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FLASH REPORT

Country:	Hungary
Title:	Dismissal of a pregnant employee during probationary period
Date:	04 March 2019
Expert:	Lídia Hermina Balogh
<u>Context</u>	
Issue at stake:	Application of rules shifting the burden of proof in employment discrimination cases, especially in situations taking place during probationary period
Ground of discrimination:	Sex
Source:	Decision of the Equal Treatment Authority, EBH/309/2018 of 3 July 2018
Field:	Employment, pregnancy and maternity
Applicable law:	Act of CXV of 2003 on Equal treatment and the Promotion of Equal Opportunities (ETA), Articles 5, 8 and 21)

Content

Case development: The complainant started to work at a hospital as a kitchen aide when, during her probationary period, she became pregnant. She informed her direct supervisor, and a few days later became sick (with the flu) and went on sick leave. One week later, her employer informed her via phone that her employment was terminated with immediate effect because of her pregnancy. The complainant filed a complaint with the Equal Treatment Authority claiming that the termination of her employment was discriminatory due to the fact that it was based on her pregnancy and health condition.

The Equal Treatment Authority launched an investigation into the case. The respondent claimed that it did not violate the complainant's right to equal treatment since the termination happened during the probationary period when both parties can lawfully terminate the employment immediately and without any reasons given. The respondent rejected the allegation that it terminated the employment because of the pregnancy. The respondent did not explain the termination of her contract

Decision of the Court: The Equal Treatment Authority found that the respondent did not prove that it observed the right to equal treatment of the complainant or that the respondent was exempted from this obligation, based on ETA. The Equal Treatment Authority found that the respondent violated the complainant's right to equal treatment and directly discriminated her based on her pregnancy and health condition because there was a causality connection between the pregnancy and health condition of the complainant and the termination of her employment during her probationary period.

The decision of the Equal Treatment Authority refers to the decision in principle no. 23/2018 in administrative law of the Curia (judgment no. Kfv.III.37.585/2017 of 5 June 2018).

Key points of analysis: The fact that the labour regulations allow the immediate termination of employment during the probationary period does not provide a lower level of scrutiny for proof under the anti-discrimination framework and therefore does not derogate the obligation of the employer to observe the requirement of equal treatment.

Internet link source:

http://www.egyenlobanasmod.hu/sites/default/files/nyilvanos_hatarozat/30.08.28.309.18..pdf (accessed 8 February 2019)