

# Pregnant? Wait till the boss hears <sup>[1]</sup>

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## EXCERPTS

Be open, honest, and unapologetic - this is the approach pregnancy manuals advise women to take when informing their employers they are going to have a baby. Most manuals also recognise that this can be one of the most stressful parts of early pregnancy.

Danniella McClain, 28, waited until she reached the 13-week milestone and had seen the foetus on a scan before telling her boss. She was anxious, but fairly confident that it would be a straightforward conversation. Within seconds it was obvious the news was unwelcome; within days she was made redundant.

After a protracted legal battle, McClain won a claim against her former employer on the grounds that he had subjected her to sex discrimination, related to her pregnancy, when he dismissed her. The case represents a rare legal success in an area of discrimination that often goes unchecked. Although news of large payouts to City executives make occasional headlines, cases involving relatively low-paid women who are either sacked or bullied into resigning are far more common, and yet go to trial far less frequently - usually because the women are unable to afford basic legal advice.

McClain's story is striking because it is such a brazen instance of an employer taking rapid action to dispense with a staff member on hearing news of her pregnancy. McClain came in to work at the London estate agents, Hogarth, where she had been employed for nine months, on a Monday morning in late September 2009, noted that the company's owner was in a good mood, and decided this was the moment to tell him her news. His response was not what she had expected.

"He said: 'Right, right . . . OK'," she recalls. "He didn't smile. He didn't say congratulations. He didn't know what to say; it was like he was in deep shock."

A few days later, concerned that nothing more had been said about arrangements for her pregnancy, she decided to put her due date and proposed departure into writing, and left an envelope on his desk. She says she was able to watch as he opened the letter, observing his actions reflected in her computer screen.

Moments later he asked if he could have a word with her. "He said: 'We are making your role redundant. I'll give you a month's notice. I'll give you your commission'," she says. He told her she didn't have to work her notice, and that was all he said. The conversation lasted less than a minute, she thinks.

"I walked out of the office and started crying. I'd gone in at 9am that day and I was out by 9.18. It was over very quickly," she says.

Since the financial crisis began, there has been a sharp rise in the number of women who have lost their jobs as a result of pregnancy, campaigners and lawyers report. There are no precise figures to illustrate their concern, but the campaigners' assessment reflects a clear increase in the numbers of people contacting lawyers and support groups to take legal advice.

Rosalind Bragg, director of the advice and campaigning group Maternity Action, says: "Before the crash, 30,000 women each year lost their jobs because of pregnancy discrimination. The situation has become much worse since the economic downturn. We see a lot of cases of pregnant women and women on maternity leave who are selected for redundancy because of their pregnancy."

The organisation has also advised a lot of women whose employers have made life unbearable since they announced their pregnancy, many of whom have subsequently resigned, Bragg says. Because of the time and costs involved in taking legal action, the majority of women do not pursue their employers, she adds. "Women on low wages find it particularly difficult to find the resources to take legal action against their employers and will receive only modest payouts if they succeed."

She points to a new willingness among some employers to complain openly about maternity rights. Alan Sugar caused outrage when he said maternity laws meant "people are entitled to have too much; everything has gone too far", and his comments were echoed more recently by Simon Murray, chairman of the commodities trading company Glencore, who said: "Pregnant ladies have nine months off. Do you think that means . . . what I'm absolutely desperate to have is young women who are about to get married in my company, and that I really need them on board because I know they're going to get pregnant and they're going to go off for nine months?"

Bragg says: "There is widespread acceptance of pregnancy discrimination amongst employers. While Alan Sugar has spoken publicly about his views, many other employers privately follow his lead. Very few women take any action over pregnancy discrimination so most employers will get away with it. A government survey found that 24% of men thought that women on maternity leave should be made redundant before anyone else."

Losing her job was devastating for McClain. She had not planned to get pregnant and had deliberated hard about going ahead as a single parent.

"It was really hard; it makes me teary to think about it," she says, trying (without success) not to cry at the memory of the weeks that followed her dismissal. "It should have been a really happy time. I can't tell you how stressed I was for the first part of my pregnancy. I was angry. I was scared. I didn't know how I was going to live. I rent - I have bills to pay. I had to get benefits, which I'd never done before. I felt really let down. I felt really alone.

"One of the major reasons I had decided to go ahead as a single mum was because I felt secure - I had a job, I could pay the rent. I really questioned myself - asking myself if I was doing the right thing." Now - she stresses - she's thrilled that she went ahead with the pregnancy, and says: "It was worth it 100 times over, obviously." But at the time losing her job made her very uncertain about her choices.

"I thought: I'm on benefits; I have no job; I didn't know how I was going to get another job. I did try, but it is hard when you are pregnant to get a new job," she says.

The case did not involve maternity payments, because McClain was not eligible for them, but focused on her employer's decision to not hold her job open for her, and addressed whether his argument that she was being let go because of unrelated company restructuring was plausible.

A colleague told the tribunal that McClain's boss, Alun Dufoo, had taken her aside on the day that he had heard the news. "Alun told me that he intended to let Danniella go as he did not see how she could continue to do her job . . . Alun has not hid the fact that he thinks Danniella is making a bad choice in regards to her pregnancy," the court transcript states.

The day after she was told she was being made redundant, McClain heard from a colleague that her boss had offered her job to someone else in the office.

Dufoo argued that there were issues with McClain's competence and also that the redundancy was related to the financial downturn, but the tribunal found for her.

Camilla Palmer, a specialist in pregnancy discrimination with solicitors Leigh Day, who represented McClain, says: "There was absolutely no issue with the job she was doing. The timing was highly suspicious."

She says she has seen a huge increase in the numbers of women contacting her in the wake of the recession, adding: "We're not talking about whole departments being made redundant, but the one person out of 10 employees who is pregnant finding that they are the only person to be made redundant."

She says that employers often make stereotypical assumptions about pregnant women - that they will only come back part-time, that they will be less committed to the job, that they will no longer be willing to be at the employer's beck and call - and decide that it is inconvenient to continue employing a pregnant woman. Sacking someone when they are pregnant "can destroy enjoyment of pregnancy and cause huge stress and high blood pressure", she says.

"I would add that, without strong protection for pregnant women and new mothers - which is properly enforced - we will never achieve gender equality."

The company went into liquidation during the course of the case, but McClain's lawyers were successful in bringing an individual case of discriminatory dismissal against Dufoo, who is now working with estate agents Hogarths Estates, at the same address in Earl's Court.

McClain was awarded £21,925.20 in recognition of loss of earnings and injury to feelings, but has not yet received the money from Dufoo. Contacted by telephone, he said the money had not been paid because his lawyers were preparing to appeal.

"Even when a woman gets a judgment in her favour, she can still face a struggle to get the payout. The cuts to Legal Aid and advice services will make it harder for women to solve these problems," Bragg says, calling on the government to do more to raise awareness about the rights of pregnant women and new mothers at work. "It is not acceptable for the government to sit back and leave it to individual women to confront their employers. The problem is not going away."

McClain says she is thrilled to have won the case, but is still looking for another job - her search hampered by the ripple effects (practical and also in terms of self-confidence) of losing her job at such a sensitive time.

"I am relieved and happy that the court process is over and that justice was served, but it is incredibly difficult now, just trying to find new work," she says.

- reprinted from the Gaurdian

**Region:** Europe <sup>[2]</sup>

**Tags:** maternity and parental leave <sup>[3]</sup>

work/life balance <sup>[4]</sup>

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