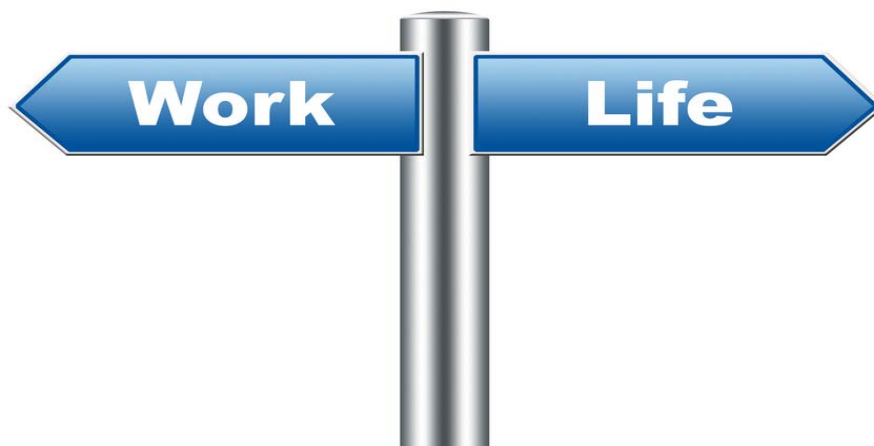


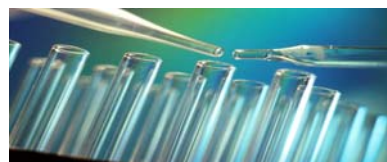
Reconciliation of work and family life



Essex Court
Chambers

The Science

- Pregnant Workers Directive 92/85
- Recast Directive 2006/54
- Parental Leave Directive 2010/18
- Treaty measures
- Charter
- Convention
- International



Pregnant Workers Directive

- Article 8 – right to maternity leave
- Article 11 (2) (b) – right to maternity pay
- Article 10 – protection from dismissal
- Article 11 – protection from risks to health

Recast Directive (2006/54)

- Article 2(1)(a) – direct discrimination on grounds of sex
- Article 2(1)(b) – indirect discrimination on grounds of sex
- Article 2(1)(c) - harassment

Parental Leave Directive 2010/18

- Four months (Clause 4)
- Prevention of less favourable treatment/dismissal (Clause 5 para 4)

Treaty measures

- Treaty on European Union (TEU): Articles 2 and 3
- Treaty on the Functioning of the European Union (TFEU): Articles 8 and 10

Charter

- Charter of Fundamental Rights and Freedoms
- Article 1 – human dignity
- Article 7 – respect for private and family life
- Article 9 – right to marry and found a family
- Article 20 – equality before the law
- Article 23 – equality between men and women

European Convention on Human Rights

- Article 8 – right to respect for private and family life
- Article 14 – freedom from discrimination

International instruments

- International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 10 – special protection for mothers before and after childbirth
- Convention on all forms of Elimination of Discrimination Against Women (CEDAW): Article 11 – protection for women on the grounds of maternity
- United Nations Convention on the Rights of the Child (UNCRC): Article 9 – child should not be separated from parents

Protective measures for pregnant workers

- The art of the jurisprudence:
- Special Protection development
- Special Relationship development
- Substantive Equality development



Special Protection

- Biology
- Webb v Emo (C-32/93)
- Brown (C-394/96)
- Tele Danmark (C-109/00)
- McKenna (C-191/03)
- Pacquay (C-460/06)
- Mayr (C-506/06)

Special Relationship

- Relationship between mother and child
- Hofmann (Case 184/83)
- Habermann- Beltermann (Case C-421/92)
- Webb (Case C-32/93)
- Brown (Case C-394/96)
- Commission v Austria (C-203/03)
- Kiiski (C-116/06)
- Sesa Start (C-104/09)

Substantive Equality

- Kalanke (Case C-450/93)
- Thibault (C-136/96)
- Mahlburg (C-207/98)
- Abrahamsson (Case C-407/98)
- Briheche (Case C-319/03)
- Sesa Start (C-104/09)

Maternity Leave

- Gillespie and Alabaster (C-342/93 and C-147/02): maternity pay must include pay rises
- Surrogacy: Z v A (C-363/12) and CD v ST (C-167/12)



Z v A

- Refusal to give maternity leave constituted:
- (1) sex discrimination pursuant to the Recast Directive (2006/54)
- (2) disability discrimination pursuant to the Framework Directive (2000/78)
- AG Wahl and Court (Grand Chamber): No

CD v ST

- Refusal to give maternity leave constituted:
- (1) a contravention of the Pregnant Workers Directive (92/85), particularly because the intended mother was breastfeeding
- (2) sex discrimination pursuant to the Recast Directive (2006/54)

CT v ST

- AG Kokott: No sex discrimination. BUT:
- Intended mothers have a right to maternity leave under the PWD
- Intended mothers who breastfeed are covered by the PWD on the basis of the PWD's objective of protecting the special relationship between a mother and her child
- Intended mothers who don't breastfeed are also protected by the PWD.

CD v ST

- Court
- MS are not required to provide maternity leave to 'Commissioning Mothers' (even ones who breastfeed) because the protection given by the PWD concerns a woman's biological condition

Parental Leave

- Can't pay a worker a reduced salary because of parental leave: Meerts (C-116/08)
- You don't get two sets of parental leave if you have twins: Chatzi (C-149/10)
- The father can take the maternity benefit where both parents are covered by a state social security scheme: Montull (C-5/12)
- An employer may have indirectly discriminated on the ground of sex where a worker is transferred to a new role after parental leave: Riezniece (C-7/12)

European Court of Human Rights

- Family life – broad definition
- Relationship between adoptive parents and children
- Article 8 and 14
- UN Convention of the Rights of the Child
- International Covenant on Economic, Social and Cultural Rights

Thank you for your attention!

