

Environment, Health and Safety Committee
Note on:
Pregnant Workers, Chemicals and the Law

There are a continuing and steady number of enquiries about the legal situation regarding pregnant workers and chemicals. This Note provides basic background on this subject, but it does not pretend to be a full or definitive guide. Readers are urged to obtain more detailed guidance where a more comprehensive treatment is required. In particular, readers' attention is drawn to the companion EHSC Note "Reproductive Risks of Chemicals".

Introduction

The Management of Health and Safety at Work Regulations 1999 recognise the need to protect the health and safety of new and expectant mothers who work. The Regulations require a risk based approach to be adopted to identify hazards, to assess the special risks to pregnant workers and new mothers and to apply appropriate controls to manage those risks.

Initiating the need for Risk Assessment

A pregnant employee needs to inform her employer of her pregnancy as soon as possible so that the employer can protect the health and safety of both the individual and her unborn child by undertaking a risk assessment. Whilst there are no legal requirements imposed on employees to inform their employers that they are pregnant or a new mother, they should bear in mind that their employer is not required to take any specific action until written notification has been provided.

Risks from Chemicals

Hazards which may affect the health and safety of new or expectant mothers and their babies include physical, biological and chemical agents, certain work processes and working conditions. These hazards are specified in the European Union Directive 92/85/EEC and are referred to in the Management of Health and Safety at Work Regulations 1999. The chemical agents and associated work processes which are referred to in the Regulations are:

substances labelled with the risk phrases R40, R45, R46, R49, R61, R63, R64 and R68. (i.e. limited evidence of carcinogenic effects, may cause cancer, may cause inheritable genetic damage, may cause cancer by lung inhalation, may cause harm to the unborn child, possible risk of harm to the unborn child, may cause harm to breastfed babies and possible risk of irreversible effects); preparations labelled on the basis of Directive 1999/45/EC; chemical agents and industrial processes in Annex 1 to Directive 90/394/EEC (Control of Carcinogenic Substances):

- mercury and mercury derivatives;
- antimetabolic (cytotoxic) drugs;
- chemical agents of known and dangerous percutaneous absorption, including some pesticides;

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- carbon monoxide; and
- lead and lead derivatives.

If any of these chemicals are present in the workplace and the workforce includes women of child-bearing age, then the risk assessments (including COSHH and lead assessments) must take into account the effects that these substances or processes can have, not just on an expectant or potential future mother but also on the unborn or recently delivered child.

If any assessment reveals risks then the employer must tell all female employees of those risks and explain the control measures that are in place to ensure that they are not exposed to those risks. Since legislation is already in place to ensure protection from workplace hazards, provided that an employer complies with existing requirements, the risks presented should already be adequately controlled and additional measures will not be required. In the minority of cases where the assessment shows that there may still be a residual risk to a mother in the workplace then the employer must take steps to remove her from that risk once she has advised her employer of her pregnancy in writing.

If a risk is identified, then the employer should:

- adjust temporarily the mother's working conditions and/or hours of work. If it is not reasonable to make adjustments or if such action would not avoid the risk then;
- offer her suitable alternative work under the provisions of the Employment Rights Act 1996 if any is available. Such work must be suitable and appropriate for her in the circumstances and must also be on terms and conditions which are no less favourable than her normal terms or conditions. If this second step is not feasible then;
- suspend her from work on full pay as long as is necessary to protect her safety or health or that of her child.

Assessments should be kept under review as the possibility of damage to the foetus as a result of the hazard will vary at different stages of pregnancy and to ensure that any new information is taken into account. In addition there are different risks that must be considered for workers who are breast feeding.

Pregnancy and Night Working

Special consideration is required for new and expectant mothers who work at night. If the employee produces a medical certificate which states that night work could affect her health and safety then the employer must either offer her suitable alternative day-time work, if any is available, or suspend her from work on full pay as long as is necessary. The HSE does not believe that at present there are any risks to pregnant or breast feeding workers arising solely from night work.

Other Hazards

The Regulations identify other non-chemical hazards in the workplace which could affect new or expectant mothers. The most significant of these are:

- physical hazards such as spending long periods of time in static postures, lifting and handling, dexterity;
- psychological hazards such those presented by tasks requiring exceptional concentration;
- stress;
- biological hazards such as those presented by work with micro-organisms, such as listeria: and
- radio-isotopes and sources of ionising radiation.

Where these hazards are present they should be addressed in the risk assessment.

Whilst it is recognised that pregnancy is not an illness, tolerance to hazards at work, enhanced sensitivity and the fatigue of advancing pregnancy may be important factors which need to be taken into account in the risk assessment.

IVF and Fertility Treatments

The pregnant worker's risk assessment process needs to recognise any individual requirements and susceptibilities. It should be remembered that a woman may be reluctant to notify her condition to her employer, especially if there has been some history of miscarriage or where IVF treatments are on-going. Clearly this information is confidential and needs to be dealt with sensitively and in a sympathetic manner.

Footnote: the Reproductive Effect of Chemicals in Males

It should be noted that the overexposure of males to some chemicals may contribute to abnormalities of reproduction. This is a separate issue which should be considered when COSHH assessments are undertaken.

Further Reading

1. Health and Safety Commission, The Management of Health and Safety at Work Regulations 1999 – Approved Code of Practice and Guidance, L21, 2nd Edition, HSE Books, 2000.
2. Control of Substances Hazardous to Health - The Control of Substances Hazardous to Health Regulations 2002 - Approved Code of Practice and Guidance L5, 5th Edition, HSE 2002.
3. Control of Lead at Work - The Control of Lead at Work Regulations 2002 – Approved Code of Practice and Guidance, L132, HSE 2002.
4. EHSC Note, Reproductive Risks of Chemicals at Work, Royal Society of Chemistry, 2005.
5. EHSC Note, Risk Assessment at Work, Royal Society of Chemistry, 2007.
6. New and Expectant Mothers at Work - A Guide for Employers, HS (G) 122, 2nd Edition, HSE 2002.
7. A Guide for New and Expectant Mothers who work INDG 373, HSE 2009.
8. Working safely with ionising radiation: Guidance for expectant or breastfeeding mothers INDG 334, HSE 2001.
9. Infection risks to new and expectant mothers in the workplace: A Guide for Employers HSE 1997.

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