

Pregnancy Discrimination

Being Pregnant is Not a Crime

Pregnancy discrimination constitutes the majority of employment-related complaints received under the Sex Discrimination Ordinance (SDO). Among the discriminatory acts is dismissal upon the employee's return from maternity leave.

The Complaint

Sarah had 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 her boss having 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 keep her position, but the boss refused the proposal. When both offers were declined, another of Sarah's colleagues suggested to her boss that the company could consider reducing the salaries of all staff members. 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 on discrimination against pregnant women in the employment field under the 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 (Section 8, SDO). Many people think that the dismissal of female employees upon their return from maternity leave is not unlawful. However, if it is clear that the employee would not have been dismissed had she not been pregnant and gone on maternity leave, the dismissal may be unlawful and a complaint may be lodged.

Both parties agreed on 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. whether during or after the period of pregnancy and maternity leave), but "why." If pregnancy is 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 a smaller salary increase than other colleagues.
- Employers should adopt a set of non-discriminatory criteria for recruitment, promotion, and dismissal.