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NEWS REPORT

Country:	Belgium
Title:	Assessment of efforts to seek employment and maternity protection
Date:	15 January 2018
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<u>Context</u>	
Issue at stake:	Maternity protection
Ground of discrimination:	Sex
Source:	Judgment of 9 August 2017, Labour Court of Appeal in Brussels
Field:	Statutory social security
Applicable law:	Royal Decree of 25 November 1991; Working Conditions Act of 16 March 1971.

Content

Case law: Under the Royal Decree of 25 November 1991 concerning the Unemployment Insurance Scheme, young persons under 25 (with possible postponement) who completed their education are entitled to “integration allowances” after a 310-day waiting period. During this waiting period, they are expected to actively seek employment. Their willingness to seek employment is assessed by the Employment Agency, and is a condition to entitlement. However, in case of pregnancy, a woman is excused from assessment during the compulsory part of maternity leave (i.e. 10 weeks) as provided by the Working Conditions Act of 16 March 1971.

A woman was assessed negatively because she admitted that over a brief period (2 months) following the end of maternity leave, she had not taken any steps to seek employment. She challenged the Employment Agency’s decision concerning the negative assessment.

Decision of the Court: The Labour Court of Appeal in Brussels¹ noted that under Article 37 (5) of the R.D. of 25 November 1991, personal circumstances must be taken into account to the purpose of assessment; now, the woman claimed that she had suffered postpartum depression as a consequence of giving birth prematurely. The Court referred to the C.J.E.U.’s decision in Case 184/83 *Hofmann* [1984-3047] on the importance of letting mother and child develop their relationship during the first months of the latter’s life. The Court also stated that, given that such circumstances cannot affect a man, Article 37 (5) had to be applied in compliance with the prohibition of direct gender discrimination imposed by Directive 79/7/EEC. Consequently, the Labour Court of Appeal cancelled the Employment Agency’s decision.

¹ *Rôle général* n°2016/AB/191, unreported.

Key points of analysis: In 2004, an opinion² of the Council of Equal Opportunities for Men and Women, a consultative body with the federal government, prompted the adoption of an amendment to the R.D. of 25 November 1991 so that maternity leave ceased to lengthen the 310- day waiting period. However circumstantial, the Labour Court of Appeal's judgment goes one step further toward the reconciliation of job seeking and protection of maternity.

Internet link source: Case unreported. Opinions of the Council of Equal Opportunities for Men and Women, available in French and Dutch at www.conseildelegalite.be or <http://www.raadvandegelijkekansen.be>, accessed on 2 January 2018.

² Opinion n°71 of 10 April 2003 concerning the impact of maternity leave on the waiting period in Unemployment Scheme Regulations.