

Being Pregnant is not a Crime (Pregnancy Discrimination)

Pregnancy discrimination constitutes the majority of complaints received under the Sex Discrimination Ordinance, with the discriminatory act often taking the form of a dismissal upon the employee's return from maternity leave.

◆ **The Complaint**

Sarah worked as a Manager at a manufacturing company for more than 12 years. She enjoyed a good working relationship with everyone at the office and never faced any problem with the management during her service. However, she was dismissed from her job when she returned from maternity leave.

When she confronted her boss about the dismissal, he told her that it was only because of the economic downturn and it had nothing to do with her pregnancy. Sarah was indignant and felt the dismissal was due to her pregnancy. She also recalled that her boss had commented that she looked like a pig when she was pregnant.

Even though she was upset, she offered to work for a lower salary if the dismissal was because of economic reasons. But her boss refused to accept it. Another colleague offered to resign and let Sarah have her position, but the boss refused the proposal. When both the offers were declined, another of Sarah's colleagues suggested to her boss that the company could consider reducing the salary of all staff. However, the boss refused this suggestion too.

Sarah later lodged a complaint of pregnancy discrimination against the company with the EOC.

✓ **What the EOC did**

Upon receiving the complaint, the EOC case officer contacted the company and informed them about the complaint and explained the provisions of discrimination against pregnant women in employment field under the Sex Discrimination Ordinance (SDO).

The SDO makes it unlawful for an employer to subject a woman to a disadvantage or dismiss her on the ground of her pregnancy (SDO section 8). While the dismissal of employees during their pregnancy may be an obvious form of discrimination, the dismissal of women upon their return from maternity leave is less obvious. However, if it is clear that the employee would not have been dismissed had she not been pregnant and gone on maternity leave, then the dismissal may be unlawful and a complaint may be lodged.

Both parties agreed for early conciliation and the case was settled after the company agreed to pay one year's salary to Sarah.

Points to Note:

- The protection of the SDO extends beyond the period of pregnancy and covers both the recruitment stage as well as after maternity leave. The main consideration is not “when” the employee is dismissed (i.e. during the period of pregnancy and maternity leave), but “why.” If pregnancy was a reason for the unfavourable treatment, the act may be unlawful.
- Pregnancy discrimination can take other forms of unfavourable treatment apart from dismissal, and may include refusal to grant training or promotion opportunities, or less salary increase.
- Employers should adopt a set of job related and non-discriminatory criteria for recruitment, promotion, and dismissal.

Tip: For more information, refer to the EOC's publication, "Pregnancy Discrimination."

