

## **PREGNANCY RELATED DISMISSAL\***

An interesting case arose in relation to a bar manager in a hotel case ADJ13503.

The AO in this case helpfully has set out considerable amount of law in relation to matters including the case of Melbury Developments Limited-v-Valpeters and as regards to the issue of burden of a proof the AO then set out the law relating to pregnancy related dismissal and the main cases including Webb-v-Emo Air Cargo (UK) Limited, Brown-v-Rentokil Limited and the Dekker case. The AO also set out The Labour Court decisions in Trailer Care Holdings Limited-v-Healy EDA128 and Wrights of Howth Seafood Bars Limited and Dorota Murat EDA178.

The AO in this case found that the employee had been dismissed due to her pregnancy. The AO in this case awarded €14,000. Importantly the AO in this case stated that the AO arrived at the award having regard to the effect of the discrimination of the complainant and the requirement pursuant to Article 17 of the framework Directive that the sanction be quote effective, dissuasive in proportionate” the AO in this case then went on to state the discrimination might well merit a higher award but that the AO had given consideration to the relatively short tenure of the complainant’s employment.

We do have a difficulty with the reasoning of the AO in this case. The level of service is, in our opinion, irrelevant to the issue of discrimination. We are aware that there is no principle set out in any European decision or in decisions of The Labour Court which have held that an award will be higher for an employee who has been in service for a longer period of time compared to someone who has been in service for a shorter period of time. So, where discrimination occurs it is irrelevant, in our opinion, whether the employee has been employed for a day, a year or 10 years. Where a woman is dismissed due to being pregnant it is irrelevant to end the service the employee has. It is the fact of the discrimination which should be the only criteria for setting compensation. That is however only our opinion. The reality is in most cases we come across in that those with less service are more likely to be dismissed.

***\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.***

***\*\*In contentious cases, a solicitor may not charge fees as a proportion or percentage of any award or settlement.***