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NEWS REPORT

Country:	The Netherlands
Title:	Administrative High Court rules that the termination of a temporary employment contract because of parental leave is not allowed
Date:	26 January 2018
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<u>Context</u>	
Issue at stake:	Judgment by the Administrative High Court on less favourable treatment of an employee because of parental leave
Ground of discrimination:	Sex
Source:	National court decision
Field:	Parental leave
Applicable law:	Article 6:1 Employment and Care Act

Content

Decision of the Court: On 23 November 2017 the Administrative High Court, the highest court in cases on social security, ruled that the police, in its capacity of employer, had breached the law by terminating the temporary assignment of a police officer because he had taken parental leave. The police officer had been placed in a higher position for the duration of one year. One month before the start of his new position, the police officer was granted parental leave for two days a week. He continued to work on the other three days of the week. Three months after the start of the new job, the police terminated the employee's assignment because they argued that his parental leave caused problems for the work process. The police officer contested this point of view in court, but his claim was dismissed by the court of first instance. The court ruled that the termination did not constitute 'less favourable treatment' within the meaning of the law, because the formal terms of employment did not change; only the temporary position ended.

On appeal, the Administrative High Court ruled that the termination of the temporary assignment did constitute less favourable treatment. The Court came to this decision because in the first place the termination damaged the career of the police officer by limiting the period during which he could gain experience in a higher position. Secondly he suffered financial damage because his temporary allowance also stopped, and thirdly it was his file now stated that his attitude had not been constructive. The Administrative High Court referred to the fact that, following the implementation of Directive 2010/18/EU, a prohibition on less favourable treatment because of the use of parental leave was introduced into the Employment and Care Act. This prohibition does not only refer to less favourable treatment in a formal sense, but also to disadvantages in a more material sense. The court furthermore pointed out that granting parental leave may be reused for business/organizational reasons, but the Court cannot justify less favourable treatment if the leave has already been granted. In this case the police organisation had

granted the leave before the start of the temporary position, and therefore should have found another solution than terminating the employee's contract in order to tackle problems in the work process.

Key points of analysis: The judgment is relevant because it makes clear that 'less favourable treatment' within the meaning of the law, does not only include negative changes in the formal contractual position of the employee, but also changes that might have a negative effect on the career of an employee and changes of a temporary nature. The notion of 'less favourable treatment' must thus be interpreted in a broad way. Also relevant is the fact that the Administrative High Court made it clear that business reasons may justify the refusal of parental leave, but cannot justify a less favourable treatment because of leave that has previously been granted. Both points are relevant for the rights of employees who take parental leave.

Internet link source:

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:CRVB:2017:4067>

(Court decision).