Sex discrimination

Local Government Staff Commission

4 December 2007

Employment Equality (Sex Discrimination) Regulations (NI) 2005

- Came into operation on 5th October 2005
- Intended to give effect to obligations arising under the Revised Equal Treatment Directive:-

1 New freestanding definition of harassment incorporated into the SDO

2. *Express* prohibition on pregnancy discrimination incorporated by new art. 5A (in relation to employment and vocational training)

3. Exception to right to claim discrimination in respect of terms and conditions during maternity leave.

EOC v SoS for Trade & Industry changes

1. Broaden express definition of harassment
2. Amend new express protection against discrimination on ground of pregnancy/ maternity (comparisons and status of contractual benefits during AML)
3. **Changes to Statutory Maternity Regulations almost certain in order to give effect to 2. above**

Land Brandenburg v Sass [2005] IRLR 147 (ECJ)

Any statutory maternity leave should not *"interrupt the employment relationship of the woman concerned, nor the application of rights derived from it."…..contractual rights must be protected for the whole of the period."*

- **Sarkatzis Herrero v. Instituto Madrileno de la Salud [2006] IRLR 296 ECJ**

  " *the deferment of the start of Ms Sarkatzis Herrero's career as an official following her maternity leave constitutes unfavourable treatment for the purposes of [the Equal Treatment Directive]."*

Blundell v BOG of St Andrew's Catholic primary School [2007] IRLR 652 (EAT)

- Failure to consult about the pending changes whilst on maternity leave was SD

- "where precise position is variable tribunal not obliged to freeze time….but may have regard to normal range within which variation has previously occurred
  - Work = teacher
  - Classroom teacher not reception
  - Place of work =school, not reception class

Gilbank v Miles [2006] IRLR 538 CA

- Aiding unlawful discrimination
- Employee deemed to have aided employer to do what she herself did
- Employee/manager jointly and severally liable to pay compensation awarded

Victimisation

St Helens Borough Council v Derbyshire, HL (April 2007)

- Statutory test is not was conduct "honest and reasonable" but was it "by reason that" employee made complaint.
- Victimisation must be looked at primarily from perspective of alleged victim to determine whether "detriment" suffered.
- Ordinary steps to settle or defend a claim do not amount to detriment.
- On the facts the "borderline" had been crossed.

Gender Goods and Services Directive 2004/113

- Consultation on implementation closed 21 September 2007
- Draft Sex Discrimination Order 1976 (Amendment Regulations) 2007
- Implementation by 21st December 2007

Changes will include:

- Change to definition of indirect discrimination

  Introduce express prohibition on harassment in GFS (not customer on customer)

- Apply Directive's burden of proof provisions to GFS in line with that for employment and vocational training;

- Direct discrimination on grounds of gender reassignment will be included in GFS

Changes contd.

- include *express* protection against discrimination on grounds of pregnancy/ maternity to GFS and

- amend the SDO exception relating to insurance to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women.