health and Safety

All employers have a legal duty to assess, and then control, the health and safety risks you are exposed to whilst at work.<sup>2</sup> This includes any specific risk to **breastfeeding mothers**, from any process, working conditions, or agents (physical, biological or chemical).

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<sup>1</sup> Workplace (Health, Safety and Welfare) Regulations 1992

<sup>2</sup> Management of Health and Safety at Work (MHSW) Regulations 1999

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A risk assessment might identify the following workplace hazards and potential risks for breastfeeding mothers.

- **Workplace hazard:** Unsuitable / absent facilities for breastfeeding / expressing milk
  - **Nature of risk** - pain, engorgement, mastitis; to employee's child – if they are very young (i.e. < 12 months) or have an underlying health condition – inadequate nutrition
- **Workplace hazard:** Long hours, shift work and/or night work
  - **Nature of risk** – fatigue
- **Workplace hazard:** Inadequate access to water and/or toilet facilities
  - **Nature of risk** – dehydration, renal tract infection

Your employer must do all that is reasonable to reduce or remove a risk posed by your working conditions and/or hours.

- **Workplace hazard:** Unsuitable / absent facilities for breastfeeding / expressing milk
  - **Protective measures could include** - access to a private room; use of a secure, clean refrigerator for storing expressed breast milk; time off without loss of pay or benefits to express milk or breastfeed
- **Workplace hazard:** Long hours, shift work and/or night work
  - **Protective measures could include** - adjust working hours temporarily; adjust/alter shift patterns; increase frequency of rest breaks; avoid night shifts
- **Workplace hazard:** Inadequate access to water and/or toilet facilities
  - **Protective measures could include** - access to drinking water; access to clean toilet facilities

If the risk cannot be avoided, then:

- Your employer must offer you suitable alternative work, on terms and conditions not substantially less favourable than your original job.
- If your working conditions and/or hours cannot be adjusted, and put you or your baby's health at risk, then you should be transferred to a different job, with no loss of pay and conditions.
- If there is no suitable alternative work available, your employer must suspend you on full pay.

### Flexible working

- If you have worked for your employer for **at least 26 weeks** you can make a request for flexible working.
- A flexible working request could include,
  - changes to your **days** of work,
  - changes to your **hours** of work e.g. reduced length of shifts, a move to part time work, a move from evening or night shifts to day work, and/or,
  - changes to your **place** of work.
- If agreed, the change will usually be a permanent alteration to your contract.
- Employers are encouraged, by The Department of Health, to include flexible working hours in their policies on breastfeeding.<sup>3</sup>
- Employers **must** give serious consideration to any request for flexible working. A request can only be refused for **good business** reasons.

### Discrimination

- You have legal **protection** against **indirect sex discrimination**,
  - i.e. a policy or practice which disadvantages more women than men (or vice versa) and cannot be justified by your employer.
- You may have a **claim** for indirect sex discrimination if,
  - you are **disadvantaged** by the length of shifts and/or shift pattern at work (see the Easyjet Case Study below), or
  - a request for flexible working, for breastfeeding reasons, is refused.
- For a claim of indirect sex discrimination to be successful **evidence** of **disadvantage** is required e.g. medical evidence of the risks to you if you are unable to continue breastfeeding (see Easyjet Case Study below).

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<sup>3</sup> [www.nhs.uk/Planners/breastfeeding/Documents/breastfeedingandwork\[1\].pdf](http://www.nhs.uk/Planners/breastfeeding/Documents/breastfeedingandwork[1].pdf)

### Case Study - Breastfeeding at work – the Easyjet case

#### McFarlane & Ambacher v Easyjet Airline Co. Ltd., Sept. 2016

- Ms McFarlane and Ms Ambacher both worked for Easyjet as cabin crew and wanted to continue breastfeeding after they returned to work.
- They were required to work a roster pattern with no limit to the potential length of each shift.
- They were unable to express breastmilk whilst working as cabin crew – and were concerned about the risk of engorgement, milk stasis and mastitis; a concern supported by their GPs.
- Both asked to be either rostered to shifts of 8 hours or less, or reassigned to ground duties.
- Easyjet refused to make any adjustments and stated they could not provide individual rosters (although the tribunal heard they did for other employees on health grounds).
- Eventually Easyjet allowed the women to undertake ground duties but only for 6 months.
- **The tribunal found that:**
  - Easyjet should have made reasonable adjustments, e.g. provided restricted hours rosters, and if this were not possible, offered suitable alternative work such as ground duties, for as long as they were breastfeeding, and, if no safe suitable alternative work was available, suspended them on full pay,
  - the long shifts put them at a disadvantage, and this amounted to indirect sex discrimination.
- Both women were awarded compensation for financial loss and injury to feelings.

*NB. As this was a tribunal decision it is not binding on other tribunals.*

If your employer does not already have a Return to Training checklist in place for breastfeeding, then please consider using the following template.

### Checklist for Breastfeeding on your Return To Training

(Complete with your line manager once you have informed them in **writing** of your intention to breastfeed/express milk on your return to training.)

Name of Trainee -

Return To Training date –

- 1. Is there a private (i.e. a room with a lockable door), healthy and safe environment in which to breastfeed and / or express milk? (A toilet is not a healthy place to breastfeed or express milk.)** Yes, No, N/A
- 2. Is a fridge available to store expressed milk?** Yes, No, N/A

If No has been selected to any of the questions above, and cannot be resolved within the local department, escalate the situation to the medical staffing / human resources team.

Escalated to -

Date escalated -

**Are there any specific risks to breastfeeding mothers from any process, working conditions, or agents (physical, biological, or chemical)?**

### Protective measures to reduce or remove risk

If any of the above risks cannot be reduced or removed through protective measures escalate the situation to the medical staffing / human resources team.

Escalated to -  
Date escalated -

Planned date of review following return to training –

Signature of trainee -  
Date -

Signature of line manager –  
Date –

### For more information see:

- Maternity Action – Breastfeeding at Work  
<https://www.maternityaction.org.uk/advice-2/professionals/breastfeeding-at-work/>
- Health and Safety Executive – New and expectant mothers  
<http://www.hse.gov.uk/mothers/index.htm>
- NHS Guidance – Breastfeeding and work  
[https://www.nhs.uk/Planners/breastfeeding/Documents/breastfeedingandwork\[1\].pdf](https://www.nhs.uk/Planners/breastfeeding/Documents/breastfeedingandwork[1].pdf)