



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

### NEWS REPORT

<b>Country:</b>	The Netherlands
<b>Title:</b>	District Court The Hague awards a 'fair compensation' of EUR 3 000,- for not extending a temporary employment contract because of pregnancy
<b>Date:</b>	01 May 2018
<b>Expert:</b>	Marlies Vegter
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Judgment by the District Court The Hague on compensation for not extending an employment contract because of pregnancy
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National court decision
<b>Field:</b>	Pregnancy and maternity, employment
<b>Applicable law:</b>	Article 7:646 Dutch Civil Code

### **Content**

**Decision of the Court:** On 21 March 2018, the District Court The Hague gave a ruling in a case on pregnancy discrimination. The case concerned an employee with an employment contract of six months. Before the end of this contract, she received a message through whatsapp from her manager, stating that it had been decided not to extend her contract, because she would be absent for 17 weeks due to her pregnancy and the company would not be able to pay the costs thereof. Subsequently, one of the directors of the company informed the employee that not her pregnancy, but a reduction of work was the reason for not extending the contract. The manager was not authorised to send the WhatsApp message. The employee subsequently applied for a so-called 'fair compensation'.

The District Court ruled that the employee had established sufficient facts from which it could be presumed that her contract had not been extended because of her pregnancy. The statement by the employer, that the manager was not authorised to decide on termination of the employment contract, failed, as the employee need not have been aware of this. Since discrimination can be qualified as 'serious misconduct', the employee was entitled to a fair compensation.

The court subsequently ruled that this compensation ought to be deterrent, as prescribed by EU-law, but should on the other hand not provide for a compensation that exceeded the actual damage. According to the court, there was no indication that the employment agreement would have been extended if the employee had not been pregnant. Therefore the employee was not entitled to compensation for loss of income. Non-pecuniary damage was not awarded either, as it was not clear, according to the court, to what extent the employee suffered because of the discrimination. The employee was entitled to

compensation though, because of the serious reproach that could be made to the employer and because the employee did not have to tolerate such a treatment during her pregnancy. Based on the above mentioned reasons and the duration of the employment, the District Court granted a compensation of EUR 3.000,- (gross).

**Key points of analysis:** This is a relevant judgment, because it is the first of its kind. Since 1 July 2015 employees are entitled to a so-called transitional compensation when their employment agreement ends, provided they have been employed for two years or longer. Besides, an employee may have a right to a fair compensation, but this applies only in exceptional cases in which the employer can be seriously blamed for his conduct. This is the first case in which it has been ruled that an employee is entitled to this fair compensation, when her contract is not extended because of pregnancy.

The compensation awarded is however rather disappointing. One would expect that, after the court had established that discrimination had taken place, it would have been the task of the employer to prove that the employment agreement would not have been extended without the pregnancy. In this case the court accepts very easily that this would not have been the case. Also, it should not be necessary for an employee, in order to qualify for non-pecuniary damage, to prove that she had suffered seriously because of the discrimination. This requirement applies in cases of mental injury, but discrimination can be seen as a wrong in itself and should therefore give right to damages, apart from the suffering it caused. Lastly, an amount of EUR 3.000,- can hardly be called deterrent, so it is peculiar that the court itself should think it is.

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