



## Pregnancy & Workplace Discrimination

*An Employer and its Directors are facing fines of up to \$200,000 as a result of alleged pregnancy discrimination. This recent NSW case has seen the Fair Work Ombudsman exercise its right to investigate and prosecute on a matter of pregnancy discrimination, via the use of the significantly stronger anti discrimination powers in the Fair Work Act 2009. These new provisions see the onus of proof reversed with an employer having to prove that they have not discriminated against an employee.*

### Background

An employer based in Sydney has allegedly discriminated against a pregnant employee by replacing her position whilst she was away on carers leave after the birth of her child.

Court documents allege that the employer told their pregnant employee days after announcing that she was pregnant, that she may not be able to return to her old position when she returned from parental leave and that they were going to employ a second office worker to cover her position.

Upon returning to the workplace the employee was placed in a lower paying position in the warehouse and not her original office based role, then after returning from a Christmas break the employee made a complaint to the Fair Work Ombudsman about her treatment at work. Subsequently the employee was then told by her employer that she had resigned and was no longer employed by the company.

This case is listed for first directions on August 18, 2010 and the employer faces a maximum penalty of \$33,000 per breach and each of its directors may each face a maximum penalty of \$6600 per breach bringing the total of potential fines to approx. \$200,000.

### Fair Work Ombudsman's Campaign:

In response to this case discrimination against pregnant women has become the target of a campaign by the Fair Work Ombudsman's office. Acting Fair Work Ombudsman Leigh Johns advised that the Agency has received more than 70 pregnancy discrimination complaints in the last year. The Fair Work Ombudsman's office has responded by launching a national campaign. This campaign will send information packs and posters to hospitals, GP's, and other health care providers to raise awareness for pregnant women of their rights. Women will receive an information pack upon registering with a health care provider after becoming pregnant.



Until recently issues of discrimination had been dealt with under State or Federal anti-discrimination legislation. The Fair Work Act now has significantly stronger provisions covering discrimination in employment. Importantly the onus of proof has been reversed meaning an employer will not have to prove that discrimination has not occurred.

### **What actions may represent pregnancy discrimination?**

Pregnancy discrimination can include any of the following actions by an employer:

- Refusing to let an employee take parental leave.
- Declining to keep the employee's job open until they return to work.
- Refusing to promote and employee simply because they are pregnant.
- Demoting an employee whilst they are pregnant or on their return from parental leave.

**For more information please contact HR Navigation on 1300 669 747 or email [enquiries@hrnavigation.com.au](mailto:enquiries@hrnavigation.com.au)**