



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Belgium
Title:	Sick leave related to maternity
Date:	27 October 2015
Expert:	Jean Jacqmain
<u>Context</u>	
Issue at stake:	Gender equality in employment: maternity protection
Ground of discrimination:	Sex
Source:	National court decisions: Labour Court in Mons and Charleroi (La Louvière division), 22 May 2015, <i>Rôle général</i> No. 13/758/A, unreported and Labour Court of Appeal in Brussels, 26 November 2008, <i>Journal des tribunaux du travail</i> , 2009, p.76 and 16 June 2009, <i>Chroniques de droit social</i> , 2010, p.19 with J. Jacqmain's case note
Field:	Pregnancy and maternity
Applicable law:	Working Conditions Act of 16 March 1971 and Gender Act of 10 May 2007

Content

Case law: Over a span of two years, a female employee experienced a series of events related to maternity. First, she gave birth to a premature baby who died the following day; six months later, she had a miscarriage; and later the same year, she had to terminate a third pregnancy based on medical grounds. Each of these painful events entailed multiple periods of sick leave, which her employer claimed was disruptive to team work, and she was dismissed on these grounds.

Decision of the Court: The employer's decision was challenged as amounting to gender discrimination before the Labour Court, by both the employee and the Institute for Equality of Women and Men (the 'equality body' under Article 20 of Directive 2006/54/EC), on the grounds of the Act of 10 May 2007 aimed at fighting discrimination between women and men (the 'Gender Act'). Given the circumstances, it was impossible for the employer to refute the *prima facie* evidence of discrimination, as the dismissal was directly connected to the successive pregnancies and miscarriages, which could not possibly have affected a male employee. Thus, the Labour Court found that there had been direct discrimination, and allowed the employee the fixed damages provided by Article 23 of the Gender Act, equal to six months' pay.

Key points of analysis: Six years ago, the Labour Court of Appeal in Brussels reached the same conclusion in a similar case of dismissal following periods of absence linked to successive miscarriages. However, the previous Gender Act of 7 May 1999, applicable to the facts of that case, did not provide for fixed damages. Thus, the compensation had to be adjudicated in tort law, resulting in a lesser amount.

Internet link source:

All legal texts available in French and Dutch via <http://www.juridat.be>, accessed on 27 October 2015.