



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss R Fleig

v

Axa Services Ltd

Heard at: Cambridge

On: 12 July 2018

Before: Employment Judge GP Sigsworth

Appearances

For the Claimant: In Person

For the Respondent: Mr B Jones of Counsel

JUDGMENT

1. The judgment of the Tribunal is that the claim is struck out and dismissed, as it has been brought out of time and the Tribunal has no jurisdiction to hear and determine it.

REASONS

1. The Claimant's claim is for pregnancy discrimination. The relevant provision is section 18 of the Equality Act 2010.

(2) a person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –

- (a) because of the pregnancy, or
- (b) because of illness suffered by her as a result of it.

(6) the protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –

- (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave

- period or (if earlier) when she returns to work after the pregnancy;
- (b) if she does not have that right, at the end of the period of two weeks beginning with the end of the pregnancy.
2. The Claimant's pregnancy ended on or about the 6 June 2017, so time began to run for limitation purposes on 20 June 2017. Thus, on the face of it, the only complaint in the claim form that took place in the protected period is the allegation of breach of confidential information. Other claims appear to post date the protected period, and therefore cannot be brought as claims of pregnancy discrimination. It may be that the Claimant could have brought a sex discrimination complaint in respect of them, but she has not done this.
 3. If I am wrong about this, and the Claimant has the protection of section 18 (6) (a), then she returned to work on 27 July 2017 and the protected period would end at the latest at that point. Several of the Claimant's allegations post-date this date also. The claim form was presented on 22 March 2018. The early conciliation period was between 25 January and 25 February 2018. On any view, the Claimant's claim is brought out of time. Either by reference to 20 June 2017, 27 July 2017 or even the effective date of termination of her employment on 22 September 2017.
 4. The Claimant, in her evidence to the Tribunal, raises a number of reasons for the late submission of her claim. First, that she was attempting to pursue an internal grievance process. Second, a lack of funds to employ solicitors. Third, illness and post traumatic stress. Fourth, uncertainty as to whether she really wanted to bring the claim at all. However, she has provided little supporting evidence in respect of these reasons. There is one letter from her GP, dated 23 March 2018. The GP first met the claimant on 8 January 2018 when she was going through a difficult time with regards to depression and anxiety, and she had been prescribed the anti-depressant Citalopram. She had some episodes of panic and reported nightmares and flashbacks in keeping with a degree of post traumatic stress. The GP noted that the Claimant suffered with typical features of depression; namely, poor sleep, withdrawal, low self-esteem and poor concentration. I also accept the Claimant's evidence that she has been diagnosed with anxiety and was on medication for this throughout the relevant period. However, by December 2017, she had been told that she could not bring a grievance (by the Respondent on 9 November 2017), she had researched Employment Tribunals and had looked at their website, she was aware (through a solicitor) of Tribunal time limits and that she was already likely to be out of time, and she was feeling better and stronger, and indeed angry about what had happened to her.
 5. The Claimant has had a solicitor acting for her, although she has only had one consultation and help with the claim form from that solicitor. That solicitor has acted from December 2017 until June 2018, when they came off the record. She was told by her solicitor that she had to go through the

ACAS early conciliation procedure first, before she could bring a Tribunal claim. Nevertheless, she did not go to ACAS until 25 January 2018, she did not seek the expedition of the certificate from ACAS because it took one month to obtain it, and it still took her from 25 February to 22 March 2018 for her to present her claim to the Tribunal. Thus, despite knowing that she was already out of time, there was no sense of urgency on her part. I have no or no cogent explanation as to why there was this failure to get on with it.

The Law

6. Section 123 (1) of the Equality Act 2010 provides that proceedings on a complaint of discrimination in the context of work and employment may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. It is not in dispute here that the Claimant's claim has been brought out of time, and therefore the Claimant is calling on the Tribunal to exercise its discretion to extend time on the basis of the just and equitable principle.

It is for the Claimant to convince the Tribunal that it is just and equitable to extend time, so the exercise of discretion is the exception rather than the rule – see Robertson v Bexley Community Centre [2003] IRLR 434, CA. There must be material on the basis of which the Tribunal could properly exercise that discretion – see Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327, CA.

In determining whether to exercise their discretion to allow the late submission of a discrimination claim, the EAT in British Coal Corporation v Keeble [1997] IRLR 336, EAT, suggested that tribunals would be assisted by considering the factors listed in section 33 of Limitation Act 1980. That section deals with the exercise of discretion in civil courts in personal injury cases, and requires the court to consider the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case. These are, in particular; the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any request for information; the promptness with which the Claimant acted once she knew of the facts giving rise to the cause of action; and the steps taken by the Claimant to obtain appropriate advice once she knew of the possibility of taking action.

Conclusions

- 7 If the Claimant had waited until her grievance was finally blocked, in November 2017, before presenting her claim, then that would have been reasonable action on her part. It is often appropriate to try and settle differences in an employment relationship internally. Further, she was still recovering in that period and she had yet to take legal advice. However, by December 2017, there was no further prospect of an internal resolution

of the Claimant's complaints, she was feeling better and was stronger, and she had researched the position herself and gone to see a solicitor. Therefore, the Claimant had all the information she needed to bring a claim by December 2017 or January 2018, and she was able to and did borrow money to seek legal advice.

8. However, thereafter there was unexplained and really inexcusable delay on her part. This may have been down to the Claimant's hesitancy about whether to bring the claim at all. Nevertheless, the fact is the Claimant failed to act promptly once she had all the necessary facts and had taken appropriate advice. She did not go to ACAS promptly, say by the beginning of January (assuming she had seen the solicitor in December 2017). She failed to ensure that the early conciliation certificate was issued near immediately after starting the process. She failed to present the claim promptly, even when she had the certificate, waiting a further three and a half weeks. Although there is prejudice to the Claimant if the claim is not permitted to go forward, perhaps not that much prejudice, because it is doubtful that she has any viable claim on the merits save for the breach of confidential information, as this is the only complaint that appears to fall within the protected period.
9. Thus, in all the circumstances, I am not persuaded by the Claimant – and it is for her to persuade the Tribunal – that it would be just and equitable to extend time in this case. Therefore, the claim being out of time, the Tribunal has no jurisdiction to hear and determine it. I therefore strike it out.

Employment Judge Sigsworth
18 July 2018

Date:
26 July 2018

Sent to the parties on:

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For the Tribunal Office