



Legal Seminar – Enforcement of equality and anti-discrimination law

28 November 2014

CASE STUDY - I

Workshop: Self-employment

Mary Jordan is 42 years old and works as a self-employed human resources professional. Usually she is hired by companies to work in a self-employed capacity for six months or a year, sometimes longer, especially for providing assistance with reorganisations. Usually, Ms Jordan does not work a fixed number of hours. Her hours depend on the quantity of work that is available. Mostly, she works for two or, at the most, three days a week. In order to earn enough for a living, Ms Jordan also takes on temporary work in the field of personnel administration, if available, although she does not really like this work, which she gets through a temporary agency.

From 1 January 2014 until 1 July 2014, Ms Jordan is hired on the basis of a contract for services (not an employment agreement) by Fresh Juice International, a company that produces and sells juices and other drinks. She is hired for approximately two or three days a week, because Fresh Juice needs extra hands to help with the reorganisation of the company. Jordan reports to the Human Resources Director, Peter Windshell.

Ms Jordan and Mr Windshell get on well together and, after a month, they begin a relationship. This goes on for a few months, but then Ms Jordan decides to terminate the relationship. For Mr Windshell, this is hard to accept. For a few weeks he keeps sending text and Whatsapp messages to Ms Jordan, trying to persuade her to continue the relationship. Ms Jordan and Mr Windshell have frequent contact by phone, sometimes late at night or at the weekend. Ms Jordan does not change her mind, however.

Around 15 June, Ms Jordan complains to the Operational Manager, who is Mr Windshell's manager, about Mr Windshell's behaviour, especially about the fact that he does not want to accept her decision and keeps contacting her. The Operational Manager informs her that he will talk to Mr Windshell about the situation.

On 23 June 2014 Mr Windshell informs Ms Jordan that her contract will not be extended. This is despite the fact that the reorganisation has not yet ended and there is enough work for Ms Jordan to do. Furthermore, her performance has so far been highly valued. Nevertheless, the company decides to hire another professional to continue Ms Jordan's work. Ms Jordan complains about this fact to the Operational Manager. He says that he understands that things are difficult for her, but that it would not be good for the company to renew her contract in view of the now complicated relationship between her and Mr Windshell.

Questions

1. What is Ms Jordan's legal position in view of the EU legislation on equal treatment of men and women? Is there a legal instrument that Ms Jordan can make use of?
2. If the latter part of question 1 is answered in the affirmative, can Ms Jordan invoke the principle of equal treatment of men and women?
3. Can the conduct of Mr Windshell be seen as sexual harassment? If so, would a claim by Ms Jordan based on the assumption that her contract has not been extended because of her refusal to continue the relationship with Mr Windshell be successful?
4. Suppose that a court rules that Ms Jordan has indeed been subjected to sexual harassment. What kind of claim could she file subsequently? Could she claim for renewal of her contract for services?

CASE STUDY – II

Workshop: Self-employment

We meet the same Mary Jordan, but this time she does not enter into a relationship with Peter Windshell. Instead, she informs the company on 15 February 2014 that she is pregnant, that the due date is 16 August 2014, and that she would like to stop working from mid-July onwards. Again, as in the previous case, the company informs her on 23 June that her contract will not be renewed, even though there is still enough work for her to do and her reviews are good. A new contractor is hired in her place. When Ms Jordan is informed what the reason for the non-renewal is, she is told that Fresh Juice International needs a human resources professional who is available during the most crucial period of the reorganisation, being in August and September 2014.

Questions

1. Can Ms Jordan file a claim for discrimination because of pregnancy with reference to EU law and, if so, which directive(s) can she invoke?
2. Will Ms Jordan be able to produce enough evidence that her contract was not renewed because of her pregnancy?
3. If it is established that the principle of equal treatment has been violated, what damages can Ms Jordan claim, or what other legal action can she take?
4. Is Ms Jordan entitled to maternity benefit during the period in which she is unable to work because of her pregnancy/maternity?