

**ASLEF**  
THE TRAIN DRIVERS UNION

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>>> **Women at work – A guide  
for ASLEF representatives**

# ASLEF

THE TRAIN DRIVERS UNION

## FOREWORD

I would like to thank ASLEF's Women's Representative Committee for the hard work and commitment they gave in producing this invaluable booklet. We hope you will find the information contained in it useful to ensure that our women members receive the equal treatment and entitlements that they deserve in the 21st Century workplace. You will also note that many of the provisions in the booklet do not solely apply to women, particular some of those in the health and safety aspirations and there is valuable advice which can benefit the whole of the ASLEF membership.



**Keith Norman**  
General Secretary

The Women's Representative Committee were tasked with writing a guide to assist reps in understanding women's issues in the workplace.

This guide is not exhaustive and further information can be found at the various websites listed at the rear of the document.

As this will be distributed to all 8 districts, and all the TOCs/FOCs have different policies, we have quoted what is the minimum legal requirement which companies have to adhere too.

As ever, members of the WRC can be contacted if needed and their numbers can be found in the ASLEF diary.

Women's Representative Committee

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## WOMEN AT WORK – A GUIDE FOR ASLEF REPRESENTATIVES

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### Pregnancy

Pregnant women have four key rights at work within law

- > Paid time off for antenatal care
- > Maternity leave
- > Maternity pay benefits
- > Protection against unfair treatment and dismissal.

A pregnant woman has a legal obligation to inform her employer of her pregnancy at least 15 weeks before the date of expected delivery of the baby. If a woman is unaware she is pregnant, she must tell her employer as soon as possible. Until the employer is aware of the pregnancy they are not obliged to take any steps to protect the welfare of the pregnant woman.

At this point standard practice within the rail industry has been to withdraw the employee from driving, although this is not necessary according to Health and Safety legislation.

As soon as they have been informed of the pregnancy the employer must carry out a specific risk assessment, also considering any medical advice the woman may have received. Under the 1975 Sex Discrimination Act an employer who fails to protect the health and safety of a pregnant worker is automatically guilty of sex discrimination.

The assessment should be carried out with the input of the employee concerned and take into account individual requirements. It should cover the need for toilet breaks, adequate rest periods, comfort whilst in the driving cab, and the ability to carry out exceptional as well as normal duties. This is not an exhaustive list.



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This risk assessment should be kept under review and steps taken to eliminate the risks at different stages of pregnancy.

**If a risk cannot be removed the employer should:**

- > offer to change the hours or conditions of work to avoid the risk, or offer her alternative work
- > if neither is possible suspend her on full pay from work as long as is necessary to avoid the risks.

Any changes deemed necessary to the woman's duties or working hours can only be carried out with the woman's consultation and approval. Under no circumstances should the woman suffer a reduction in pay due to a change in shifts or suspension.

### **Sickness during pregnancy & maternity leave**

Legislation states that any pregnancy related sickness absence must be recorded separately and should not be included in any formal monitoring procedure. The normal remuneration for sick leave applies. If a woman is absent after the 36th week of pregnancy the employer can insist that she begins maternity leave.

During maternity leave there is no entitlement to sick pay. If a woman wishes to receive sick pay instead of maternity pay they will need to give eight weeks notice to end their maternity leave and then follow the employer's sickness procedures to receive sick pay. Once the employee is well enough to work they will need to return to work as you cannot return to maternity leave.

### **Paid time off for antenatal care**

Pregnant women have the right to reasonable paid time off to attend antenatal appointments. Antenatal care includes GP, clinic and hospital appointments, parentcraft and relaxation classes. Travel time to and from appointments should also be paid. Employers can ask to see appointment cards for this care.

### **Maternity leave**

Basic statutory maternity leave rights are detailed below; most TOC/FOC's will have enhanced policies which should always be checked locally.

**To qualify for maternity leave, a woman must tell her employer by the end of the 15th week before the baby is due:**

- > that she is pregnant
- > the expected week of childbirth
- > the date she intends to start maternity leave.

Ordinary Maternity Leave (OML) is 26 weeks leave from work with the right to return to the same job at the end of it. All women are entitled to this regardless of length of service or number of hours worked.

Additional Maternity Leave (AML) is 26 weeks leave which starts the day after the end of OML. All women are entitled to this regardless of length of service or number of hours worked.

If a woman wishes to change the start date of her maternity leave she must give the employer 28 days notice before the new or the old date, if this is not possible the employer should be told at the earliest opportunity.



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A woman is entitled to Statutory Maternity Pay (SMP) if they have been in the same job for at least 26 weeks by the 15th week before the baby is due and earns at least £97 per week.

If a woman changes jobs during pregnancy, does not earn enough to get SMP or is unemployed, they will be entitled to claim the Maternity Allowance from the Jobcentre Plus for 39 weeks.

Once she has told her employer her intended date to start maternity leave, she must then confirm her return date in writing within 28 days. She can change this date if she gives her employer eight weeks notice.

### **Rights during maternity leave**

Women are entitled to all contractual rights throughout their maternity leave, including the accrual of annual leave; the only exception is normal pay.

### **Redundancy**

If a woman is made redundant whilst on maternity leave they have a right to be offered any suitable alternative vacancy before it is offered to any other employees. This protection is provided by Regulation 10 of the Maternity and Parental Leave Regulations 1999. If on maternity leave they are not required to attend an interview or any other assessment procedures.

### **Paternity leave**

Basic statutory paternity leave rights are detailed below; TOC/FOC's may have enhanced policies which should always be checked locally.

Paternity leave is up to two weeks leave paid at the statutory rate from work following the birth of a baby for fathers and partners (including same sex partners). To qualify you must have worked for your employer for 26 weeks by the 15th week before the baby is due.

**To qualify for paternity leave the employer must be informed by the end of the 15th week before the baby is due:**

- > the expected week of childbirth
- > whether one or two weeks leave will be taken
- > the date intended to start paternity leave.

If an employee wishes to change the start date of the leave the employer must be given 28 days notice or as much as reasonably possible.

Paternity leave must be taken within 56 days of the birth; you can take one or two weeks in a row but not odd days, you do not get a longer entitlement for multiple births.

All contractual rights still apply during paternity leave.

### **Breastfeeding when returned to work**

Breastfeeding is recommended for new babies for at least the first six months by the Department of Health. In the UK breastfeeding mothers have some legal protection under health and safety and sex discrimination laws.

Whilst breastfeeding women and their babies have special health and safety protection under the same regulations that give protection to pregnant employees, women must tell their employers in writing that they are breastfeeding to qualify. Employers must then carry out a risk assessment to consider whether the woman's working conditions are risk to hers or babies health.

If there is a risk then employers must take steps to avoid these, including temporarily changing working conditions or hours if it is reasonable, allowing extra breaks to express milk, regular shift patterns and avoiding night work. If these adjustments aren't enough to enable the woman to



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continue breastfeeding then a temporary transfer to alternative work should be offered. Alternative work or additional breaks for breastfeeding or should be provided without loss of pay.

For detailed information visit <http://www.hse.gov.uk/mothers/law.htm>

### Stillbirth

A stillbirth is the loss of a baby after 24 weeks of pregnancy and up to birth.

If a baby has died in the womb, a woman is normally expected to give birth naturally; a caesarean is only given if there is a medical reason for it. Obviously this is a very emotional and traumatic time for both parents. There will be the normal recovery time that a woman goes through after giving birth along with the additional shock and grief of the death.

If a woman suffers a stillbirth from the 25th week of pregnancy onwards, she is eligible for maternity leave, Statutory Maternity Pay and Maternity Allowance just as if her baby had been born alive. If she is already on maternity leave, she doesn't have to do anything.

If her baby is stillborn before she has started maternity leave, she must tell her employer as soon as she can (in writing if they request it) that she has given birth. The hospital will provide a certificate of stillbirth.

### Miscarriage

A miscarriage is the loss of a baby up to 24 weeks into the pregnancy. Most miscarriages happen within the first 12 weeks of pregnancy and 1 in 4 women will miscarry, some will not even be aware that they are pregnant when this happens.

If the miscarriage is complete (a complete loss of the pregnancy) this can be confirmed with a scan. If there is still foetal matter within the womb then a

surgical procedure under general anaesthetic will be performed after a few days.

The parents may experience the same sense of loss as they would losing any family member and tend to follow the same cycle of denial, anger, guilt, emptiness and longing.

If a woman suffers a miscarriage earlier than the 25th week of pregnancy she doesn't qualify for maternity leave, Statutory Maternity Pay or Maternity Allowance. Any time she takes off will fall under contractual sick pay or Statutory Sick Pay if there is no contractual sick pay scheme. Employers must not take any pregnancy-related sickness absence into account when working out a period of sick leave.

### **Fertility treatment**

At the moment, a worker does not have a legal right to time off for fertility treatment. Currently in the UK, 1 in 7 couples have trouble conceiving, so this is something that is now becoming a pressing issue in the workplace. IVF can be a lengthy and very stressful process and is not always successful on the first attempt. Apart from the physical side, there is the emotional aspect of the IVF; being unable to conceive naturally, and continually failing to conceive with IVF, could have a huge impact on the would be parents state of mind, leading to more time off work. Employers are reluctant to implement a policy which could lead to an indefinite amount of absence only then to be followed by a potential 52 weeks of maternity leave depending on whether their employee is male or female.

### **Adoption leave**

Basic statutory adoption leave rights are detailed below; TOC/FOC's may have enhanced policies which should always be checked locally.



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### **To qualify for statutory adoption leave you must:**

- > be newly matched with a child by a recognised adoption agency
- > have worked continuously for your current employer for at least 26 weeks before the beginning of the week when you were matched with a child.

### **You will not qualify for statutory adoption leave or pay if:**

- > a private adoption is arranged
- > you become a special guardian
- > you adopt a stepchild
- > have a child through surrogacy.

The employer must be provided with documentary proof of the adoption; this is normally a matching certificate from the adoption agency.

An employee will be entitled to 26 weeks ordinary adoption leave followed by 26 weeks additional adoption leave paid at the statutory rate. This can be started either from the date the child begins to live with the employee or up to 14 days before the expected date of the child's arrival.

The employer must be informed within 7 days of the employee being matched that they wish to take adoption leave, they should be informed of when the child is expected to be placed and when the adoption leave will begin. The start date can be changed with 28 days notice.

### **Parental leave**

An employee with a child aged under 5 (under 18 if the child has a disability) has the right to take parental leave.

### To qualify an employee must:

- > have one year's continuous service
- > be named on the child's birth certificate, adoption certificate or have legal parental responsibility.

Parental leave is an individual right and can not be transferred between parents.

Employees who are separated and not living with their children still have the right to parental leave if they keep formal parental responsibility for the children.

Each parent can take a total of 13 weeks for each child up to their fifth birthday. If the child has a disability parents can take 18 weeks parental leave up until the child's 18th birthday.

For adopted children each parent can take a total of up to 13 weeks parental leave up until the fifth anniversary of their placement or until the child's 18th birthday, whichever comes first.

Statutory parental leave is unpaid but TOC/FOC's may have enhanced policies which include the right to pay so local agreements should be checked.

### Flexible working

**Flexible working is a phrase used to describe working patterns that are adapted to suit an employees needs. More commonly women will apply to an employer to work flexibly after having a child. Examples of flexible working practices include:**

- > part time: working less than the normal hours
- > flexi time: choosing when to work



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- > annualised hours: hours are worked out over a year
- > compressed hours: working agreed hours over fewer days
- > staggered hours: different starting, break and finishing times
- > job sharing: sharing a job designed for one person with someone else.

This is not an exhaustive list

### **Anyone has the right to apply to their employer for flexible working, the employee must:**

- > have worked for the employer for 26 weeks continuously before applying
- > not have made another application to work flexibly under the right during the past 12 months.

### **Employees have the statutory right to ask if:**

- > they have or expect to have parental responsibility for a child aged 16 or under or a disabled child under 18 who received the Disability Living Allowance
- > are the parent/guardian/special guardian/foster parent/private foster carer or the holder of a residence order or the spouse, partner or civil partner of one of these and are applying to care for a child
- > are a carer who cares or expects to be caring for an adult who is a spouse, partner, civil partner or relative or who although not related to the employee lives at the same address as them.

Legally the employer must then seriously consider any application made and only reject it if there are good business reasons for doing so. Employees have a right to request flexible working but not the right to have it.

### **How to apply for flexible working:**

The process of making a request for flexible working can take up to 14 weeks for an employer to consider and employees should keep this in mind when making an application. They must also remember that if an employer agrees to the request it may result in a permanent change to the contract of employment.

### **When making your application employees must confirm that you either:**

- > have responsibility for the upbringing of the child and they are either the mother, father, adopter, guardian or foster parent or are married to or are the partner of them
- > care for, or expect to be caring for, a spouse, partner, civil partner, relative or someone who, though not related to you, lives at the same address as you.

### **The application must:**

- > be made well in advance of when the employee wants it to take effect
- > be in writing (whether on paper or electronically)
- > be dated
- > state that the application is made under the statutory right to request a flexible working pattern
- > give details of the flexible working pattern they are applying for, including the date from which they want it to start
- > explain what effect the employee believes the new working pattern would have on the employer and how the effects might be dealt with
- > state whether you have made a previous application and if so when.



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### However employees do not have to:

- > provide evidence that you have a parental or caring responsibility
- > demonstrate why the care cannot be provided by someone else.

### Points to remember when negotiating flexible working:

- > retaining qualified drivers in the industry saves TOC/FOC's money
- > after maternity leave, according to industry standards only training refreshers will be required, this is cheaper than training a driver from scratch
- > the overall female membership of ASLEF is just 3%, therefore the financial burden on the TOC/FOC's is minimal.

### Toilet facilities

All toilet facilities for members should be of the highest possible standard and as such the LUL Dignity at Work policy has been used as an example of clear standards for acceptable facilities.

- 1 Cubicles to have coat hook and a lock in working order
- 2 Toilets and urinals to be clean and free of unpleasant odours
- 3 Cubicle doors to be clean and free of stickers and graffiti
- 4 Toilet rolls to be available in each cubicle in a holder or dispenser
- 5 Toilet seats should be securely attached and not broken
- 6 In female/unisex toilet facilities each cubicle should have a sanitary bin if a macerator is not installed
- 7 Each female/unisex toilet should have a sanitary dispenser that is not empty
- 8 liquid soap or block soap to be available

- 9 Wash basins to be clean and free from foreign objects and contain a working plug
- 10 Taps should be in good working order, not leaking with both hot and cold water readily available
- 11 The facility for hand-drying (paper/roller towels or machine) should be available and in good working order
- 12 Painted walls or tiles to be clean and free from graffiti and unauthorised stickers
- 13 Liquid spillages to be cleared promptly and in any event within an hour of discovery
- 14 Ventilation should be in working order and ventilation equipment to be kept clean
- 15 Lighting to be in working order

The definition of clean is 'substantially free from dust, dirt, body fluids, spillages, stains, scuff marks, rubbish, fallen leaves, chewing gum, broken glass, bird droppings, infestations and food debris'.

### **Sexual Harassment**

Sexual harassment is overwhelming a problem experienced by women; however harassment can be directed by women to men. Young men and gay men can also be vulnerable.

#### **Sexual harassment is:**

- > repeated verbal sexual comments/innuendos
- > physical abuse such as inappropriate touching or physical contact
- > spreading sexually malicious rumours



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- > offensive or abusive letters, texts or emails
- > derogatory mimicking sexual poses, sexual positions or sexual intercourse
- > incidents of stalking
- > single serious assault.

The common feature is that it is unwanted by the person on the receiving end and once it is made clear that the behaviour is unwelcome, it must stop or it becomes sexual harassment.

Harassment can have a significant effect on the physical and mental health of the victim. They can feel anxious, intimidated, and threatened; this can affect their work performance and absence levels.

Under the Health and Safety at Work Act, employers have a legal responsibility for preventing harassment in the workplace; employees must be provided with a safe and healthy working environment.

### **If you are approached by someone who has been a victim of sexual harassment you should:**

- > discuss with them what options are available to them and seek their agreement before reporting any incidents to management
- > encourage them to write down details of every incident of harassment including what was said, the time and date. Copies of any documents such as letters, memos and emails should also be kept
- > make sure they keep records of any medical treatment sought
- > find out if any other workers have experienced similar problems and try to identify any possible witnesses.

In some cases, the incident may be able to be resolved in an informal manner but depending on the nature of the harassment this may not always be possible and a formal grievance may need to be considered. It should also be remembered that sexual harassment cases can also lead to employment tribunal cases.

### **Domestic violence**

Anyone can be a victim of domestic violence, women, men and people in same sex relationships although overwhelmingly the abuser is a man and the abused a woman. Domestic violence is physical, sexual, mental, verbal or emotional abuse by a partner, ex-partner, family member, extended family member or person co-habiting.

Domestic violence accounts for almost one quarter of all reported violent crime, one in four women will experience domestic violence and at least 2 women are killed every week by violent partners or ex-partners.

#### **Support for victims could include:**

- > arranging paid leave for them to attend appointments with support agencies, solicitors, court dates or to rearrange housing or childcare
- > negotiating temporary or permanent changes to working times or patterns
- > negotiating redeployment or relocation.



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### Womens health issues

#### Female cancers

Breast cancer is the most common female cancer in the UK; followed by cervical and ovarian cancer.

The link between shift work and certain cancers, including breast cancer, has been confirmed in a report from the HSE in May 2010. Currently there is no pressure on employers to provide additional protection of employees than what is currently required.

Changes to the Disability Discrimination Act in 2005 now mean that all cancers are considered as a disability from the point of diagnosis. Employees do not have to have symptoms or consider themselves to be disabled to be covered. The DDA also covers employees who have had a disability in the past so a worker who has had cancer but is now in remission or cured would still afford the same rights under the act.

The employer has a duty to make 'reasonable adjustments' to workplaces and working practices to ensure that employees with a disability are not at a disadvantage compared to others.

#### **What is considered a 'reasonable adjustment' depends on:**

- > the cost of making the adjustment
- > the amount the adjustment will benefit the employee
- > the practicality of making the adjustment
- > whether making the adjustment will affect the employer's business/service/financial situation.

### **Examples of a reasonable adjustment include:**

- > allowing an employee time off to attend medical appointments
- > modifying a job description to take away tasks that cause particular difficulty
- > allowing some flexibility in working hours
- > allowing extra breaks to help an employee cope with fatigue
- > temporarily allowing the employee to be restricted to 'light duties'
- > adjusting performance targets to take into account the effect of sick leave/fatigue etc on the employee
- > moving the employee to a post with more suitable duties (with the employee's agreement)
- > moving a work base
- > ensuring suitable access to premises for employees using wheelchairs/crutches etc
- > providing toilet facilities appropriate for a disabled employee
- > allowing 'phased (gradual) return' to work after extended sick leave.

Employees do not need to tell their employers that they are having tests for cancer or that they have cancer, however if they do not, the employer does not need to make any adjustments.

### **The menopause**

The menopause is the point in time when menstruation ceases for a woman. The average age at which this happens is 51 but the normal range is between 45 and 55 although it can affect women of a younger age. This period of hormonal change lasts about 6 years.



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Symptoms of the menopause can vary a great deal from woman to woman, some will suffer debilitating symptoms and others none, they can include:

Hot flushes, night sweats, sleep disturbances, fatigue, poor concentration and memory, weight gain, irritability, mood disturbances and changes in heart rate (palpitations and tachycardia).

Hormone Replacement Therapy can be prescribed to help combat the symptoms but women can suffer other side effects from this treatment. Employees should inform their employer of any medication they are taking to alleviate symptoms they may be experiencing.

In 2003 the TUC conducted a study of 500 Health and Safety Representatives and found that only 1 in 5 employers provide information about the menopause and 45% of managers don't recognise the symptoms associated with it.

In 2009 following a request from the Womens Representative Committee the EC instructed District Organisers to negotiate with TOC/FOC's to implement a menopause policy.

### **Points of negotiation towards this policy include:**

- > access to suitable washing and toilet facilities
- > suitable uniform, layered loose clothing made from natural fabrics
- > providing cold drinking water
- > avoiding negative and discriminatory attitudes
- > flexible working patterns and adequate rest breaks
- > paid leave for medical appointments and treatment
- > training for managers in dealing with the issues surrounding the menopause.

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## Useful websites

[www.tuc.org.uk](http://www.tuc.org.uk)

[www.directgov.uk](http://www.directgov.uk)

Employment rights advice (including DDA)

[www.businesslink.gov.uk](http://www.businesslink.gov.uk)

Employment rights advice

[www.acas.org.uk](http://www.acas.org.uk)

Employment rights advice

[www.hse.gov.uk](http://www.hse.gov.uk)

Health & Safety Executive

[www.womensaid.org.uk](http://www.womensaid.org.uk)

Domestic Violence charity

[www.refuge.org.uk](http://www.refuge.org.uk)

Domestic Violence charity

[www.cancerresearchuk.org](http://www.cancerresearchuk.org)

[www.breastcancercare.org.uk](http://www.breastcancercare.org.uk)

[www.ovarian.org.uk](http://www.ovarian.org.uk)



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