

# Failure to notify employee about reorganisation and new roles was maternity discrimination

In *Smith v Greatwell Homes*, an Employment Tribunal has held that a failure to notify an employee on maternity leave about a business reorganisation, and the new roles within it, was an act of maternity discrimination.

## What happened in this case?

Ms Smith began working for Greatwell Homes in 2019 as a Business Improvement Analyst. She had a heavy workload, including taking on a significant part of her line manager's role after she went off sick and then left the business. Ms Smith was regarded as a valuable and ambitious member of staff and was encouraged to apply for a more senior role with line management responsibilities when one became available.

Things seemed to change in April 2020, after Ms Smith told Ms Herzig, the Head of Property Services and Compliance, that she was pregnant. This was not passed on to Human Resources, and Ms Smith had to provide this information to them on two further occasions. Later that month, she was excluded from a bonus Friday off work which was given to staff as a goodwill gesture during the pandemic. Ms Smith was told that she was not eligible because she did not work on Fridays. She challenged the decision, but Greatwell refused to extend the scope of the offer.

Ms Smith started her maternity leave in early September 2020. On 5 April 2021, Ms Smith received a text message from Ms Herzig, informing her of a number of changes to the workplace which had just taken place, namely the appointment of a Mr Syed as Ms Smith's new line manager and the appointment of a Ms Perkins into the new post of Governance and Assurance Manager. Both roles represented opportunities of the sort that Ms Smith had previously been told she should apply for when the chance came along. Ms Smith was unhappy about the text, and the general lack of communication during her maternity leave. She raised a grievance, which was rejected although partially upheld on appeal.

In August 2021, Greatwell began to send job adverts to Ms Smith, including a "re-advertisement" of the Governance and Assurance Manager occupied by Ms Perkins. Greatwell claimed this was the start of the process of recruitment for the permanent role, due to commence eight months later. However, Ms Smith resigned on 31 August 2021 and brought an Employment Tribunal claim alleging that she had been subjected to discrimination and/or detriments because she had been on maternity leave. At the heart of her claim was the failure to communicate the job opportunities and the changes to the workplace.

### **What was decided?**

The Tribunal found that Greatwell was obliged to notify Ms Smith of the "*sweeping changes*" to the organisation of the business at the same time as other staff. Ms Smith needed to know about the changes in order to be in a position to apply for the new roles. The staff members who had applied for the roles had all been at work at the time and were informed of the changes. In contrast, Ms Smith had been on maternity

leave and was not so informed. The consequence was that she was denied the chance to compete with the other applicants and progress her career.

Greatwell's explanation for this unfavourable treatment was, said the Tribunal, *"inconsistent and confusing"*. However, evidence from two senior witnesses from the business repeatedly highlighted that the reason for the difference in approach was because Ms Smith was on maternity leave, which the Tribunal said were *"tantamount to admissions"*. The Tribunal concluded the reason Greatwell had excluded Ms Smith from the recruitment process was because the positive view Ms Herzig had once had of her was *"...eroded by the knowledge that she had become pregnant and was on maternity leave"*. Even if this was a subconscious attitude, it was clear that this was the reason. The Tribunal noted that the re-advertisement of the Governance and Assurance Manager role was *"...window dressing, an attempt to disguise the perceived treatment that had gone before"*.

Considering all of the evidence given on behalf of Greatwell in the round, the Tribunal concluded that it revealed *"lazy and unfair assumptions"* that those on maternity leave:

- will insist on taking the full 12 months' leave;
- cannot, or will not, return to work before this;
- should not be given the opportunity to make decisions about these issues for themselves;

- are less useful assets in the workplace; and
- are less likely to be the solution to staffing problems where an immediate response was needed.

The Tribunal also went on to criticise other aspects of Greatwell's treatment of Ms Smith. It said that the response to the notification of her pregnancy was symptomatic of their attitude towards the fact she was pregnant. And the refusal to allow her the bonus day off was a further indication of their general approach to diversity issues, amounted to indirect sex discrimination and was also "*deeply unsympathetic*" to Ms Smith. Finally, the handling of Ms Smith's grievance was "*neither thorough or fair*" and the Tribunal inferred from this a generally negative attitude towards Ms Smith, the fact that she had been on maternity leave and had raised a grievance.

Both the discrimination and detriment claims were upheld. Before the Tribunal ruled on compensation, the parties agreed that Greatwell would pay the sum of £50,000 to Ms Smith.

### **What does this mean for employers?**

Employers should pay careful attention to the Tribunal's criticisms of the employer in this case. The dismissive and unfair attitudes shown to the employee even before she went on maternity leave helped to paint a picture of an employer who

did not treat pregnant employees well. Although they may seem like relatively small matters in themselves, when added to the later events, they were particularly unhelpful. Care should be taken that notification of pregnancies are handled efficiently and with sensitivity and warmth. Failure to do so could contribute to an inference of discrimination being drawn.

Employers should seek to agree an appropriate level of communication with employees going on maternity leave. Certainly, staff should not be bombarded with the workplace communications, but nor should they be frozen out, as appeared to the case here. Clearly, employers should agree to send communications about matters of importance affecting the employee, such as a business reorganisation or redundancies. However, care should also be taken to send communications about work social events and training. In one case, a failure to invite an employee on maternity leave to an informal Christmas drinks party was held to be an act of maternity discrimination.

Perhaps most importantly, employers need to put time into embedding enlightened attitudes towards employees taking maternity leave (and other forms of leave such as shared parental leave). The negative assumptions about women on maternity leave found to be held by Greatwell staff are surprisingly common. Training should be given to managers to address these attitudes, which are sometimes unconsciously held.

[Smith v Greatwell Homes Limited](#)

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