

# **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.

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## **Do mothers who have children through surrogates have a right to maternity leave?**

The European Court of Justice has been asked to decide a mothers’ right to maternity leave if she has a baby through a surrogacy arrangement. Two cases have been referred to the ECJ

and the Advocate Generals (advisers for the ECJ) have offered conflicting opinions. Such opinions are usually adopted as final judgments by the ECJ but in this scenario only one can be.