



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

### NEWS REPORT

<b>Country:</b>	Greece
<b>Title:</b>	Adverse treatment of women returning from maternity leave
<b>Date:</b>	23 September 2016
<b>Expert:</b>	Sophia Koukoulis-Spiliotopoulos
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Employment of a woman returning from maternity leave in the same or an equivalent job
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National equality body
<b>Field:</b>	Employment; pregnancy and maternity
<b>Applicable law:</b>	Directive 2001/23/EC; Directive 2006/54/EC; Presidential Decree (PD) 178/2002 transposing Directive 98/50/EC; Act 3896/2010 transposing Directive 2006/54/EC.

### Content

**Case development:** A woman complained to the Ombudsman that upon her return from maternity leave she found that the pharmacy in which she was employed for 17 years had been transferred to a new employer (transferee). The latter told her that the pharmacy in question was moved to another, far away, place where she would have to work. The new employer was a close relative of her original employer, whom she knew, as he was occasionally working in the pharmacy with her. The woman lodged a complaint with the Ombudsman and the Labour Inspector (LI) alleging that a transfer of the pharmacy had taken place and that the transferee was violating his obligation to employ her in the same job. She also served a letter to the transferee declaring that she was offering him her services in the same pharmacy where she had worked for 17 years.

The Ombudsman, in collaboration with the competent LI, found that the pharmacy had not been moved but had been transferred to the transferee. The transferee insisted that this was a "newly established" pharmacy and that he had no obligation to employ the woman. The LI, at the recommendation of the Ombudsman, imposed on him a fine for a violation of the provisions on workers' rights in case of transfer of an undertaking and on the right of women returning from maternity leave to be employed in the same or an equivalent job.<sup>1</sup>

**Key points of analysis:** The Ombudsman often reports cases of adverse treatment of women returning from maternity leave in the private sector, which are constantly increasing since the onset of the economic crisis.

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<sup>1</sup> See Ombudsman 'Summary of mediation', August 2016: available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el> (in Greek), accessed 5 September 2016.

The right of the woman to return to her previous or an equivalent job arises from Directive 2001/23/EC<sup>2</sup> in conjunction with Directive 2006/54/EC.<sup>3</sup> Relevant Greek legislation also embodies the above right of the woman. Article 3(1) of Directive 2001/23 requires that the transferee comply with the obligations arising from the contract of employment existing on the date of the transfer. This requirement is embodied in Article 4(1) of PD 178/2002<sup>4</sup> transposing Directive 98/50/EC.<sup>5</sup> Moreover, Article 15 of Directive 2006/54 entitles a woman, after the end of her maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her. This entitlement is contained in Article 16 of Act 3896/2010 transposing Directive 2006/54.<sup>6</sup>

This is a characteristic example of the adverse treatment of women returning from maternity leave often occurring in the private sector, as repeatedly reported by the Ombudsman. Private employers often impose on these women prejudicial modifications of working conditions (e.g. modification of working time, change of workplace) or part-time or rotation work, mainly with a view to compelling them to resign. Moreover, they may dismiss them, without notifying them of the dismissal, while they declare to the Ministry of Labour and the Agency of Manpower Employment (OAED) (competent for registering the unemployed and paying unemployment benefits) that they resigned of their own free will. The Ombudsman notes that complaints of such treatment mostly come from female employees of small and medium-sized undertakings (i.e. those employing up to ten workers). Due to these undertakings being heavily hit by the economic crisis, they see maternity rights as an additional burden. Quite often employers admit that they give priority to their tax and other financial obligations, while they consider maternity protection of lesser importance.<sup>7</sup> However, the Ombudsman only sees the tip of the iceberg. Moreover, such cases do not seem to reach the courts, as they are very difficult to prove. The spectre of unemployment, which is much higher for women than for men, in conjunction with rising litigation costs, deter women from claiming their rights.

#### **Internet link source:**

Ombudsman 'Summary of mediation', August 2016: available at:

<http://www.synigoros.gr/?i=isotita-ton-fylon.el> (in Greek), accessed 5 September 2016.

Presidential Decree 178/2002, 'Measures regarding the protection of employees in the event of transfers of undertakings, businesses or parts of businesses, in compliance with Council Directive 98/50/EC', OJ A 162/12.07.2002, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 5 September 2016.

Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/08.12.2010, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 5 September 2016.

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<sup>2</sup> Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.03.2001 pp. 16-20.

<sup>3</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.07.2006, pp. 23-36.

<sup>4</sup> OJ A 162/12.07.2002.

<sup>5</sup> Council Directive 98/50/EC amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, OJ L 201, 17.07.1998, pp. 88-92. Directive 2001/23/EC constitutes a codification of Directive 77/187 as amended by Directive 98/50, in light of the Court's case law.

<sup>6</sup> Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/08.12.2010.

<sup>7</sup> See Ombudsman Annual Report 2014 (Special Report '*Gender and Employment Relationships*'), pp. 138-141. available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>; Ombudsman Annual Report 2015 (Special Report '*Gender and Employment Relationships*'), pp. 117-121: available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>, both accessed 30 August 2016.