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NEWS REPORT

Country:	France
Title:	A Court decision on positive action
Date:	14 December 2017
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<u>Context</u>	
Issue at stake:	Positive Action
Ground of discrimination:	Sex
Source:	National court decision
Field:	Employment
Applicable law:	Cass. Soc. 12 July 2017, n°15-26262

Content

Case: A transport company's collective agreement provides for a half day's leave for women on Women's Day. A male employee has claimed that reserving this advantage for woman constitutes unequal treatment between men and women.

Decision of the Court: The *Cour de Cassation*, applying the French Labour Code (Articles L 1142-4, L. 1143-1 and L. 1143-4) in the "light of Article 157 § 4 of the TFEU", decides that a collective agreement may provide for half day's leave only for women if this measure seeks to address equal opportunities in remedying de facto inequalities that generally affect women.

This is an important decision of the *Cour de cassation*, as demonstrated by the publication of the case on the website of the Court. There have been very few cases on positive action, and this case admits the legality of this specific advantage in giving a broad interpretation of the concept of positive action.

The Labour Code recognises the possibility to take positive action through temporary measures laid down by decree or by collective agreements at sectoral levels or by the employer when establishing a plan for equality between men and women. Positive actions are defined as temporary measures which only benefit women with the aim of establishing equal opportunities between men and women in particular in remedying existing inequalities in opportunities between men and women (Article L 1142-4 of the Labour Code). According to Article L 1142-4 of the Labour code, positive actions can be defined through a decree, a collective agreement at sectoral level or through a unilateral decision by the employer when establishing a plan for equality between men and women. Article L1142-4 does not specifically mention collective agreement at company level. However, interpreting this Article in the light of Article 157 § 4 of the TFEU, allows the *Cour de cassation* to also admit that a collective agreement concluded at plant level can provide for positive action.

The decision is a very short one and it is not clear how half day's leave can contribute to compensate inequalities. In an explanatory memorandum published with the case on the

website of the Court, the Court explains that with this important case, the Cour de cassation takes into account the evolution of European law and of the case law of the ECJ regarding positive action. For the Court, the manifestations of any kind during Women's Day contributes to raising awareness and reflection on the specific situation of women at work and how to improve their situation. Therefore there is a link between this day and working conditions, and a collective agreement can reserve this advantage to women.

Key points of analysis: The *Cour de Cassation* very clearly intends to apply the European principles on positive action and the Court adopts a broad interpretation of the concept of positive action which is not conceived as an exception to the principle of equal treatment. An important element is also that the advantage has been negotiated and there is therefore a presumption that it respects the principle of equal treatment.

Internet link source:

https://www.courdecassation.fr/jurisprudence_2/notes_explicatives_7002/droits_femmes_37306.html