

Pregnancy Discrimination

Jeanie's story

Jeanie had been with ABC Company for two years as a merchandiser and got pregnant in the third year. After that her manager started criticizing her work and making remarks that she took too much time off for antenatal appointments and pregnancy-related sickness. After Jeanie had resumed work from maternity leave, her employer announced that they no longer needed her service and dismissed her. She was duly paid all her entitlements under the Employment Ordinance and given an employment reference letter.

Considerations

- Given the proximity of Jeanie's maternity leave and the dismissal, along with the attitude displayed by her manager, is this a case of pregnancy discrimination?
- What exactly is pregnancy discrimination?

Definition of pregnancy discrimination

Pregnancy discrimination means treating a woman less favourably because of her pregnancy. The Sex Discrimination Ordinance (SDO) protects a woman from pregnancy discrimination in areas such as employment, and the provision of goods, facilities or services.

Pregnancy discrimination in employment

Under the SDO, it is unlawful for an employer of a Hong Kong establishment to subject a woman to a disadvantage or dismiss her on the ground of her pregnancy. All types of employment (including contract work) are covered under the law.

Situations where pregnancy discrimination in employment are often seen to arise:

- Not being hired for a job
- Dismissal during pregnancy or upon return from maternity leave
- Being bypassed for promotion or favourable transfer
- Subjected to demotion or unfavourable transfer
- Not being offered a pay rise or bonus consistent with what other

- employees receive
- Changes to working hours, roles and duties without just causes
 - Positions filled by substituting or existing employees

What employers can do to prevent discrimination

Employers should avoid making assumptions about the abilities of pregnant women. Just because a woman is pregnant does not mean she cannot perform her duties or is less effective at her work. Employers should be aware of the rights and responsibilities of both their organisations and pregnant employees and applicants. Employers should also ensure that they comply with the provisions of the Sex Discrimination Ordinance and the Employment Ordinance.

Employers can help prevent discrimination by:

- Advising pregnant employees of their rights and responsibilities in relation to maternity and sick leave
- Having clear and consistent policies on prenatal check-up and maternity leave, staff recruitment, transfers, performance appraisals, pay rises and bonus system
- Providing training to staff in relation to these policies and encouraging a culture of understanding and openness

Jasmine's story

Jasmine was 30 weeks pregnant and wanted to go on a 4-day cruise holiday with her family. The staff of the cruise company asked her to produce a medical certificate proving that she was fit to travel when she arrived at the pier ready to embark. Jasmine was unable to produce such medical certificate and was therefore refused boarding.

Considerations

The requirement of a medical certificate may constitute pregnancy discrimination if the cruise company cannot provide justifiable reasons for imposing such a requirement on Jasmine.

Provision of goods, facilities or services (GFS)

Under the SDO, it is unlawful for a provider of GFS to discriminate against a woman because of her pregnancy who seeks to obtain or use its goods, facilities or services, unless there are reasonable justifications, such as health and safety considerations.

Situations where pregnancy discrimination in GFS are often seen to arise:

- Travel insurance companies rejecting claims for losses arising from tour cancellations due to pregnancy
- Holiday cruises refusing to allow pregnant women on board
- Beauty salons not offering services to pregnant women
- Refusing to rent properties to pregnant women

Advice for GFS providers to prevent discrimination

It is unlawful for a provider of GFS to discriminate against a woman because of her pregnancy. Although there may be safety concerns with pregnant women receiving certain services or using some facilities, a GFS provider's policies on safety restrictions should not be based on stereotypical assumptions without reasonable supporting proof.

What can you do if you suffer from pregnancy discrimination?

- Write down what has happened
- Keep medical certificates
- Talk to your employer or the service provider
- Continue doing a good job and keep a record of your work
- Find out how other female employees have been treated
- Resolve the problem with your employer or the service provider
- Lodge a complaint with the EOC for investigation and conciliation

For further information or training on this issue, please contact :

Equal Opportunities Commission

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