



IVF Treatment – Dismissal Will Be Discriminatory.

In a landmark case, the European Court of Justice (ECJ) has found that if a woman undergoing in vitro fertilization treatment (IVF) is dismissed for any reason relating to the treatment, then any such dismissal will be regarded as direct sex discrimination contrary to the EC Equal Treatment Directive as only women receive such treatment.

The ECJ also found that women who are undergoing IVF treatment and who have had their ova fertilized but not yet implanted are not to be regarded as pregnant and would therefore not be protected by the Equal Treatment Directive.

In this case which originated in Austria, it was agreed between the parties that at the date of the workers dismissal the ova had been fertilized but not implanted. As such, the worker in this case did not receive any protection from dismissal and the ECJ expressed concerns about providing protection to workers in such circumstances as often the ova are fertilized and stored for long periods of time which would provide ongoing protection from dismissal for women who had postponed the treatment for several years or may even have abandoned the treatment.

Under the Equal Treatment Directive, a

woman who conceives naturally and who is dismissed for any reason based on pregnancy amounts to direct sex discrimination. The ECJ felt that there was no reason why this protection ought not to be extended to women conceiving through IVF treatment which also affects only women. The Directive therefore prevents the dismissal of a female worker who is at an advanced stage of IVF treatment, if the dismissal is “essentially based on the fact that the woman has undergone such treatment”.

This is an extension of the rights contained within the Equal Treatment Directive which will give workers the right to present a claim for sex discrimination in the Employment Tribunal if any dismissal is perceived as having been related to IVF treatment.

For further advice on this or any other employment related matter please contact either Judith Curran on 020 8768 7022 or Roy Carlo on 020 8768 7031.

These notes are for guidance only and do not remove the need to take legal advice in any circumstances. No responsibility will be accepted for any loss occasioned as a result of actions taken or refrained from due to their contents.

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