

UK COVID scheme indirectly discriminated against maternity leave takers, court rules ^[1]

But ruling will not allow self-employed women whose income support was hit during pandemic to claim rebates

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EXCERPTS

Tens of thousands of self-employed women who took maternity leave were indirectly discriminated against by the UK government during the pandemic but will be unable to claim rebates, the court of appeal has ruled.

The speed at which civil servants had to create a safety net for workers justified their actions, three judges found.

About 75,000 women who took maternity leave between 2016 and 2019 lost out on earnings because payments from the self-employment income support scheme (Seiss) – introduced after the furlough scheme last year – are worked out using average profits.

The campaign group Pregnant Then Screwed brought a publicly funded judicial review – supported by the Musicians' Union, the Federation of Entertainment Unions and the union Community – against the chancellor, Rishi Sunak, arguing that giving birth could not be compared to taking a holiday or other planned work breaks and fell foul of equality laws by only affecting women.

The payments, calculated by taking into account 80% of self-employed profits averaged out between 2016 and 2019, did not exempt periods when self-employed women were not earning because they were on maternity leave, or take into account statutory maternity payments.

Earlier this year the high court ruled that Seiss was not discriminatory, but this was partly overturned by the court of appeal on Wednesday. Thousands of women will be unable to claim rebates, however, after three judges ruled that the nature of the pandemic meant it would have been impossible to amend the scheme without affecting its speed, simplicity or verifiability.

Kerry Chamberlain, a self-employed energy analyst who acted as a claimant in the case, took maternity leave in 2017 and 2018. She estimates that she missed out on £7,000. "The biggest frustration was that this was a calculation that was supposed to compensate fairly for your actual loss of earnings. But it wasn't fair because they didn't count in the last full tax year when my earnings had returned to normal."

Zoë Challenor, the founder of the children's opera company B'Opera, said her self-employed household lost all work and income overnight in March 2020. Challenor, whose children are six and four, had been working four days a week in 2020 but her Seiss payment was based on earnings in 2016-19 when she was on maternity leave and then looking after a small child.

Under the furlough scheme she would have received 80% of her wages but instead she got £29 a week, about 5% of her income when the pandemic hit. "That didn't come close to covering my mortgage or basic bills like food," she said. "And this is in the context that many self-employed mothers will have already taken a huge financial hit and career setback to take unpaid time off to have children in the first place."

Joeli Brearley, the chief executive and founder of Pregnant Then Screwed, said she was delighted at the ruling of indirect sex discrimination, and said it should act as a reminder to the government of its legal obligation to ensure no policies disproportionately affect any group, unless it can be justified.

"The fact that women who have taken a period of maternity leave to do the most important job in the world – raising the next generation – are then subject to a lower payment is quite clearly discrimination," she said.

Brierly said there was a "blindness at the heart of government" to women's needs, with ministers only considering the impact of the scheme on new mothers in late April 2020 after the charity raised it in parliament and through a legal challenge, supported by Doughty Street Chambers and the law firm Leigh Day.

Asked about the issue in parliament, Sunak said self-employed people had "ups and downs" in their earnings "for all sorts of reasons ... whether through maternity, ill health or others".

Region: Europe ^[3]

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