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NEWS REPORT

Country:	Belgium
Title:	Multiple discrimination grounded on health and maternity
Date:	24 April 2017
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<u>Context</u>	
Issue at stake:	Dismissal related to maternity and health
Ground of discrimination:	Sex and health
Source:	Case Law
Field:	Employment; pregnancy and maternity
Applicable law:	Gender Act and General Discrimination Act, both of 10 May 2007

Content

Case law: In a private firm, a female employee took extended sick leave during which she was treated for cancer. She then informed her employer that she was pregnant; after the end of maternity leave, she was on sick leave again. Finally, she was dismissed and received pay in lieu of a notice period.

The employee challenged the dismissal on different grounds. On the one hand, with the support of the Institute for Equality of Women and Men ("the gender agency" as meant in Directive 2006/54/EC), she claimed that the employer had breached the provisions on protection of maternity (Article 40 of the Employment Conditions Act of 16 March 1971) as well as the prohibition of gender discrimination (Article 6 of the "Gender" Act of 10 May 2007).

On the other hand, with the support of the Centre for Equal Opportunities and the Struggle Against Racism and Discrimination, now "UNIA" (the "Anti-Discrimination Agency" as meant in Directive 2000/43/EC and 2000/78/EC), the employee claimed that the employer had breached the prohibition of discrimination grounded on "health status", one of the numerous criteria listed in the "Discrimination in General" Act of 10 May 2007.

Key points of analysis: Concerning protection of maternity, the employee held that the facts of her case were similar to those of CJEU's Case C-460/06 *Paquay* [2007-I-8511], i.e. that during the period when the right of dismissal was restricted, the employer had manifested that he intended to terminate the contract when the period of protection was over. However, the Labour Court of Ghent (division of Kortrijk) found that the employee had not brought sufficient evidence of such a manifestation of intention. Similarly, when the employee claimed that there had been gender discrimination related to maternity, as in CJEU's Case C-177/88 *Dekker* [490-I-3941], consisting in the employer's wish to give the plaintiffs' position to the woman who had replaced her during her maternity leave,

the Labour Court found that the employer had stated convincingly that his preference rested on a comparison of the two employees' qualifications.

Concerning "health status", the employee claimed that the employer had breached the prohibition of discrimination grounded on one of the numerous criteria listed in the "Discrimination in General" Act of 10 May 2007. In this respect, the *prima facie* case was self-evident and the Labour Court found that the employer had not demonstrated that the dismissal was grounded on other considerations than the employee's health status. Consequently, the Labour Court decided that fixed damages equal to six months' remuneration, as provided in Article 18 of the Act, were due.

Internet link source: Labour Court of Ghent (division of Kortrijk), 25 October 2016, *Algemene Rol* n°15/382/1, unreported.

All legal texts available in Dutch and French on www.juridat.be, accessed on 21 March 2017.