



Bulletin 158

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SEX DISCRIMINATION: EMPLOYEES UNDERGOING IVF TREATMENT – EXTENSION OF THE “PROTECTED PERIOD”

It has long been established that discrimination against a female employee on the grounds of pregnancy during the “protected period” constitutes direct discrimination without the need for a male comparator. It is therefore a period during which the employer should take particular care in relation to the employee

For a woman undergoing IVF, the “protected period” starts when the fertilised ova are implanted (when she is considered to be “pregnant”).

If an implantation is successful, the “protected period” ends when the employee returns from maternity leave or, if they are not entitled maternity leave, two weeks after the end of the pregnancy.

If an implantation fails and the pregnancy ends, the “protected period” ends two weeks after that point.

However, in the recent case of *Sahota v The Home Office and Pipkin*, the EAT held that where a woman is at the advanced stages of IVF treatment but is not yet pregnant, **she will receive additional protection from direct discrimination for the limited period between the ova being collected and the “imminent” implantation of the fertilised ova.**

Practical Tip

Unfortunately it is not clear how “imminent” the implantation needs to be to afford the employee the additional protection. An employer may be aware that an employee is undergoing IVF but have no knowledge of the stage the treatment has reached.

As such, employers should adopt a cautious approach.

The position is analogous to dealing with a pregnant employee. Unless proper legal advice has been obtained employers should avoid taking any action which is or could be construed as detrimental to an employee undergoing IVF. We would also recommend that the issue is covered in the Staff Handbook.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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