



Maria Miller MP
Chair, Women and Equalities Committee
House of Commons
London
SW1A 0AA

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Dear Chair,

EMPLOYMENT TRIBUNAL: TIME LIMITS FOR PREGNANCY AND MATERNITY DISCRIMINATION CLAIMS

At my committee appearance on 13 June, I set out the data we have been collecting on time limits in pregnancy and maternity related discrimination claims to the Employment Tribunal, following the commitment by my predecessor Dominic Raab, to yourself in December 2017. This letter provides some further background to that data collection as well as responding to the question raised as to whether equivalent information could be collected in relation to sexual harassment cases.

Data collection for pregnancy and maternity cases

Data collection began in January 2018: the data collection process was refined in April 2018 to better capture the reasons given for out of time applications. All data in this period has been recorded manually, as the HMCTS IT systems do not currently have the capacity to record this information, with each regional office submitting a return to the Jurisdictional Support Team. Where regions did not submit a monthly return, this was recorded as a nil return. As with all manual data collection, my officials cannot guarantee the complete accuracy of the method: as such the figure of 21 is accurate to the best of our knowledge and current capacity to monitor.

I can confirm that these 21 cases are all the pregnancy and maternity cases in which an extension of the time limit was requested during the period from January 2018 to March 2018, to the best of our knowledge and that our data collection had been able to verify. (The breakdown of the figures is as follows: 15 cases in January; 5 in February; 1 in March.) It should be noted however, and as I mentioned at the committee hearing, that in recent months some claims have been submitted to the Tribunals out of time, on the grounds that the previous fees regime was a barrier to them being brought in time, so the pattern in the period of data collection may not be typical. We do not know of any cases of refusal during this period. I would emphasise that in any case such decisions are a matter of judicial discretion and independence.

Official statistics for January to March 2018 show that in this period, the Employment Tribunal received 368 claims where the type of jurisdiction complaint was listed as 'suffer a detriment / unfair dismissal – pregnancy'¹. Therefore, the 21 cases identified as out of time account for 5.7% of the total in this period.

¹ Tribunals and gender recognitions certificates statistics quarterly: January to March 2018.

The Ministry of Justice has no internal data or research on the number of cases that might have resulted in a claim had the time limit not been in place. In 2016, the Equality and Human Rights Commission published the findings of a substantial research programme (commissioned jointly with the then Department for Business Innovation and Skills) into the prevalence and nature of pregnancy discrimination and disadvantage in the workplace, based on interviews with 3,034 employers and 3,254 mothers. This research found that around one in nine mothers reported that they were either dismissed; made compulsorily redundant, where others in their workplace were not; or treated so poorly they felt they had to leave their job.

The Government will be seeking to undertake further research into pregnancy and maternity related discrimination and disadvantage among mothers and employers in Great Britain using a similar survey methodology to that used for the 2016 report. However, this will not be before 2020, to allow time for the current package of interventions to take effect. In the interim Government will monitor others' findings (such as the recent EHRC poll on employer attitudes) for any signs that the interventions are starting to have an impact or of changes in employers' practices.

Data collection for sexual harassment cases

We do not routinely collect data on the applications for extensions of time to bring claims: as such, it is very difficult for equivalent figures for cases relating to sexual harassment to be provided. I have asked my officials to explore whether such figures could be obtained. However, there are concerns that the process would be more complicated and open to misinterpretation than in the case of pregnancy and maternity discrimination, and would therefore not be suitably accurate. This is because sexual harassment cases are currently recorded as part of the sexual discrimination jurisdiction code (this method of recording originates from the Equality Act 2010). This code includes indirect and direct discrimination, harassment and victimisation on ground of sex, marriage and civil partnership or gender reassignment. As such, any recording of data would be open to interpretation and would rely on HMCTS staff, who are not legally qualified, making a decision as to whether it was sexual harassment or not. Each file would have to be scrutinised to establish if sexual harassment was the cause of the complaint and then manually counted and recorded. This would create a problem of consistency across different officials, as data collection would be heavily reliant on individual interpretation.

Whilst it is not, therefore, possible to collect accurate and consistent data relating to sexual harassment at this time, I have asked my officials to continue to work with their counterparts in the Government Equalities Office to explore what options are available for obtaining useful data on this issue. Since April of this year HMCTS have conducted a manual count of out of time applications to the Employment Tribunal for all jurisdiction codes. Through this data set we can track how many cases are recorded as part of the sexual discrimination jurisdiction code, which would include cases of sexual harassment. This data will be published in the public domain on 13th September 2018, when we will be able to share the official figures with the Committee.

Yours sincerely



LUCY FRAZER QC MP