



Bulletin 173

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HOW SPECIAL SHOULD “SPECIAL TREATMENT” BE?

The tension in the Sex Discrimination Act between equal and special treatment became a crucial point in the case of *De Belin v Eversheds Legal Services Ltd ET/1804069/09* where a female lawyer was given inflated scoring to that of a male colleague in a redundancy scoring matrix for performance during her absence on maternity leave.

Given that the female employee was absent on maternity leave during the period of performance that was assessed, the employer decided to give the female employee the benefit of the doubt and awarded a maximum possible notional score of 2 for that category. This was despite her performance prior to maternity leave being the lowest possible score of 0.5. The male employee was assessed on his actual performance during the period assessed and was given the lowest possible score of 0.5.

This resulted in the two employees having a difference in overall scoring of only 0.5, with the female employee having the higher score.

The employer argued that this scoring had been given to protect the female employee under the “special treatment” afforded to women in connection with pregnancy or childbirth under section 2(2) of the Sex Discrimination Act.

Decision

The female employee’s score was held to be unfairly inflated and as such the Tribunal decided that the Claimant had been unfairly dismissed and discriminated against on grounds of his sex.

Although the Tribunal did not provide an absolute definition of “special treatment”, it did helpfully clarify that special treatment cannot afford blanket protection for women.

Practical Tips

Instead of simply giving the employee on maternity leave a notional scoring employers should try to base the score on tangible information.

It would be worthwhile making this approach clear in any internal redundancy policy or training so that managers ensure that all employees are scored fairly based on available and tangible employee information.

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.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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