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NEWS REPORT

Country:	The Netherlands
Title:	District Court Zwolle awards EUR 21 000,- pecuniary and EUR 5000,- non-pecuniary damages for pregnancy discrimination
Date:	9 June 2016
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<u>Context</u>	
Issue at stake:	Judgment by the District Court Zwolle on compensation for pregnancy discrimination
Ground of discrimination:	Sex
Source:	National court decision
Field:	Pregnancy and maternity
Applicable law:	Article 7:646 Dutch Civil Code

Content

Decision of the Court: On 26 April 2016, the District Court Zwolle rendered a decision on pregnancy discrimination. The case concerned an employee whose temporary contract was not extended after she had informed her employer that she was pregnant. If the contract had been extended, it would have become an employment contract for an indefinite period of time. The woman claimed damages on the basis of unlawful conduct by the employer.

The District Court ruled that the employee had established sufficient facts from which it could be presumed that her contract had not been extended because of her pregnancy. A week before the contract was due to end, the parties had had a conversation about the continuation of the employment agreement. The employee then informed her employer about her pregnancy. Subsequently a discussion took place about the length of the pregnancy leave, after which the meeting was ended. Two days later the employer informed the employee that her contract would not be extended because her performance had not been good enough. However, the employer had never before been critical about the employee's performance and there was no written or oral evidence of poor performance. The Court therefore concluded that the employer had not refuted the presumption of discrimination.

Subsequently, the Court ruled that if the employment agreement had turned into a permanent one, it would have lasted at least five years. The employer therefore had to pay compensation for the loss of income of the employee during these five years. For this purpose a calculation was made of the income the employee would have earned during these five years minus the unemployment benefit she was entitled to after the expiry of her employment agreement. This amounted to a sum of EUR 21 000. The employer also had to pay EUR 5 000,- for non-pecuniary damage. In this respect, the Court pointed out that the right to be free from discrimination is a fundamental right and compensation has to be awarded when an infringement of this right takes place, regardless of whether the

person in question also suffered physical or mental damage. The court ruled that the amount of EUR 5 000,- is in line with other judgments by Dutch courts.

Key points of analysis: Although this is a judgment by one of the lower courts, it is relevant because there are not many judgments in which compensation is granted due to discrimination. In the Netherlands, it happens frequently that temporary employment agreements are not extended because of pregnancy. It is not easy for the employees concerned to claim damages in this respect and the possible damages often do not outweigh the costs of a legal procedure. The judgment mentioned here is, in that sense, a step in the right direction. It is also important that the judge states explicitly that the single fact of discrimination gives right to (non-pecuniary) compensation, without it being necessary to prove further damage.

Internet link source:

There is no internet link yet.