

The importance of risk assessments for breastfeeding workers

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In order to comply with EU law and avoid a finding of direct sex discrimination, employers should conduct individual risk assessments with breastfeeding workers in order to identify the risks that are posed in each worker's particular circumstances.

Ms Ramos was a nurse in the accident and emergency department

of a Spanish hospital. On return from maternity leave, she informed her employer that she was breastfeeding. She stated her belief that her job posed risks to her lactation. In particular, she was concerned about the effects of the shift system; the potential exposure to radiation and infections; and the stress caused by the job itself. In accordance with Spanish law, Ms Ramos asked that her working conditions be adjusted to minimise those risks.

Ms Ramos' employer refused. It stated that her job was not of a category it considered to carry risks to breastfeeding mothers because it was not on the list of risk-based jobs agreed with workers' representatives. On the same grounds, Ms Ramos was refused a financial assistance grant available to at-risk breastfeeding mothers under Spanish law. Ms Ramos' legal challenge of that decision was referred on appeal to the European Court of Justice.

The European Court of Justice held that the failure to assess the risks posed to a breastfeeding worker by reference to that worker's particular circumstances is less favourable treatment on grounds of pregnancy or maternity and constitutes direct sex discrimination. A breastfeeding worker must present evidence capable of showing that such a risk assessment was not carried out. Ms Ramos had evidence from her line manager, who agreed that her job posed risks which the employer had not taken into consideration. It is then for the employer to prove that there has been no discrimination, and Ms Ramos' employer could not do so.

On the basis of this case, employers may want to take a belt-and-braces approach by conducting individual risk assessments for breastfeeding mothers returning to the workplace. However, there is no legal requirement to do so, as UK law prevents women from bringing direct sex discrimination claims on the basis of treatment relating to breastfeeding. Employers who choose to wait it out should watch this space, as UK law could be found to be incompatible with EU law on this point.

Ramos v Servicio Galego de Saude (C-531/15)

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