**Supporting Working Parents: Pregnancy and Return to Work National Review**

Submissions from women and men who have experienced discrimination at work while pregnant, or while on or on return to work after taking parental leave

**Submission Number 290**

**Part C Submission Response**

**Experience and challenges while pregnant and working full-time**

Prior to going on maternity leave in November 2011, I held a management position that I undertook full-time. This was a position which I had had significant input into when it was created following an organisational restructure in April 2011.

During my pregnancy, I felt supported and my needs were accommodated by my employer. Flexible working practices were encouraged, and the organisation was accommodating of pregnancy related appointments and absences. I was provided copies of the organisation’s maternity leave policy and informed of my rights while on leave and upon my return to work. I was encouraged to have a few ‘contact days’ while on leave and to stay in touch. I had discussed in broad terms arrangements for when I returned from maternity leave with my supervisor. I felt that I was a valued employee, and as it was envisaged that my role could be done on a part-time basis when I returned, I did not feel that my employment with the organisation was at risk.

A few months before I took maternity leave, I oversaw the recruitment process to fill my position for the period I was on leave. A 12 month contract was proposed and the position filled on that basis.

**Discussions about part-time work arrangements**

Prior to returning to work, in October 2012 I had a discussion with my supervisor regarding my return to work on a part-time basis. It was suggested to me that the contract employee would continue temporarily in my substantive position while I undertook some other work around the organisation’s external communications. I agreed to attend to these tasks upon my return. I was not given a new title or position description and was still substantively in my previous role.

Shortly after returning to work, the CEO of the organisation questioned me about how long my part-time arrangements were to continue. At the time I did not give much import to the question and replied honestly that I hoped to work part-time until having a second baby, which would hopefully be sooner rather than later. I recall having a similar conversation with my supervisor before returning to work. I might add at this time the organisation had agreed to my request to work part-time and at no time did they advise me that they wished me to return full time (which if had been the case I would have considered).

**Experiences and challenges upon returning to work on a part-time basis**

I returned to work in November 2012 after one year of maternity leave. As per my discussions with my supervisor, I performed the tasks that we had discussed prior to my return while my maternity leave replacement continued in my substantive role. I was not, however, given a new title or position description.

In June 2013 I was informed that the role I had been performing was no longer needed and would be made redundant. When I then asked to be returned to my substantive role, I was advised that this role would now be incorporating additional tasks that were not suited to my skills. I was then advised that my maternity leave replacement, who did work full time, would stay in this role permanently.

I was then told that if I “could come up with something that I could do within the organisation” it would be considered. No documentation was given to me at that meeting and neither was there any certainty as to what was actually happening to me and my role.

These events led me to believe that my employer was not honest with me upon my return to work. I was led to believe that I still held my substantive position but that I was to be diverted for a time into other work.

I believe that my employer decided that my substantive role should be a full-time role and unilaterally decided that I could not perform it because I had requested part time work and expressed a desire to have another child. At no time was it put to me that if I took up the undefined role for external communication that I would not be returned to my substantive role or that they preferred a full-time person in the role. If I had known my role would be in jeopardy by my requesting part-time work and agreeing to divert to the new role, then I would have seriously considered a return on a full time basis.

For this reason I believe that I was made redundant because of my part-time status, and was therefore unlawfully discriminated against on the basis of family and carer’s responsibilities and/or pregnancy status.

Furthermore, the redundancy was very badly handled by my employer - both by senior management and by Human Resources. There was a lack of transparency around what was happening and the process was extremely drawn out, taking approximately four weeks from the initial conversation about the intended redundancy to receiving a formal redundancy offer (during which time I was expected to perform my duties as though nothing had happened). Additionally, despite my employer’s offer to consult with me about what was happening, when I set out my concerns in writing to my employer that I was being discriminated against and how I had believed I had been misled upon my return to work, these were ignored.

**Consequences for me, my family and my career**

When I was told that I was being made redundant I had just discovered that I was pregnant with my second child (I had not yet informed my employer). This meant that the redundancy substantially impacted my economic circumstances. Under normal circumstances, after being made redundant I would have hoped to find another role within three to six months. Realistically, I knew that it would be extremely difficult if not impossible to find employment very late in my pregnancy. For this reason, I decided not to seek employment prior to my second child being born.

***Economic consequences***

Being made redundant when I had just discovered I was pregnant had the double effect of disentitling me to paid parental leave – both from my employer as well as the government paid maternity scheme - as I must have been employed for 10 months out of the preceding 13 months in order to qualify for this payment.

***Career consequences***

As I intend to stay at home with my second child for at least a year after she is born, it is likely that I will have been out of the workforce for two years or more by the time I am ready to recommence employment. I am concerned that a break of this duration will affect my employment prospects.

Additionally, as my preference is to return to work on a part-time basis, I believe my job options will be much more limited than if I was seeking full-time employment, or returning to a known employer with whom I have already established myself, on a part-time basis.

Furthermore, after the way I was treated by my employer (and expressing my concerns in writing to them about it) I don’t feel comfortable using either my supervisor or the CEO as referees for future employment. I feel that this will put me in a difficult position when applying for jobs in the future.

**Action I took in response to the redundancy and discrimination**

The day after I was informed of the intended redundancy I sought legal advice from a workplace relations law firm. While I was advised that I would have a good case for pregnancy related discrimination, I was warned that discrimination cases are notoriously difficult to win, and even when a case is successful, compensation is typically minimal. I was also warned that taking formal legal action was very expensive, drawn-out and stressful.

Agreeing that I did not necessarily want to take the matter to court, but that I wanted my employer held accountable for their actions, I worked with my lawyer to draft a letter to my employer outlining my concerns (most of which have been outlined in my submission above). After this letter was largely ignored by my employer, I requested a meeting with my supervisor to discuss the matter. At this point, I still had not received a formal offer of redundancy from my employer.

After meeting with my supervisor to discuss my concerns about their actions, including the financial disadvantage that I would suffer as a result of the redundancy, I received a formal letter of redundancy with details of my redundancy pay-out. After considering the offer, I decided to accept the offer and not pursue legal action. While I felt a very strong moral responsibility to pursue the matter and hold my employer accountable, I had been finding it difficult to cope with the stress and anxiety in the month since being told I was being made redundant. The tiredness and sickness that I was experiencing as a result of my pregnancy, and concerns about how ongoing stress and anxiety may affect my unborn child, also influenced my decision not to pursue the matter.

In accepting the redundancy offer I was required to sign a deed which prohibited me from (among other things): taking any further action in relation to the matter, disclosing details of the redundancy, or referring to my employer in a disparaging way. The effect of the deed was to preclude me from taking any further action whatsoever in relation to what I believe was their unlawful behavior.

**Recommendations**

* The current legal framework in relation to discrimination has the effect of discouraging people who have been the subject of unlawful discrimination from taking formal legal action against their employer. It needs to be much easier for people to pursue remedies for discrimination and hold their employer accountable than it currently is. The available courses of action for people who experience unlawful discrimination need to be clear and easily understood by the general public.
* Employers are able to discriminate against employees in most cases by simply giving the employee sufficient compensation to discourage them from taking the expensive, arduous and stressful route of litigation. The conditions of that pay-out generally then preclude the employee from taking further action or disclosing the discriminatory actions of their employer. This enables organisations to discriminate against its employees without consequence as long as they sufficiently ‘pay them off’. To address this, there should be some responsibilities that employers should not be able to buy their way out of. As a matter of public interest, it is recommended that there are certain rights and protections that employers cannot by law require their employees to forego as a condition of accepting a redundancy offer. For example, an appropriate balance might be that while employers can require employees not to take any action for unfair dismissal, they cannot require employees to forego their rights to take action in the Human Rights Commission for a morally important declaration that their human rights have been infringed.