PROTECTION FOR PREGNANT WORKERS

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Protecting motherhood

From an exception to the principle of equality between men and women

Towards a condition of real equality between men and women
General framework

• General directive on equality between men and women: Directive 76/207 replaced by Directive 2006/54
• Specific directive 92/85: aimed at safety and health at work
• Case-law from the Court of Justice: key player in determining the scope of women’s rights and protection deriving from motherhood

Please note

• Directive 2004/113: access to goods and services provides in Article 5 (3) that costs associated with pregnancy and motherhood should not result in different premiums or cover for persons insured.

• Directive 2010/41: applies to women who are self-employed and to the spouses (partners) of the self-employed.
Protection for pregnant women and recent mothers is ensured by the combined application of provisions in the general directive on equality for men and women and the specific directive designed to protect workers during pregnancy, childbirth and breastfeeding.

**Directive 2006/54**

- Attempt to streamline and update existing legislation (integrating case-law from the Court)
- Equality in employment and working conditions including pay
- Discrimination includes any less favourable treatment experienced by a woman that is related to pregnancy or maternity leave as defined by in Directive 92/85/EEC (Article 2(2))
Directive 2006/54 (2)

- Right to return to her job (or an equivalent) after maternity leave and to benefit from any improvements in working conditions to which she would have been entitled in her absence (Art. 15)
- NB:
  - Article 2 = horizontal provision
  - Article 15 = access to employment, working conditions

Directive 92/85

- Protects a worker during pregnancy, childbirth and breastfeeding against risks associated with her job or working conditions;
- Risk assessment procedure and need to take appropriate measures;
- Night work: prohibited
- At least 14 weeks of maternity leave (two of them compulsory).
Directive 92/85 (2)

- Notion of adequate allowance.
- Time off work for ante-natal examination.
- No dismissal: Article 10
  “... during the period from the beginning of their pregnancy to the end of the maternity leave, save in exceptional cases not connected with their condition…”

Case-law

- Evident fact: working women experience discrimination as a result of motherhood.
- Important to provide real, substantive protection.
- Court refuses to consider costs to the employer or inconvenience of reorganising work patterns.
Direct discrimination

Dekker C-177/88

motherhood calls for a specific approach: only women can be pregnant; their situation cannot be compared with that of men.

A refusal to employ a woman because she is pregnant constitutes direct discrimination: no possible justification

Hiring and firing

Dekker, Webb C-32/93, Habermann-Beltermann, C-421/92 Melgar C-438/99, Tele Danmark C-109/00

Prohibition applies:
✓ all types of contract: permanent, fixed-term, temporary.
✓ appointment to replace a pregnant worker.
✓ legal impossibility for the employer to ask the pregnant worker to carry out the intended tasks.
Period of protection
From the start of pregnancy until the end of maternity leave.
- When does a pregnancy begin?
  Mayr C-506/06: worker dismissed while undergoing in vitro fertilisation.
- Prohibition extends to any preparations to dismiss the worker while she is on maternity leave.
  Paquay C-460/06

Points to discuss
• Concept of “worker”?
  Allonby C-256/01
  - performs services for a period of time
  - for and under the direction of another person
  - in return for remuneration
  Danosa C-232/09
  broader concept? company executive
Points to discuss (2)

• Absence due to pregnancy-related illness
  Boyle C-411/96, Pedersen C-66/96, Lewen C-333/97

• Reintroduction of the idea of a comparator
  McKenna C-191/03: entitled to an allowance corresponding to that received by a male worker absent by reason of illness

Points to discuss (3)

• Adequate allowance: basic salary but no performance-related pay (presence at work)

  Parviainen C-471/08: air hostess transferred to another job is not entitled to supplements linked to carrying out specific tasks
Points to discuss (4)

• Possibility of treating women more favourably on grounds of motherhood: compensating for less favoured treatment in the labour market.
  Renault C-218/98: allowance paid to women going on during maternity leave
• Link between motherhood and bringing up children: Griesmar C-366/99

Remedies and sanctions

National law applies but must ensure effective protection

• Effective remedies: Article 18
  Pontin C-63/08
• Penalties for dismissal?
Thank you

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