

ECJ rules that surrogate mothers are not entitled to maternity or adoption leave or pay

The ECJ has held in two recent cases that mothers who had children via a surrogate and were subsequently denied maternity or adoption leave and pay had not been discriminated against. The court found that there was no sex discrimination because a man who had organised a surrogacy would be treated in the same way. It held that the EU Pregnant Workers Directive protected those who were in a vulnerable position because they had recently given birth and therefore, “commissioning mothers” would not be protected under it. The ECJ also held that there was no disability discrimination under the Equal Treatment Framework Directive where a woman, who has a disability preventing her from giving birth and whose genetic child has been born via a surrogacy arrangement, is refused paid leave equivalent to maternity or adoption leave.

Dismissal for absence caused by post-natal depression was not discriminatory

The EAT recently held that it is not discriminatory to dismiss a woman for absence due to post-natal depression where that absence continues after the end of her maternity leave. Where

an employee is absent after her maternity leave due to a pregnancy related illness, the employer is entitled to take into account the absence after maternity leave and compare that period with any period of sickness of a man.

Covert recordings at grievance and disciplinary hearings may be admissible

The EAT upheld a Tribunal's decision that covert recordings made by an employee of her disciplinary and grievance hearings were admissible as evidence.

Disregarding an independent appeal panel's decision does not render a dismissal unfair

The EAT ruled that an employee had not been unfairly dismissed after her employer disregarded the independent appeal panel's decision, which overturned the employer's original decision to dismiss. Given that the employer was a small nursery, there was no other appropriate person to hear the appeal, there were no clear terms of engagement with the independent panel and a subsequent investigation was completed as part of the appeal, the employer was not bound by the appeal panel's decision.