

Case Study on Parental Leave: Dir 2010/18/EU

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Case study



Mr S, a train guard, sought to take a single day's parental leave in order to provide care for his two year old son who lived with Mr S's former partner, Ms A. Ms A had informed Mr S that she would be unable to look after the child on a particular day and Mr S had notified his employers of this fact some three weeks prior to the date on which he sought to take leave. His employers refused him permission to take the leave on the basis that domestic law permitted them to demand that parental leave be taken in one-week blocks, and Mr S had sought to have only one day off. (Note that, under domestic law, there was no entitlement to payment during periods of parental leave.) Mr S took the day off anyway and was subject to disciplinary proceedings as a result.

Mr S claimed that he had been unlawfully subject to a detriment by reason of having taken parental leave contrary to the domestic (UK) provisions implementing Directive 96/34/EC (now Directive 2010/18/EC).



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• In your view, ought his claim to have succeeded?



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•Would the claim have succeeded in your jurisdiction?



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•Would your answer differ had Ms A given Mr S a shorter period of notice of her unavailability to care for their son?

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- What, if any, are the limitations of the right to *force majeure* leave in your jurisdiction?

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• In your view, should Mr S be permitted to bring a sex discrimination claim in these circumstances?



- **SCHEDULE 2 Default Provisions in Respect of Parental Leave, Regulation 16, *Conditions of entitlement***
- **1** An employee may not exercise any entitlement to parental leave unless—
- (a) he has complied with any request made by his employer to produce for the employer's inspection evidence of his entitlement, of the kind described in paragraph 2;
- (b) he has given his employer notice, in accordance with whichever of paragraphs 3 to 5 is applicable, of the period of leave he proposes to take, and
- (c) in a case where paragraph 6 applies, his employer has not postponed the period of leave in accordance with that paragraph...

Postponement of leave



6 An employer may postpone a period of parental leave where ...

(b) the employer considers that the operation of his business would be unduly disrupted if the employee took leave during the period identified in his notice;

(c) the employer agrees to permit the employee to take a period of leave—

(i) of the same duration as the period identified in the employee's notice, . . .

(ii) beginning on a date determined by the employer after consulting the employee, which is no later than six months after the commencement of that period [and]

(iii) ending before the date of the child's eighteenth birthday];

(d) the employer gives the employee notice in writing of the postponement which—

(i) states the reason for it, and

(ii) specifies the dates on which the period of leave the employer agrees to permit the employee to take will begin and end, and

(e) that notice is given to the employee not more than seven days after the employee's notice was given to the employer.

Minimum periods of leave

7 An employee may not take parental leave in a period other than the period which constitutes a week's leave for him ... or a multiple of that period, except in a case where the child in respect of whom leave is taken is entitled to a disability living allowance, armed forces independence payment or personal independence payment.

Maximum annual leave allowance



8 An employee may not take more than four weeks' leave in respect of any individual child during a particular year.

9 For the purposes of paragraph 8, a year is the period of twelve months beginning—

(a) except where sub-paragraph (b) applies, on the date on which the employee first became entitled to take parental leave in respect of the child in question, or

(b) in a case where the employee's entitlement has been interrupted at the end of a period of continuous employment, on the date on which the employee most recently became entitled to take parental leave in respect of that child, and each successive period of twelve months beginning on the anniversary of that date.

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