

## AFTER MATERNITY LEAVE – RETURNING TO THE ‘SAME JOB’?

Women who return to work following maternity leave are normally entitled to return to “the job in which she was employed before her absence”. In a recent EAT case, the Claimant was employed as a teacher in a primary school where classes were rotated between teachers every two years.

At the point when the Claimant began her maternity leave she was teaching in the reception class. When she returned from her maternity leave she was allocated to teach Year 2 which she alleged did not amount to the ‘same job’.

The EAT upheld the Tribunal’s decision that this was “the same job” and stated that the relevant factors to consider when comparing the “old” and “new” jobs in this context are:-

- Nature;
- Capacity; and
- Place.

The EAT found that the Claimant was employed as a primary school teacher and that she had returned to work as a primary school teacher, therefore, the statutory requirement of returning to the job in which she was employed before her absence was satisfied.

### 👉 Practical Tips

- On the face of it good news for employers but beware. The EAT substituted a finding that the Claimant was subjected to a detriment because she was not properly consulted over the class to which she would be assigned when she returned from maternity leave.
- Therefore, if there are any changes at all between the old and the new job it will be doubly important to ensure full consultation so that potential problems can be averted.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

This bulletin is for general guidance purposes only and should not be used for any other purpose.

Brabners Chaffe Street is listed in The Sunday Times 100 Best Companies to Work For

Brabners Chaffe Street is a Limited Liability Partnership



#### LIVERPOOL 0151 600 3000

1 Dale Street, Liverpool L2 2ET  
Fax: 0151 227 3185  
MDX 14118 Liverpool  
email: [law@brabnerscs.com](mailto:law@brabnerscs.com)

#### MANCHESTER 0161 836 8800

55 King Street, Manchester M2 4LQ  
Fax: 0161 836 8801  
MDX 14431 Manchester  
email: [law@brabnerscs.com](mailto:law@brabnerscs.com)

#### PRESTON 01772 823921

7-8 Chapel Street, Preston PR1 8AN  
Fax: 01772 201198  
MDX 17118 Preston  
email: [law@brabnerscs.com](mailto:law@brabnerscs.com)