

Employment Rights Bill evidence: early pregnancy endings and the workplace 5th December 2024

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EXECUTIVE SUMMARY

- Our response to this inquiry focuses on the area of protecting workers and, more specifically, to these questions:
 1. Does the Employment Rights Bill adequately safeguard the workers it seeks to protect?
 2. Are there areas of employment law not covered by the Bill that weaken workers' protections?
- We are supplying this evidence as members of a research team who have been working together since Spring 2021 on early pregnancy endings and the workplace.
- We have published a [journal article](#) on the subject¹ and, more recently, a [research report](#) which summarizes the findings from a survey (N = 226) and 41 qualitative interviews. The report concludes with 10 best practice recommendations for employers, line managers and HR professionals².
- We have also held knowledge exchange events to gather feedback on a draft version of the report and facilitated awareness raising and training events for professional bodies and employers, including the Essex branch of the Chartered Institute of Personnel and Development. We draw on this body of experience in what follows.
- Our key recommendation is to extend entitlement to bereavement leave to those who experience early pregnancy endings (before 24 weeks' gestation) without a live birth. These are much more common than post 24-week pregnancy endings which are already protected in this way. Early pregnancy endings, however, may well be experienced as bereavements.

EVIDENCE AND RECOMMENDATIONS

1. Our discussion focuses in particular on the Bill's proposed widening of the entitlement to bereavement leave. We note with approval the expansion of this entitlement beyond parents. **However, what we wish to argue for here is its expansion to cover pregnancies which end without a live birth before 24 weeks' gestation.** As the Committee will be aware, the existing legislation provides this entitlement only for pregnancies of 24 weeks' gestation and beyond which end without a live birth, which it defines as stillbirths.

2. Our position on this is **that the Bill needs to extend its redefinition of bereavement leave yet further, to encompass ‘early’ pregnancy endings – i.e., miscarriages, abortions, ectopic pregnancies and molar pregnancies before the period of stillbirth.** This is for the following reasons.
3. The 24-week cut off is premised on the concept of ‘viability’, which is an assumption that after a specific point in pregnancy the foetus can survive outside of the womb. As the Committee will be aware, this also structures access to abortions which are permissible for a range of reasons before 24 weeks in our legal context. After this point, terminations can only be provided in situations of serious foetal anomaly or a significant threat to the gestational parent’s health. Viability also acts as the point after which a non-live birth is defined as a stillbirth and parents are entitled to maternity and paternity leave as well as bereavement leave.
4. Using viability as a threshold for bereavement leave assumes that bereavement is only experienced after this point in pregnancy and does not take into account the wide range of pregnancy endings which can be experienced as bereavements. It also very much restricts the number of pregnancy endings which are considered to need support in the workplace.
5. For example, although miscarriages are not formally recorded in official statistics in the UK, they are very common. Indeed, they have been identified as the most common complication of early pregnancy³. The Miscarriage Association estimates that around 1 in four pregnancies end in miscarriage⁴.
6. Abortions are also very common, occurring in around one in four pregnancies⁵. By far the most frequent reason for abortion under the law is Ground C of the Abortion Act (1967), which includes abortions before 24 weeks’ gestation. In 2021, Ground C accounted for 98% of all abortions in England and Wales⁶. Stillbirths, on the other hand, including abortions from 24 weeks onwards, account for just 0.4% of all births⁷.
7. As such, the vast majority of pregnancy endings occur within the first 24 weeks of gestation. **It therefore seems much more equitable to us to protect all pregnancies, regardless of gestation period, by extending entitlement to bereavement leave where these end without a live birth; and where those affected feel able to disclose their situation at work and want to take such leave.**
8. These qualifications are important, for reasons we will explain in paragraph 12. Nonetheless, the Committee will also recall that there have been two previous attempts to extend bereavement leave for parents to those who experience miscarriage. The first fell due to Parliament being prorogued in 2022⁸; the second did not proceed to a second reading⁹.
9. Moreover, our [research report](#) establishes that three quarters of our respondents took leave from work after an early pregnancy ending. 65% took some form of unprotected sick leave, while a further 8% used annual leave and 6% unpaid leave. Only 13% took either compassionate leave or leave provided by a specific pregnancy endings policy. 28% of this group of respondents, further, reported that they needed time off from work to recover emotionally from their pregnancy ending.

10. Those who felt unable to disclose their pregnancy ending were also much more likely to take a short amount of leave (79%) compared to those who did tell others (40%). Of those who did not take leave at all, 20% were reluctant to tell anyone at work about their experience and 11% were concerned that others would judge them negatively for having had an early pregnancy ending. This speaks to us of a profound stigma around pregnancy endings in UK workplaces; and our data suggest this is particularly marked around abortions.
11. Notably, when asked what would have improved their experience at time, 35% of our respondents told us that entitlement to paid time off would have helped, whereas 28% suggested they needed more time off than they were able to take. **We therefore argue that expanded statutory entitlement to bereavement leave as an element of the new Bill would not only provide more support for workers affected by early pregnancy endings but also help to reduce the stigma we have identified around these experiences.**
12. It is very important to end by noting that not all gestational parents, or their partners, experience early pregnancy endings as bereavements: the physical and emotional effects of these endings vary significantly. As we say in our [research report](#), assumptions should not be made, for example, that a miscarriage will always be more traumatic than an abortion, or that abortions are chosen rather than spontaneous and therefore don't constitute bereavements.
13. However, as the law currently stands and with the proposal of the new Bill, the time seems ripe to offer those who experience pre-24 week pregnancy endings some legal protection in the workplace through the provision of bereavement leave, where that would be helpful to them.
14. We would welcome the opportunity to provide further evidence to the Committee should that be needed, in the form of oral or written evidence.

REFERENCES

¹ Middlemiss, A.L., Boncori, I., Brewis, J., Davies, J. and Newton, V. (2024) 'Employment leave for early pregnancy endings: a biopolitical reproductive governance analysis in England and Wales', *Gender, Work and Organization*, 31(1): 75-91.

² Boncori, I., Brewis, J., Davies, J., Foroughi, H., Middlemiss, A., Mullan, K., Newton, V. and Schnitzler, K. (2024) *Understanding the Experience of Early Pregnancy Endings as a Workplace Issue*. Research report. Available at: [Early pregnancy endings and the workplace | The Open University Business School](#).

³ Regan, L. (2018) *Miscarriage: What Every Woman Needs To Know*, Croydon: Orion Spring.

⁴ The Miscarriage Association (n.d.) *Information*. Available at: [Information about miscarriage & pregnancy loss - The Miscarriage Association](#).

⁵ Office for National Statistics (2023) *Conceptions in England and Wales; 2021*. Available at: [Conceptions in England and Wales - Office for National Statistics](#).

⁶ Office for National Statistics (2024) *Abortion Statistics, England and Wales: 2021*. Available at: [Abortion statistics, England and Wales: 2021 - GOV.UK](#).

⁷ Office for National Statistics (2024) *Births in England and Wales: 2023*. Available at: [Births in England and Wales - Office for National Statistics](#).

⁸ [Bereavement Leave and Pay \(Stillborn and Miscarried Babies\) Bill - Parliamentary Bills - UK Parliament](#).

⁹ [Miscarriage Leave Bill - Parliamentary Bills - UK Parliament](#).