



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

### FLASH REPORT

<b>Country:</b>	Sweden
<b>Title:</b>	Interruption of probationary employment in connection with pregnancy
<b>Date:</b>	12 February 2019
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Pregnancy discrimination in employment
<b>Ground of discrimination:</b>	Gender
<b>Source:</b>	Swedish Labour Court judgment AD 2018 No 74
<b>Field of application:</b>	Pregnancy and maternity; parental leave;
<b>Applicable law:</b>	Discrimination Act (2008:567)

### **Content**

**Case:** In December 2019, the Swedish Labour Court ruled in a case on sex discrimination regarding the interruption of a probationary employment for a woman shortly after she had given birth of a child. The woman had informed the employer about the pregnancy before she started the employment. During the employment her supervisors had given her positive feedback on her performance. In agreement with her employer, the employee had planned to take a period of parental leave before the delivery. Due to pregnancy related sick-leave which lasted until the child was born, she had stopped working earlier than anticipated. Three weeks after the childbirth, the employer interrupted the probationary employment.

According to the Swedish Employment Protection Act, an employer is free to interrupt a probationary employment at any time, and the decision does not have to be motivated. However, if the employee demonstrates circumstances that give reason to presume that the interruption has been discriminatory, the Discrimination Act requires the employer to show that there was no discrimination. In this case, the Swedish Labour Court ruled upon whether the employee had demonstrated circumstances to give reason to presume discrimination.

**Decision of the Court:** The Swedish Labour Court acknowledged the timing between the interruption of the probationary employment and the pregnancy related sick leave. However, the employment was not interrupted until after the childbirth. At that point, the woman was no longer pregnant and, according to the Swedish Labour Court, there was no reason to believe that she was about to become pregnant again in the foreseeable future. For that reason, the Swedish Labour Court ruled that the timing was not enough to give reason to presume discrimination. The Swedish Labour Court also stated that the mere fact that an employer interrupts a probationary employment before the end of the trial period for a worker who is pregnant during the probationary period and has a reduced capacity to work as a result of her pregnancy, does not give cause to assume that the interruption was related to pregnancy. Thus, the Swedish Labour Court did not switch the

burden of proof to the employer to show that discrimination or reprisals have not occurred. Instead, the discrimination claim was rejected.

**Internet link source:**

<http://www.arbetsdomstolen.se/upload/pdf/2018/74-18%20-%20NY.pdf>.