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FLASH REPORT

Country:	Norway
Title:	The Equality and Anti-Discrimination Tribunal (Equality Tribunal) awards damages and compensation for the first time in a case on pregnancy and parental leave
Date:	30 October 2020
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Context	
Issue at stake:	Employment
Grounds of discrimination:	Sex, Gender
Field of application:	Pregnancy and maternity, Employment
Source:	National equality body, Equality Tribunal case
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 and Anti-Discrimination Tribunal (Equality Tribunal) recently awarded damages and compensation in case 20/57.³ The case concerned discrimination because of pregnancy and parental leave, prohibited by Article 6 of the GEADA. This is the first case where the Equality Tribunal awards damages.

A female cosmetic nurse got a position at a private health care facility. She was offered NOK 25 000 (approximately EUR 2 500) in minimum wages, plus a certain percentage of the profits of the sales. Shortly after starting her new position, she informed her employer of her pregnancy. She was informed by the employer by e-mail that it would be problematic to let her start in the position due to her pregnancy and the upcoming parental leave.

The Equality Tribunal, unanimously found that the nurse was a victim of direct discrimination, violating Article 6 the GEADA, because of both her pregnancy and parental leave.

The employer argued that the complainant had been offered a position as an 'independent therapist' in a temporary position, and not a permanent position as nurse. The Equality Tribunal concluded that the e-mails from the employer to the complainant suggested that the position she applied for was a permanent one. There were no other reasons than the pregnancy and parental leave, for terminating the position she had been offered at the health care facility.

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 24 September 2020 from the Equality Tribunal; <https://www.diskrimineringsnemnda.no/media/2531/anonymisert-vedtak.pdf>.

According to Article 12(1) of the EAOA, the Equality Tribunal can make an administrative decision concerning compensation in employment. According to Article 12(2) of the EAOA the Equality Tribunal may also unanimously make a decision on damages for 'economic loss' if the defendant has no objections to the claim, or if the Equality Tribunal finds reasons to set aside the defendant's objections as 'manifestly untenable'.

In this case, the Equality Tribunal found that the defendant's (employer's) objections were obviously untenable and could be set aside. The Equality Tribunal could therefore award damages. The Equality Tribunal also concluded that the complainant was not obliged to inform her employer about the pregnancy during the recruitment process. The prohibition against differential treatment due to pregnancy and parental leave in connection with employment is absolute, and applies to both employees and self-employed workers.

Based on previous statements in the preparatory works for the EAOA,⁴ the Equality Tribunal discussed whether its competence to award damages is limited to NOK 10 000, (approximately EUR 1 000). The Equality Tribunal concluded that it has never been the Government's intention to limit the Tribunal's mandate to award damages to a maximum of NOK 10 000. Its competence goes further than this, and the Tribunal therefore awarded the nurse NOK 75 000 (approximately EUR 7 500) in damages for 'economic loss' for three months lost income, which matched her claim.

In accordance with Article 12(1), the Equality Tribunal also awarded the complainant NOK 50 000 in compensation (approximately EUR 5 000).

Key points of analysis: This is the first case where the Equality Tribunal awards damages for economic loss in a case on gender equality after the amendment of the EAOA in 2018. The case also shows 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/media/2531/anonymisert-vedtak.pdf> (only in Norwegian).

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/>.