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FLASH REPORT

Country:	Norway
Title:	The Equality and Anti-Discrimination Tribunal (Equality Tribunal) awarded compensation in two cases on pregnancy and parental leave
Date:	24 July 2020
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Context	
Issue at stake:	Employment
Grounds of discrimination:	Sex, Gender
Field of application:	Pregnancy and maternity, Employment, Family related leave
Source:	National equality body, Equality Tribunal case 19/115 and case 19/118
Applicable law:	Gender Equality and Anti-Discrimination Act (GEADA) ¹ and the Act relating to the Equality and Anti- Discrimination Ombud and the Anti-Discrimination Tribunal (EAOA) ²

Content

The Equality Tribunal has recently awarded compensation in two cases on discrimination because of pregnancy and parental leave prohibited by Article 6 of the GEADA.

Case 19/115 and case 19/196³ The contract of a woman, employed as a substitute in a industry company (through a recruitment agency), was not extended when she got pregnant and wanted to take parental leave. The cases against both the company where she was placed to work (19/196), and against the recruitment company (19/115) were brought before the Equality Tribunal.

The Equality Tribunal, unanimously found that the woman was victim of direct discrimination, violating Article 6 the GEADA, because of her pregnancy and parental leave. The Tribunal found there were no other reasons, than the pregnancy and planned parental leave, for not extending the contract. She had a part time contract with the recruitment company, working 50 percent, but after the contract with the industry company was not extended she didn't get other contracts or jobs through the recruitment company. In the Tribunal's opinion, there was therefore no doubt that the woman had been put in a less favourable position, because she was pregnant and planned parental leave.

A central question was whether the recruitment agency had contributed to the discrimination, which is prohibited by Article 16 of the GEADA. The Tribunal found that

¹ Gender Equality and Anti-Discrimination Act (GEADA) <https://lovdata.no/dokument/NLE/lov/2017-06-16-51> (English).

² Act relating to the Equality and Anti- Discrimination Ombud and the Anti-Discrimination Tribunal (EAOA), <https://lovdata.no/dokument/NLE/lov/2017-06-16-50> (English).

³ Statement of 29 January 2020 from the Equality Tribunal; <https://www.diskrimineringsnemnda.no/media/2276/sak-19-115-anonymisert-vedtak.pdf>.

there was 'reason to believe' that the agency had contributed by failing to engage in a dialogue with, and seek to, influence the company to extend the assignment despite the woman's announced leave, which should begin several months later. Therefore, the Tribunal found that the agency was also responsible for the discrimination.

According to Article 23 of the GEADA, pregnant workers and job seekers have a right to suitable individual accommodation when it comes to recruitment processes, workplaces and worktasks. The woman was hired in a part time contract by the recruitment company, and the Tribunal concluded that the recruitment company it had not secured the complainant proper individual accommodation when it did not contribute to finding the woman other suitable jobs after her contract with the industry company was not extended

According to Article 12 first paragraph of the EAOA, the Equality Tribunal can make an administrative decision concerning compensation in employment, and with regard to an employer's selection and treatment of self-employed persons and hired workers. Article 38 third paragraph of the EAOA states that the amount of compensation is set from what is reasonable based on the nature and extent of the injury, the circumstances of the parties and the other circumstances. The amount of compensation will normally be between NOK 20,000 (EUR 2000) and 80,000 (EUR 8000), with the possibility of going higher in serious cases. Relevant factors in this decision are the discriminatory action, the guilt, the strength of the relationship between the parties, and the financial situation of the responsible party.⁴

In accordance with Article 12 first paragraph, the Tribunal awarded the complainant NOK 15 000 in compensation (approximately EUR 1500) from the industry company and NOK 25 000 (approximately EUR 2500) from the recruitment agency. The Tribunal didn't explain why the compensation wasn't set any higher, but pointed out that the prohibition against discrimination on the ground of pregnancy in employment requires particularly strong protection, and that both the company where she was placed to work and the agency should be held responsible.

Case 19/118⁵ The case concerned a woman who wanted to apply for a position as headmaster at a kindergarden as the workplace went through organisational changes. When she got pregnant and wanted to take up parental leave, she was not considered for the position, and not given the opportunity to apply for other positions or functions in the kindergarden. She didn't return to work in the kindergarden after her leave. It was also questioned whether she was discriminated against due to parental leave, as she was removed from the employer's e-mail list during the leave period.

The Equality Tribunal unanimously found that the woman was victim of direct discrimination, violating Article 6 the GEADA, because of her pregnancy and use of parental leave. The Tribunal found there were no other reasons, than the pregnancy and the parental leave, as to why the employer had not given her the possibilities to apply for other positions with more responsibilities in the kindergarden. The woman had been put in a less favourable position than if she had not been pregnant nor taken up parental leave.

The Tribunal found that she had not been discriminated against when she was removed from the e-mail list during her leave, as the restriction was intended to shield employees on leave from receiving much useless information by e-mail.

In this case the Equality Tribunal also awarded the complainant compensation. When determining the amount the Tribunal again stated that the prohibition against discrimination on the ground of pregnancy in employment requires particularly strong protection. Moreover, the Tribunal stated that the complainant in fact had been deprived

⁴ See EAOA's preparatory works in Prop.80 L (2016-2017) p. 94.
<https://www.regjeringen.no/no/dokumenter/prop.-80-l-20162017/id2545683/>.

⁵ Statement of 14th January 2020 from the Equality Tribunal;
<https://www.diskrimineringsnemnda.no/media/2286/anonymisert-vedtak-29701.pdf>.

from opportunities for various position, and that this could possibly impact her career. However, the Tribunal also pointed out that in this case there was not sufficient evidence to state that the complainant would have actually obtained the relevant positions and function had she not been pregnant and then taken out parental leave. Therefore the compensation was not set any higher than NOK 30 000 (approximately EUR 3000).

Key points of analysis: These cases are important as they are some of the first where the Tribunal awards compensation in cases on gender equality after the amendment of EAOA in 2018. They also show the important principle that pregnant employees and employees taking up parental leave should not be treated less favourable than a non-pregnant employee, and employees that are not taking up parental leave.

Internet link source: <https://www.diskrimineringsnemnda.no/artikkel/2588>.