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NEWS REPORT

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| Country: | Spain |
| Title: | Supreme Court reinforces the burden of the proof for employers in non-discrimination cases in a case of collective dismissals affecting workers who are pregnant or on parental leave |
| Date: | 26 May 2015 |
| Expert: | María-Amparo Ballester-Pastor |
| <u>Context</u> | |
| Issue at stake: | Dismissal of workers who are pregnant or in parental leave |
| Ground of discrimination: | Sex |
| Source: | Judgment of the Supreme Court of 14 January 2015 (publicly available in April 2015), Appeal No. 104/2014 |
| Field: | Pregnancy and maternity |
| Applicable law: | Article 55.5 of the Worker's Statute |

Content

Case: The claimant, a pregnant woman who was also on parental leave, was dismissed along with 47 other workers since the company was experiencing economic difficulties. The company had fulfilled the administrative requirements for the collective dismissal and the Labour Authority had established that the company had the right to abolish 48 working positions.

When the company dismissed the claimant, she claimed that her dismissal was null and void as it contravened the rights established in Article 55.5 of the Worker's Statute. Article 55.5 of the Worker's Statute stipulated that a dismissal is null and void if it is without cause and affects a worker who is pregnant or on parental leave. However, in this case the employer had established cause for the dismissal (economic difficulties), and furthermore, none of the other 47 workers challenged the dismissal in the courts.

Decision of the Court: In its judgment, the Supreme Court ruled that in the event of a collective dismissal due to economic reasons, the employer must justify the specific reason for including a person protected by Article 55.5 of the Worker's Statute in the group of persons dismissed. As the employer failed to do so, the dismissal of the claimant was declared null and void.

Although in this case the claimant was both pregnant and on parental leave for the care of another child at the time of dismissal, the Supreme Court confirmed that the same solution would apply if the claimant satisfied only one of the two conditions (pregnancy or parental leave). This is because the protection afforded by the Spanish legislation (dismissal null and void) is the same for both cases.

Key points of analysis: In the Spanish legislation the employer does not have to explain the reason why he/she chooses to dismiss a concrete worker when there are economic reasons for that. However, the Supreme Court has clarified in this ruling that the employer must provide concrete justification of his/her choice when the dismissal affects workers that are pregnant or on maternity or any of the parental leaves listed in Article 55.5 of the Worker's Statute.

Internet link source:

Judgment of the Supreme Court of 14 January 2015, Appeal No. 104/2014.
<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7324092&links=&optimize=20150313&publicinterface=true>.

Article 55.5 of the Worker's Statute, Royal Legislative Decree 1/1994, of 24 March 1995,
http://noticias.juridicas.com/base_datos/Laboral/rdleg1-1995.t1.html#a55.