

Unlawful dismissal of pregnant employee upon business takeover

February 08 2017 | Contributed by [George Z Georgiou & Associates LLC](#)

Facts
Decision
Comment

In a recent case before the Industrial Disputes Tribunal, the dismissal of a pregnant employee following the takeover of her employer's business was deemed to be discriminatory and thus unlawful.⁽¹⁾

Facts

The employee had been employed from June 1 2006 as a marketing officer by a local company dealing with the import, export, purchase and sale of motor vehicles in Cyprus. Pursuant to the terms of employment, her remuneration package had comprised of:

- a monthly salary of €2,000;
- discretionary payments entitlement by way of an extra month's salary; and
- a performance bonus equal to one month's salary.

On February 7 2012 the employee informed her employer that she was pregnant.

On April 30 2012 the employer informed the employee in writing that due to the takeover of its business as a going concern by another local undertaking, all obligations emanating from her existing employment contract would be transferred to and assumed by the new owners without disruption to her employment.

On the same date, the company's new owners informed the employee in writing that she was being made redundant and shortly thereafter paid her €3,692.31 in lieu of notice and the amount of €633, which represented her *pro rata* discretionary payments entitlement.

The employee brought proceedings against the new owners before the Industrial Disputes Tribunal, claiming damages for unlawful dismissal on the basis of:

- a breach of the Protection of Maternity Law (Law 100(I)/1997);
- sex discrimination within the meaning of the Equal Treatment of Men and Women in Employment and Vocational Training Law (Law 205(I)/2002); or
- compensation by the Redundancy Fund in case her dismissal was found to be due to redundancy.

In their defence, the new owners argued that:

- they were unaware of the employee's pregnancy at the time of her dismissal; and
- the dismissal was fair, as it was wholly or mainly attributable to redundancy in that there was no marketing department in which the employee could work and no other position in the company in which she could carry out her role.

AUTHOR

**Christiana
Michael**



Decision

In considering whether the employee's dismissal could be attributed to redundancy, the tribunal examined the circumstances under which an employee is made redundant and thus entitled to a redundancy payment, as provided for by the Termination of Employment Law (Law 24/1967). Having considered the evidence provided by the employer, the tribunal held that there was no justification for the employee's dismissal due to redundancy.

The tribunal confirmed that under Law 24/1967, dismissal on grounds of pregnancy is unlawful. Further, and with regard to Law 100(I)/1997, which is in line with the EU Pregnant Workers Directive (92/85/EEC) and European Court of Justice case law, the tribunal stressed that a pregnant employee enjoys full protection against potential dismissal once she has formally informed her employer of her pregnancy. Based on the evidence before it, the tribunal found that the employer had been informed of the employee's pregnancy through the relevant pregnancy certificate submitted on February 7 2012.

In deciding whether the employee had been also a victim of discrimination, the tribunal referred to the provisions of Law 205(I)/2002 – implementing the EU Equal Treatment Directive (76/207/EC) and the EU Directive on Equal Treatment (2006/54/EC) – as well as to Cypriot case law, which provides that unfavourable treatment (including dismissal) due to pregnancy constitutes direct sex discrimination. On this reasoning, the employee's dismissal was found to constitute discrimination on grounds of sex and was thus unlawful, as she had been dismissed while pregnant in breach of the aforementioned legislation. The employee was awarded €22,500 in damages calculated from the date of her dismissal up to three months following the end of her maternity leave.

Comment

This is one of the most recent cases regarding discrimination against pregnant workers in Cyprus. While Cypriot law has been fully harmonised with EU directives so as to protect pregnant workers and working mothers, discrimination claims on grounds of pregnancy and maternity are still rare in Cyprus. In reaching its decision, the tribunal upheld the law's approach that the dismissal of a woman due to her pregnancy is unlawful, as it constitutes an absolute violation of her rights. The tribunal's judgment is a welcome precedent for pregnant women, who often become victims of discrimination in the workplace. It also raises awareness of Cyprus's anti-discrimination laws, demonstrating that more needs to be done to enforce them in practice.

For further information on this topic please contact [Christiana Michael](#) at George Z Georgiou & Associates LLC by telephone (+357 22 763 340) or email (christiana.michael@gzg.com.cy). The George Z Georgiou & Associates website can be accessed at www.gzg.com.cy.

Endnotes

(1) *Maria Hadjidaniel v Demstar Automotive Ltd*, Industrial Disputes Tribunal, December 28 2016, Case 813/2012.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).