

Efforts to combat pregnancy discrimination

In 2017, the National Commission for the Promotion of Equality (NCPE) Commissioner investigated a complaint alleging unfair treatment and dismissal due to pregnancy. The complainant stated that following a series of incidents, her employer asked her to resign, despite the fact that she did not want to leave, and that she never had any written or verbal warnings, nor was she called to a disciplinary hearing. Following the investigation, it was evident that the decision to terminate the complainant's employment was taken right after she revealed her pregnancy. This is just one example of discrimination against pregnant women at the workplace in spite of EU Directives and Maltese legislation that provide against such discrimination.

Indeed, the report of the European Network of Legal Experts in the Field of Gender Equality states that despite equality and employment-related directives in the EU¹, discriminatory practices in employment occur on expectant women and new mothers. They are not hired, are fired, harassed, or discriminated due to their pregnancy or intention to become pregnant. Such cases show that in many EU countries, women are still perceived as the main carer and not as a worker in their full right.

Nonetheless, in Malta in line with EU Directives, treating a woman less favourably due to potential or actual pregnancy or childbirth is illegal as per the *Equality for Men and Women Act*. Moreover, this law allows for special protection to women during childbirth or pregnancy to protect maternity and safeguard their right to equality.

More specifically, the *Protection of Maternity (Employment) Regulations*² seek to safeguard the employment rights, and facilitate the health and safety, of pregnant employees, employees who have recently given birth and breastfeeding employees. Employers are thus requested to take measures to protect the health and safety of these employees when applicable and to give them time off without loss of pay to attend ante-natal examinations.

In addition, pregnant women are entitled to maternity leave for an uninterrupted period of eighteen (18) weeks. The first fourteen (14) weeks are paid by the employer and for the remaining four (4) weeks pregnant women are entitled to the Maternity Leave Benefit. Six

¹ European Union, 2012. Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood The application of EU and national law in practice in 33 European countries

² <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11225>

weeks of the maternity leave entitlement is to be taken compulsorily immediately after the date of confinement; four weeks immediately before the expected date of confinement, unless agreed otherwise with the employer; and the remaining balance either before or after the above periods, as the employee may request.

Furthermore, if an employee is pregnant or has recently given birth, and who could be exposed to a risk at work that could jeopardise her health and safety or her pregnancy, is entitled to special maternity leave as long as the risk exists.

Moreover, when an employee is on maternity leave or special maternity leave, the employee is entitled to all rights and benefits which may accrue to other employees of the same position at the same place of work, including the right to apply for promotion opportunities and to return to the same job or similar work which is consistent with her original contract of employment. This is not the reality in all EU Member States. For instance, in Poland, although most women in practice return to the same or equivalent position, women lose out in the form of not being offered promotion or not being offered training because they are on maternity leave³.

In Malta, it is also unlawful to dismiss pregnant employees or employees who have recently given birth or are breastfeeding. If an employer dismisses a pregnant employee during the probationary period, the employer is bound to give reasons for the employee's dismissal in writing to justify that the discharge is unrelated to the employee's condition. Employees need to inform themselves on this legislation in order to ensure that their rights and responsibilities are safeguarded. If in doubt, recourse can be had at the National Commission for the Promotion of Equality (NCPE) that is empowered by Chapter 456 of the Laws of Malta to investigate alleged cases of discrimination in employment on the grounds of gender and family responsibilities and employees who are discriminated can contact NCPE to seek advice or to lodge a formal complaint. The NCPE also provides an information service to stakeholders and the general public on such issues.

The protection of pregnancy, motherhood and parenthood is crucial for an equal and just workplace. NCPE is committed to continue working to raise awareness on such rights and to investigate complaints in view that discriminatory practices breach pregnancy and maternity

³ European Union, 2012. *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood The application of EU and national law in practice in 33 European countries*



rights. Employees are encouraged to report cases of discrimination; reluctance to do so may hinder access to justice and redress.

The National Commission for the Promotion of Equality (NCPE) can be contacted on: 2295 7850 or equality@gov.mt or our Facebook page.