



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Quigley

Respondents: 1. Bernadette Kearns Ltd (in liquidation)
2. Mrs S Lowe

Heard at: Liverpool **On:** 4, 5 and 6 January 2022

Before: Employment Judge Horne

Members: Mr G Pennie
Ms J Stewart

Representatives

For the claimant: in person

For the respondents: (1) Did not appear and was not represented
(2) Ms K Barry, counsel

JUDGMENT

Successful complaints

1. Bernadette Kearns Ltd breached the claimant's contract of employment by failing to give notice of termination.
2. Mrs Lowe contravened section 110 of the Equality Act 2010 by discriminating against the claimant because of maternity in the following respects:
 - 2.1. On 17 October 2019, because the claimant was seeking to exercise her right to ordinary maternity leave, Mrs Lowe told the claimant that her colleagues' jobs were resting on her head and that her colleagues would lose their jobs.
 - 2.2. On 17 October 2019, because the claimant was seeking to exercise her right to ordinary maternity leave, Mrs Lowe proposed that the claimant remain the company's Head of Legal Practice (HOLP) nominated to the Council of Licensed Conveyancers (CLC), knowing that this would have the effect of misleading the CLC into thinking that the claimant was working in the role of HOLP when she would actually be on maternity leave and not working in that role.

2.3. Because the claimant had exercised her right to ordinary maternity leave, Mrs Lowe informed the claimant of the closure of the business later than she informed other employees.

2.4. Because the claimant had exercised her right to ordinary maternity leave, Mrs Lowe caused the business to cease to trade, resulting in the claimant's dismissal.

Unsuccessful complaints

3. Mrs Lowe did not discriminate against the claimant because of her sex. By operation of section 18(7) of the Equality Act 2010, section 13 of that Act did not apply to the alleged less favourable treatment.

4. This paragraph relates to the complaint that Mrs Lowe discriminated against the claimant because of sex, pregnancy or maternity by failing to carry out a risk assessment following delivery by the claimant to Mrs Lowe of written confirmation of her pregnancy. Mrs Lowe did not discriminate against the claimant by not carrying out a risk assessment at that time.

5. Mrs Lowe did not discriminate against the claimant because of pregnancy or maternity when she:

5.1. asserted by letter dated 23 October 2019 that she had carried out a risk assessment; and

5.2. on 6 November 2019, sent the claimant a proposed new contract with reduced salary and responsibilities.

6. The tribunal has no jurisdiction to consider the following allegations of sex discrimination or discrimination because of pregnancy and maternity. The claim in respect of these allegations was presented after the expiry of the statutory time limit. The tribunal decided that it was not just and equitable for the time limit to be extended. The allegations are:

6.1. that Mrs Lowe failed to carry out a risk assessment taking account of the claimant's pregnancy; and

6.2. that Mrs Lowe did not permit the claimant to attend ante-natal appointments during working hours in June 2019.

7. The tribunal has no jurisdiction to consider the claimant's complaint against Bernadette Kearns Ltd under section 57 of the Employment Rights Act 1996. The complaint was presented after the statutory time limit expired. The claimant did not satisfy the tribunal that it was not reasonably practicable to present the claim within the time limit.

8. When determining the claimant's remedy for Mrs Lowe's contravention of section 110 of the Equality Act 2010, any damages for loss of earnings will be assessed on the following basis. Had Mrs Lowe not discriminated against the claimant, there is a 40% chance that Mrs Lowe would in any event have caused the business to cease to trade in December 2019, in which case the claimant's employment would have terminated at that time.

Employment Judge Horne

12 January 2022

SENT TO THE PARTIES ON

25 January 2022

FOR THE TRIBUNAL OFFICE

Notes:

- (1) This judgment follows a hybrid hearing on 4 January 2022 and fully-remote hearings on 5 and 6 January 2022. The tribunal provided facilities for Mrs Lowe to connect to the remote hearing on 5 January 2022.
- (2) Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party makes a request in writing within 14 days of the date when this judgment is sent to the parties. If written reasons are provided, they will be published on the tribunal's online register, which is visible to internet searches.