EasyJet roster was discriminatory towards breastfeeding mothers

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EasyJet roster was discriminatory towards breastfeeding mothers

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EasyJet’s roster system, which could require cabin crew to work shifts of over 8 hours, was indirectly discriminatory on grounds of sex. This was because it put breastfeeding women at a particular disadvantage without justification.

The two claimants were crew members for easyJet and were breastfeeding after returning from maternity leave. EasyJet's roster system contained a provision whereby staff could be asked to work for longer than 8 hours continuously. The claimants made flexible working requests; they asked not to work shifts of longer than 8 hours in order to manage the time between opportunities to express milk.

EasyJet refused the requests, pointing to the need for it to manage its flying schedule and avoid flight delays. In response, the claimants went to their GPs and were given fitness to work certificates confirming an increased risk of mastitis if they could not express milk. The certificates recommended that the claimants should not work shifts of over 8 hours.

The claimants seemingly took periods of sickness absence and unpaid leave before they were moved to temporary ground duties. They brought claims of indirect sex discrimination against the airline.

The Employment Tribunal held that the claimants had been indirectly discriminated against on grounds of their sex. The provision whereby crew members could be required to work shifts of longer than 8 hours put women at a particular disadvantage, such that the claimants would either have to work the roster and be unable to express milk or lose out financially by missing shifts.

The tribunal noted that easyJet could not point to any examples where the airline had suffered difficulties from giving a crew member a bespoke roster. Additionally, the claimants did have medical evidence supporting the risks to their health posed by the longer shifts.

As a result, it ordered that the claimants be compensated for their lost wages and given £8,750 and £12,500 respectively for injury to feelings. The tribunal recommended that EasyJet

write off any periods of absence and credit back any annual leave the claimants took in that period.

This is a reminder to employers that their obligations to employees who are mothers do not end when they return from maternity leave. More generally, it reinforces that employers arguing that a disadvantageous measure is justified will need to have some degree of evidence to support their positions.

McFarlane and another v EasyJet Airline Company Ltd ET/1401496/15 & ET/3401933/15

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