



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

### NEWS REPORT

<b>Country:</b>	Spain
<b>Title:</b>	The Supreme Court recognizes the right to full remuneration in two cases related to pregnancy and maternity
<b>Date:</b>	9 May 2017
<b>Expert:</b>	María Amparo Ballester Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The Supreme Court's judgment of 24 January 2017, has recognized the right to full remuneration for an employee in the medical field, who, due to her pregnancy, could not perform night shifts. In a judgment of 10 January 2017, the Supreme Court recognized the right to receive full remuneration (including bonuses) from the first day of work after maternity leave.
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National Court Decision (Supreme Court)
<b>Field:</b>	Pregnancy and Maternity
<b>Applicable law:</b>	<ul style="list-style-type: none"><li>- Article 26 of the Law 31/1995, of 8 November 1995, for the prevention of risks at work place</li><li>- Articles 3, 6 and 8 of the Law 3/2007, of 22 March 2007, for the effective equality between women and men</li></ul>

**Case:** In January 2017, the Supreme Court pronounced two judgments of great importance in which it recognized the right to full remuneration in case of pregnancy and maternity leave.

In its judgment of 24 January 2017 (appeal number 1902/2015) the Supreme Court ruled in favour of the right to full remuneration in a case of a medical worker who had been exempted of night shifts and other professional obligations, due to the fact that these work obligations could pose a risk to her pregnancy. The performance of night shifts and other professional obligations are rewarded with a specific remuneration called "bonus for continued attention" (*complemento de atención continuada*) whose payment was denied to the claimant by the hospital during the time she was exempted of these duties because of her pregnancy. Before her pregnancy she complied with these obligations and, accordingly, received the established bonus for continued attention.

Article 26 of the Law 31/1995, of 8 November 1995, for the prevention of risks at the work place, establishes the obligation of employees to adapt a working situation to a pregnant employee. However, it does not mention any consequences this may have regarding the payment of the employee. The Supreme Courts' judgment of 24 January 2017, recognized the right of the pregnant worker to receive full payment, including the above mentioned "bonus for continued attention", even though she had been exempted of the professional duties connected to this bonus. The main argument presented by the Supreme Court was that, if she would have temporarily stopped working due to her pregnancy she would have received a periodic payment equal to her whole

salary including the bonus for continued attention from the social security system. Based on this fact, the Supreme Court reaches the conclusion that, if she continues to work, she must also receive the same remuneration from her employer (entire salary including bonuses).

In its judgment of 10 January 2017 (appeal number 283/2015), the Supreme Court recognized the right to receive the entire salary, including bonuses from the first day upon returning from maternity leave. In applying the collective employers agreement literally, the employer of the claimant gave her a bonus only in the second month after returning from maternity leave, given that the right to it was generated from the productivity of the month before. However, the Supreme Court considered that an employee should not be placed at a disadvantage from being on maternity leave, which meant that she should receive the bonus from the first day upon her return to work.

Both judgments demonstrate the Supreme Court's intent to guarantee that pregnant employees, and employees who are on maternity leave do not suffer any economic disadvantage by exercising their rights.

**Decision of the Court:** The Supreme Court has pronounced two judgments of great interest which have recognized the right to full remuneration in case of pregnancy and maternity leave. The Supreme Court's judgment of 24 January 2017, recognized the right to receive full remuneration for a worker in the medical field, even though, because of her pregnancy, she did not perform night shifts. The Supreme Court's judgment of 10 January 2017 has recognized, as well, the right to receive full remuneration (including bonuses) from the first day of work after maternity leave.

**Key points of analysis:** In January 2017 the Supreme Court has pronounced two judgments which have recognized the right to full remuneration of workers who were in certain situations related to pregnancy and maternity. Both judgments have in common the interest of the Supreme Court to guarantee that pregnant workers or workers on maternity leave do not suffer any economic disadvantage for the fact of exercising their rights.

**Internet sources:**

- Article 26 of the Law 31/1995, of 8 November 1995, for the prevention of risks at work place, <https://www.boe.es/buscar/doc.php?id=BOE-A-1995-24292>, accessed 15 March 2017.
- Articles 3, 6 and 8 of the Law 3/2007, of 22 March 2007, for the effective equality between women and men, <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-6115>, accessed 15 March 2017.
- Judgment of the Supreme Court of 10 January 2017 (appeal number 283/2015) , <http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7920557&links=%22283%2F2015%22&optimize=20170130&publicinterface=true>, accessed 15 March 2017.
- Judgment of the Supreme Court of 24 January 2017 (appeal number 1902/2015), <http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=7950828&links=%221902%2F2015%22&optimize=20170306&publicinterface=true>, accessed 15 March 2017.