



Living a Reproductive Life in the Workplace
Seminar 6th December 2024

ModernLawReview

Programme

09:30 – 10:00: Registration

10:00 – 10:15: Welcome from Northumbria University's Faculty of Business and Law

10:15 – 11:15: Paper Session 1

- Dr. Fiona Bloomer – *Abortion as a Labour Rights Issue: The Workplace as a Site of Abortion Surveillance*
- Dr. Michelle Weldon-Johns – *Fertility treatment in the workplace: the case for blurring the boundaries of pregnancy rights and protections*
- Dr. Mark Gatto – *A Faustian bargain for power? Theorising the mobilisation of Parents and Carers in UK Universities as new labour actors within organisations*

11:15 – 11:30: Break

11:30 – 13:00: Paper Session 2

- Victoria Murray – *Labour of Love: Industrial Solutions to the Cost of Parenthood*
- Dr. Megan Pearson – *Work/life balance rights: foregrounding care in work?*
- Dr. Elaine Dewhurst – *Uncertain Futures: Intergenerational Stagnation and Equality in the Workplace*

13:00 – 14:00: Lunch

14:00 – 15:15: Paper Session 3

- Dr. Elisabeth Griffiths, Dr. Lyndsey Bengtsson, and Students from Northumbria University Policy Clinic – *The Intersection of Menopause and Work*
- Manisha Mathews – *The Importance of Policy Design in Supporting Work-Family Balance for Mothers and Fathers: A Comparison to the “Nordic Model”*
- Dan Deahan – *Male Informal Caregivers & Workplace Disclosure*

15:15 – 15:30: Break

15:30 – 16:30: Expert Panel Discussion

16:30 – 16:45: Closing Remarks

Invited Speaker Biographies and Abstracts

Dr. Fiona Bloomer

Senior Lecturer, School of Applied Social and Policy Sciences, Ulster University, UK

Dr. Fiona Bloomer is a Senior Lecturer in the School of Applied Social and Policy Sciences, at Ulster University, UK. Her research focuses on abortion policy. She has written extensively on this subject, including co-author of the book *Reimagining Global Abortion Politics* (2018) and co-editor of the book *Reimagining Faith and Abortion – A Global Perspective* (2024). Current projects include abortion in prison and, reproductive citizenship on the island of Ireland – an examination of changes since 2108.

Paper Title:

Abortion as a Labour Rights Issue: The Workplace as a Site of Abortion Surveillance

Abstract:

Analysis of the experiences and resulting inequalities in reproductive health in the workplace has generated studies on pregnancy, miscarriage, menstruation, fertility, and menopause. However, one issue that has largely remained outside this literature is abortion. This paper explores how abortion is talked about (or not), experienced, and perceived as a workplace issue based on research conducted in the Republic of Ireland and Northern Ireland in 2017.

The research included a survey with 3,180 respondents and a series of online focus groups with 61 participants from a broad range of workplaces, investigating how abortion was positioned within legally restrictive regimes. The study revealed how, in conservative societies, abortion talk is suppressed and how resistance to anti-abortion norms is experienced. The paper concludes by proposing avenues for future research on abortion stigma to extend further knowledge and conceptual framing of abortion as a workplace issue.

Dr. Michelle Weldon-Johns

Senior Lecturer, Abertay University

Dr Michelle Weldon-Johns is a Senior Lecturer in Law at Abertay University. Her research focuses on the work-family employment rights of working parents and other carers, examining the boundaries between employment law and family law as they relate to care in this context. She has researched the relationship between more atypical working family models and work-family legislation. In particular whether it needs to adopt a different understanding of the family, and the employment and equality protections and rights for those engaged in assisted reproduction.

Paper Title:

Fertility treatment in the workplace: the case for blurring the boundaries of pregnancy rights and protections

Abstract

This paper will critically analyse the limitations of existing pregnancy and sex discrimination law in the context of those undergoing fertility treatment, before putting forward the case for blurring the boundaries of pregnancy rights and protections. The limitations of pre-conception discrimination protection will be outlined with reference to *London Borough of Greenwich v Robinson*,¹ *Case C-506/06 Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG*,² and *Sahota v The Home Office*.³ These decisions reinforce the challenges and the implications that undergoing fertility treatment has on work, and the need to ensure effective protection for those involved.⁴ In particular, the decision of the CJEU in *Mayr* offered the possibility to blur the boundaries of sex discrimination law during the latter stages of fertility treatment.⁵ However, it also highlighted the challenges of attempting to redefine pregnancy.⁶ While not without criticism,⁷ the decision indicated that the law could be interpreted to include those undergoing fertility treatment.⁸ Nevertheless, it also placed limits on when protection could be afforded.⁹ This was reinforced in the subsequent decision in *Sahota*,¹⁰ thus demonstrating that further change is necessary to effectively protect those undergoing fertility treatment while at work.

¹ (unreported; [1995] UKEAT 745), available from:

https://www.bailii.org/uk/cases/UKEAT/1995/745_94_2111.html accessed 22 August 2024.

² [2008] 2 CMLR 27.

³ [2010] 2 CMLR 29.

⁴ Michelle Weldon-Johns, *Assisted Reproduction, Discrimination and the Law*, (Routledge, 2019).

⁵ *Mayr* (n.2), [AG53]-[AG68] and [50]-[51].

⁶ *Mayr* (n.2), [AG30]-[AG38], [AG43]-[AG46], [AG48], [24]-[27], [41]-[42] and [53].

⁷ Mark Bell, 'The Principle of Equal Treatment: Widening and Deepening' in Paul Craig and Gráinne De Búrca (eds), *The Evolution of EU Law* (OUP 2011), 617; Claire Kilpatrick, 'The ECJ and labour law: a 2008 retrospective' [2009] 38(2) ILJ 180, 190.

⁸ Carol Fox, 'Protection in Contemplation of Pregnancy?' [2008] *Emp LB* 3, 3; and Kilpatrick, *ibid*, 190.

⁹ *Mayr* (n.2), [AG70].

¹⁰ *Sahota* (n.3), [11]-[12].

The paper will then advance the case for blurring the boundaries of pregnancy rights by first examining the potential to further expand the boundaries of protection under pregnancy and sex discrimination law.¹¹ In particular, reference will be made to attempts to recognise associative pregnancy discrimination.¹² The paper will then reflect on the previously proposed Fertility Treatment (Employment Rights) Bill,¹³ which sought to mirror antenatal rights and related protections afforded to pregnant employees, their partners and equivalent rights for adopters.¹⁴ It will be argued that those undergoing fertility treatment should be afforded similar rights and protections to those who are pregnant.¹⁵

¹¹ Weldon-Johns (n.4), ch.4.

¹² *Kulikaoskas v Macduff Shellfish* [2011] ICR 48; *Gyenes v Highland Welcome (UK) Ltd t/a The Star Hotel* 2014 WL 10246834.

¹³ Available from: <https://bills.parliament.uk/bills/3235> accessed 22 August 2024.

¹⁴ Employment Rights Act 1996, rights to time off: ss.55-57 (pregnant employees), ss.57ZE-57ZF (partners), ss.57ZJ-57ZM (adoption). Protections against detriment, s.47C, and dismissal, s.99.

¹⁵ Weldon-Johns (n.4), ch.5.

Dr. Mark Gatto

Assistant Professor, Northumbria University

Dr Mark Gatto is an Assistant Professor in Critical Organisation Studies at Northumbria University whose main research interest is the gender inequity experienced by working parents (in paid employment). Mark's PhD used dystopian fiction and critical discourse analysis as a transdisciplinary, critical approach to gender research in organisations. Mark established the Northumbria University Parents and Carers Network in 2020 and has successfully led this Network since that time. Mark's current research focuses on parents and carers networks, with a particular emphasis on gender in the data analysis and the lack of engagement from men.

Paper Title: A Faustian bargain for power? Theorising the mobilisation of Parents and Carers in UK Universities as new labour actors within organisations.

Abstract

Parents and carers are ubiquitous in organisations at all levels; their experiences, and the associated value of care, have the power to humanise the employment relationship (Gatto & Lopes, 2022). While they can be categorised within recognisable 'diversity network[s]' (e.g. LGBTQ*) (Dennissen et al., 2019), we argue that Parents and Carers networks can be more usefully understood as actors in an assemblage of worker activists, community groups, and conventional trade unions (Lopes & Hall, 2015), whose aspiration is to organise to address injustice and advance diversity in organisations. We present thematic findings from 34 semi-structured interviews with leaders and members of Parents and Carers networks in UK universities, which were analysed following a Rhyzoanalytic approach (Masny 2016). We ask, 'what potential is there for PCNs to become powerful actors in the employment relationship?' and secondly, 'whose interests do these networks *really* serve?' The paper's main contribution is our theorisation of how Parents and Carers Networks (PCNs) could become new actors in the employment relationship (ER) based on their unique membership profile.

Victoria Murray

Regional Organiser, Unison

Victoria Murray is a Regional Organiser for UNISON, based in the Northern region. UNISON is the UK's largest union, serving more than 1.3 million members. One of UNISON's main aims is challenge discrimination and fight for equality in the workplace and beyond.

Victoria represents members, negotiates and bargains on their behalf, campaigning for better working conditions and pay for public services. One of UNISON's main aims is to challenge discrimination and fight for equality in the workplace and beyond.

Prior to joining UNISON Victoria was an Associate Professor specialising in employment law. She worked in academia for 15 years where her research interests and publications focused on social justice and clinical legal education.

Paper Title: Labour of Love: Industrial Solutions to the Cost of Parenthood

Abstract

This paper sets out the financial implications of parenthood for working families and the role and impact trade unions have in addressing the 'parent penalty.' It will highlight the costs of parenthood from pregnancy and maternity through to menopause and retirement, evidencing how creating the next generation of the workforce has a disproportionate financial impact on families, particularly women. Using the work of UNISON as a case study, this paper will argue and illustrate how trade unions can provide solutions to some of these issues locally and nationally, and demonstrate that industrial relations are a force for good which should be embraced more readily by employers.

Dr Megan Pearson

Lecturer, University of Southampton

Dr Megan Pearson is a Lecturer in Law based in the School of Law at the University of Southampton. She is Director of the Stefan Cross Centre for Women, Equality and Law. Her research focuses upon care and work life balance rights within UK employment law. Her work uses vulnerability theory to argue that care and care giving relationships are marginalised and undervalued by the current law. Megan has presented her research at several conferences and has recently contributed a chapter which considers combining work and care: the failure of work/life reconciliation policies within the following textbook due to be published in 2023 by Routledge *'The Evolution of the Gender Pay Gap: A Comparative Perspective'*.

Paper Title: Work/life balance rights: foregrounding care in work?

Abstract

Care giving relationships are central to the human condition. As Martha Fineman has explored in her work on vulnerability theory, everyone requires care to survive and flourish over their life course. This need for care inevitably interacts with a caregiver's paid work. These interactions are partially recognised by UK labour law and there are a myriad of rights, augmented and reformed by successive governments, designed to help workers to combine work and care. This patchwork of rights though amounts to only a limited reconciliation of work and care.

The most wide reaching is the right to request flexible working introduced in 2014 and last reformed only a few months ago by the Employment Relations (Flexible Working) Act 2023. As my recent article in the Industrial Law Journal demonstrates though, even on its own terms as a right to a process rather than a particular result, it is difficult to navigate and unnecessarily complex.

The Labour government has made labour rights a key priority on its legislative agenda, including a significant focus on making work more 'family friendly'. It has committed to significantly reforming flexible working rights, ending 'one-sided' flexibility by employers and introducing a 'right to switch off', alongside significantly expanding the coverage of unfair dismissal rights and access to employment tribunals. Notably though, its rhetoric focuses on increasing productivity and a perception that too many people are not in paid work. This is different from recognising care as fundamental in its own right.

Elaine Dewhurst

Senior Lecturer, University of Manchester

Dr Elaine Dewhurst has written extensively on issues relating to age discriminatory practices in recruitment, employment and termination of employment. Elaine is a Steering Committee Member for the Manchester Interdisciplinary Collaboration for Research on Aging. Furthermore, she has built up an extensive network across Europe. She works with the European Equality Law network where she is a senior ground expert on ageing, preparing reports annually for the European Commission. All European countries report to this network which collects data on how countries are implementing equality protections.

Paper Title: Uncertain Futures: Intergenerational Stagnation and Equality in the Workplace

Abstract

The Uncertain Futures Project is a unique art and research project based in Manchester which has successfully used participatory research methods to uncover the hidden inequalities facing older women in the workplace. These inequalities can arise from a number of intersecting sources but one of the mainstay factors remains inequalities arising from reproductive lives including maternity, child-rearing and menopause. The longer-term impact on women is significant and our project has also indicated a measure of intergenerational stagnation with respect to the prospects of those who are currently at the start of their reproductive lives or who are yet to experience it. We will discuss our "Manifesto" of rights for older woman and how this aims to reduce the impact of this current stagnation.

Dr. Elisabeth Griffiths Associate Professor Northumbria University, Dr. Lyndsey Bengtsson Assistant Professor Northumbria University, and Students from Northumbria University Policy Clinic

Dr. Lyndsey Bengtsson is a qualified Solicitor who transitioned to academia in 2017 after 12 years in legal practice. She teaches and supervises research across undergraduate, postgraduate, and doctoral levels. Her research focuses on equality and diversity, with a particular emphasis on menopause, dementia, and ageing in the workplace. She explores issues such as age discrimination and stereotyping, advocating for inclusive workplace practices that provide support to individuals encountering these challenges. In addition, she is part of the management team for the Working with Dementia Network, which addresses social and financial inequalities related to dementia through research and education.

Dr Elisabeth Griffiths is an Associate Professor at Northumbria Law School and a qualified Solicitor (non-practising). Elisabeth has taught employment law on a range of undergraduate and postgraduate programmes and has supervised projects at all levels from undergraduate to PhD. Elisabeth's research focuses on equality law and disability discrimination both in the workplace and as a lived experience. She has co-edited a collection on the gender pay gap, published research on religious discrimination in the workplace, ableism in higher education, the gendered nature of promotion criteria and fairness barriers to entry into the legal profession for law students from widening participation backgrounds. She was awarded her Professional Doctorate in Law in 2021 with her thesis entitled 'The lived experience of disability in law school: present realities and possible futures'

Paper Title: *The Intersection of Menopause and Work*

Those who are experiencing the menopause whilst in work are the fastest-growing demographic in the workplace (Office for National Statistics, 2018) and an unprecedented number of people will go through the menopause whilst in work (ONS, 2015). In industrialized nations, the average age for natural menopause is 51, and individuals often begin experiencing peri-menopausal symptoms around the age of 45 (Brewis et al, 2017). Several studies have highlighted the negative effects of menopause transition on workplace participation (Woods and Mitchell's (2011), including impact on job performance, career progression, more frequent absence from work (Brewis et al, 2017) and difficulty discussing menopausal symptoms at work (Jack et al., 2014). The number of employers introducing menopause policies or guidance is growing (Henpicked, 2019), but they are often not used fully for a variety of reasons. A legal framework which adequately addresses the menopause to accommodate societal needs is needed.

This paper presents the initial findings on a qualitative and quantitative content and case by case analysis (Hall and Wright, 2008) of all Employment Tribunal judgments in England and Wales relating to menopause. This method provides an important insight on any discernible trends that have developed over the years, and recommendations offered for employers and policymakers. The study will also reveal how menopause is perceived and addressed in the workplace and help inform the development of guidelines that better support individuals who are going through the menopause in the workplace, including where legal frameworks may need adjustments to accommodate societal needs.

Manisha Mathews

Teaching Fellow, University of Birmingham

Dr Manisha Mathews' research interests chiefly centre on strengthening the design of work-family reconciliation policies under employment legislation to support the active participation of fathers in childcare and mothers in the workplace. Her further research interests also include the protection of fathers from discrimination under equality legislation when fathers attempt to be actively involved in childcare.

Paper Title: The Importance of Policy Design in Supporting Work-Family Balance for Mothers and Fathers: A Comparison to the “Nordic Model”

A key reason as to why many UK parents struggle to balance work and caregiving responsibilities is due to the particularly weak design of the entitlements that fathers are allocated under employment legislation to support their participation in childcare. My paper highlights that the current design of entitlements strongly promotes the traditional “male breadwinner” model, which is a model that describes the heterosexual 2-parent unit wherein the father is the financial breadwinner and the mother is responsible for childcare. At present, over a third of fathers do not use paternity leave (Fogden et al., 2023) and less than 11% of fathers use the remaining entitlements allocated to them (Lewis, 2009; Eurofound, 2015; Women and Equalities Committee, 2018). Due to mothers using leave significantly more than fathers, mothers retain a “double burden” of familial and workplace obligations (Krapf, 2014) and have consequently experienced higher rates of pregnancy and maternity discrimination (Women and Equalities Committee, 2016). The 4 key weaknesses present in the design of entitlements that my paper will pinpoint as an obstacle that limits fathers' use of leave are the following: (i) strict eligibility requirements; (ii) low levels of replacement pay; (iii) short-term length of leave; and (iv) maternal permission to access leave. My paper will further make a comparison to the design of work-family reconciliation policies under the “Nordic model”, which is a model introduced in Nordic countries that promotes an equal sharing of long parental leave periods between both parents with high replacement pay. Stronger entitlements have better supported Nordic parents in balancing their work and caregiving responsibilities, with roughly 80% of Nordic fathers using leave (Eerola, 2019; Duvander and Cedstrand, 2022). My paper will conclude that UK parents will struggle to maintain a work-family balance if a similar policy design to the “Nordic model” is not adopted.

Dan Deahan

Doctoral Teaching Assistant, University of Plymouth

Dan Deahan is a Doctoral Teaching Assistant at the University of Plymouth, with his PhD focusing on workplace disclosure for male informal caregivers. His research uses Interpretative Phenomenological Analysis (IPA) to explore how men navigate the complexities of caregiving and employment, with the goal of informing inclusive workplace policies. Before pursuing a PhD, he worked in various HR roles in the NHS, Serco, and administrative roles in higher education.

Paper Title: Male Informal Caregivers & Workplace Disclosure

With an ageing population, declining birth rates, and rising formal care costs, the demand for informal caregiving, particularly in eldercare, is increasing (Carers UK, 2023; Bijnsdorp et al., 2021). Despite this growing need, the specific challenges faced by male caregivers, especially regarding workplace disclosure, remain poorly understood. This lack of understanding creates barriers for male informal caregivers, such as impact on job prospects, health, finances, and the underutilisation of flexible working arrangements (FWAs).

Existing literature suggests that societal expectations around masculinity may intensify the stigma associated with caregiving roles, affecting men's willingness to disclose their caregiving responsibilities at work. This research aims to explore how male informal caregivers navigate the complexities of caregiving and employment in the context of eldercare.

The study employs Interpretative Phenomenological Analysis (IPA) to gain a deep understanding of male informal caregivers' experiences with workplace disclosure. This qualitative approach provides rich insights into a group that remains underrepresented in caregiving research compared to other roles, such as parenting. The research highlights the challenges these men face and the implications for the workplace.

The findings will contribute valuable insights into the lived experiences of male informal caregivers, shedding light on this under-researched group. Additionally, the study will inform workplace policies, moving beyond the current emphasis on FWAs to investigate the need for tailored support for informal caregivers. This could lead to the development of more inclusive workplace practices that recognise the diverse needs of all caregivers, regardless of gender. Ultimately, this research will contribute to the broader discourse on disclosure, caregiving, gender, and workplace dynamics in the context of an ageing society and rising care costs, aiming for just outcomes for all involved.