

# Eggspecting more: the legal risks of employer-backed egg freezing in the UK

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1. As an employment law barrister, I have been closely monitoring the growing trend of UK employers offering egg freezing benefits as part of their benefits packages. However, after attending the medico-legal conference in Dublin in February, I am more concerned than ever about the unique legal and ethical minefields that this new perk can create for businesses.
2. Even the most well-intentioned initiatives in this area can slide into unlawful territory when it comes to the complex and sensitive realm of assisted human reproduction. From discrimination dangers and coercion concerns to confidentiality cracks and compensation complications, the list of potential pitfalls is enough to make any employer's head spin.

## **Discrimination dangers**

3. Eligibility criteria for egg freezing benefits must be meticulously constructed to avoid either directly or indirectly discriminating against employees on the basis of protected characteristics such as age, gender, relationship/family status, or disability. Failing to provide equal access to this benefit could leave employers vulnerable to claims of direct discrimination, indirect discrimination, or failure to make reasonable adjustments under the Equality Act 2010.

## **Coercion concerns**

4. Egg freezing is an incredibly personal medical decision with far-reaching implications for an employee's future family planning. Employers must take the utmost care to avoid any perception of pressure or undue influence, which could undermine the voluntary nature of the benefit and give rise to claims of constructive dismissal, harassment, or discrimination.

## **Confidentiality cracks**

5. Fertility treatment data is classified as "special category" information under the UK GDPR, demanding the highest standards of data protection and confidentiality. Employers must

ensure robust processes are in place to keep this sensitive medical data secure and prevent any accidental disclosure, which could not only breach the Data Protection Act 2018 but also expose the business to regulatory action and civil claims.

### **Consent conundrums**

6. Employees may wish to use their frozen eggs in the future, potentially involving their employer in complex consent and decision-making processes around embryo creation, storage, and use. Watertight policies, robust training, and access to independent support services are crucial to navigate these highly sensitive issues and avoid liability.

### **Duty of care demands**

7. Employers have a legal duty of care to ensure the physical and mental wellbeing of staff accessing this benefit. Providing access to independent medical and psychological support, flexible working arrangements, and appropriate leave entitlements is not just ethical, it's a necessity to meet this duty of care and avoid potential claims.

### **Reputational risks**

8. Beyond the legal minefield, there are also significant reputational risks for employers offering egg freezing. Poorly executed initiatives could attract negative media attention and public backlash, undermining the company's brand and standing in the eyes of current and prospective employees.

### **Ongoing obligations**

9. Offering egg freezing is not a one-off event, it creates an ongoing relationship and set of obligations between the employer and employee. Rigorous record-keeping, regular policy reviews, and continual staff training are essential to manage these long-term responsibilities.
10. Ultimately, while employer-backed egg freezing can be a valuable perk, the legal and ethical risks are considerable. Meticulous planning, watertight processes, and ongoing review are essential to avoid the minefield of potential claims. Employers must tread carefully, prioritising employee wellbeing and consent at every step.

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