



## Discrimination in the workplace – Pregnancy

The *Fair Work Act 2009* (**Act**) establishes discrimination provisions to protect employees (and prospective employees) from adverse action on the grounds of secure attributes, including pregnancy. There is a clear expectation in the Act that employers treat all employees fairly and lawfully.

However, a recent decision of the Federal Circuit Court in *Fair Work Ombudsman v Jewel Bay 2015 Pty Ltd & Anor* [2019] FCCA 3561, has demonstrated that discrimination continues to be a problem within the workplace. In this case, the Court penalised Coco's Restaurant \$31,500, and the company director, \$6,300 for breaches of the adverse action provisions of the Act for using a woman's pregnant appearance as a reason to reduce and cancel her casual shifts.

The woman was employed as a waitress at the restaurant and alleged the deliberate denial and reduction of her shifts around the time her pregnancy became visible, amounted to discrimination by the operator and director of the business.

The pregnant employee alleged that on one occasion, after informing her employer that she was pregnant, her manager directed a supervisor to send her home first because "*she looked disgusting.*" On another occasion, it was also alleged that her manager directed the supervisor to cancel her rostered shift for the evening, for reasons that she was "*holding another human inside of her*" and that she "*couldn't move as fast*" as other employees.

The Court held that the company took the adverse action, and its director constituted discrimination and a breach of the Act. Judge Douglas Humphreys was critical of the adverse action that flowed from the "*explicit and very derogatory comments*" made by the manager and reiterated that the comments "*convey an entirely unacceptable view of pregnant women in modern Australia.*" Further, the Fair Work Ombudsman (**FWO**) Sandra Parker said that the FWO investigated this matter after the waitress had lodged a request for assistance. Commenting on the case, the FWO also stated that discrimination has no place in any Australian workplace and will not be tolerated by the Fair Work Ombudsman.

Judge Humphreys commented that the cost of discrimination will far outweigh any perceived financial benefits of doing so, and was of the view that the Courts need to send a strong message of general deterrence that employers cannot use casuals employees in the manner in which the restaurant used the employee.



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In addition to the penalties, the Court also ordered that the company pay \$7,000 compensation to the employee and undertake workplace relations training for management personnel.

While this case involved a contravention of the Act, the Court noted that employers who can demonstrate that their action to send home an employee early if there was no work to perform is reasonable, and could be a defence to claims of discrimination.

**If you have any questions regarding workplace discrimination, please call the ARA Employment Relations Advisory Team on 1300 368 041.**

**The ARA's Employment Relations Advisory Team provides a free telephone consulting service for members on all employment matters and offers free online resources such as contracts and templates, as well as member rates for legal services specialising in Employment matters.**

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