



Bulletin 215

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REDUNDANCY SCORING DURING MATERNITY LEAVE

In *Eversheds Legal Services Ltd v De Belin* UKEAT/0352/10, the EAT has upheld a decision that a law firm discriminated against a male lawyer on the ground of his sex when it inflated the redundancy selection score of a female colleague who was on maternity leave. It was decided that pregnant employees and those on maternity leave should only be treated more favourably than male colleagues to the extent that this is reasonably necessary to remove the disadvantages occasioned by their condition.

Mr De Belin and a female colleague were put in a pool for redundancy and scored against five criteria. One of the criteria was based on the time between a lawyer completing a piece of work and receiving fees from the client for that work (known as “lock-up”). The relevant reference period considered by Eversheds was the previous 12 months however, during this period the female employee had been on maternity leave. In the circumstances, she was given the highest possible score whereas Mr De Belin was given the lowest possible score based on a relatively bad lock-up performance. Once all criteria had been scored, the female employee scored a total of 0.5 points more than Mr De Belin and Mr De Belin was therefore selected for redundancy.

The EAT, upholding the Tribunal’s decision held that, although pregnant employees and those on maternity leave should sometimes be treated more favourably than their colleagues, this is only the case to the extent that it is reasonably necessary to compensate them for the disadvantages occasioned by their condition. The employer’s decision to award the female employee a notional maximum score in respect of one of the selection criteria, while leaving Mr De Belin with his actual score, was not a proportionate means of removing the woman’s disadvantage.

An alternative, less discriminatory way of removing the female employee’s maternity-related disadvantage would have been to measure the lock-up of both individuals as at the last date on which the female employee was present at work.

This decision highlights to employers that they should not automatically give employees on maternity leave preferential treatment as the “safe option”. Instead, the potential ways of mitigating the disadvantage of maternity absence should be assessed and the most appropriate option chosen.

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.

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