

Pregnancy Dismissal Claims*

This issue arose in case EDA215 being a case of Permanent TSB Plc and O Dwyer.

The Court quoted the provisions of Section 6 (1) of the Employment Equality Acts 1998 -2015 and also Article 10 of Directive 92-85-EEC (The Pregnancy Directive).

One of the provisions of that Article is that the employer must cite substantiated grounds for the dismissal in writing.

The Court then considered the provisions of Section 85A of the Act as regards the Burden of Proof and quoted the case of Kieran McCarthy – v- Cork City Council that at the initial stage the complainant is merely seeking to establish a prima facie case.

The Court pointed out that the authority starting with the decision C-1778 Dekker is one where the Court of Justice made it clear that since pregnancy is a uniquely female condition any adverse treatment of a woman on the grounds of her pregnancy is direct discrimination on the grounds of her sex. The Court pointed out that since that decision the protections afforded to pregnant women in employment has been strengthened considerably in the case law of the Court of Justice. The Court quoted the provision of Article 10 (2).

The Court pointed out that because of the potential harmful effects dismissal can have on the health both physical and mental of workers who are pregnant, Article 10 provides for special protection for women by prohibiting dismissal during the period from the beginning of their pregnancy to the end of Maternity Leave save in exceptional cases not connected with their condition provided the employer gives substantiated grounds for the dismissal in writing. The Court referred to the case of Danosa C-232-09. The Court pointed out that in order to rely on the exemption provided in Article 10 (2) the respondent must give substantiated grounds for dismissal in writing, In this case the respondent submitted that they gave substantiated grounds in writing by email on 21 August, a week before the dismissal.

The respondent submitted that providing the notice in advance met the requirements. The complainant submitted that the email was issued in advance of the decision to dismiss and therefore cannot meet the requirement.

The Court stated that in their view the decision of the CJEU appears to suggest that the decision to dismiss has to be taken before the employer can cite substantiated grounds in writing.

In this case the Court found that the respondent had provided cogent evidence to rebut the presumption of discriminatory treatment relating to her pregnancy and in the particular circumstances of this case the Court found that the omission in respect of setting out in writing the reasons for the dismissal once a decision to dismiss had been made was not fatal to their case.

This is an important decision of the Court. However, this is one which turns on the particular circumstances of the particular case and normally the provisions of Article 10 (2) will be of paramount importance for an employer to seek to defend a case.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

***In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**