



## The Right to Return to Work

Pregnant women, women on maternity leave and those returning from maternity leave have a protected status in the workplace. Depending on the duration of the maternity leave, a woman is entitled to return to "terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period". This is when a woman is absent on ordinary maternity leave, that is for 26 weeks. The issue of what

job a woman was doing prior to her maternity leave and what job she is entitled to on her return is often a matter of fact and can depend on individual circumstances. A recent decision of the Employment Appeal Tribunal in London considered the extent of these obligations for an employer.

Mrs Blundell was a Primary School teacher. In the school year 2002-2003 she was allocated as teacher of Reception Yellow. In June 2003 she told the Principal, Mrs Assid that she was pregnant. Mrs Assid's practice towards the end of the school year was to ask teachers for their preference as to class allocation for the coming academic year to try to keep a teacher in a particular role for 2 years and then change their class - for the sake of breadth of experience. Mrs Assid asked Mrs Blundell on the 23<sup>rd</sup> June 2003 if she would undertake "floating" duties in the following year, for as long as she was able, rather than accept an assignment to a particular class. Mrs Blundell agreed to this but some time afterwards decided she wanted the role teaching Reception Yellow. After much discussion, Mrs Assid reluctantly agreed to this as she had been concerned that Mrs Blundell's leaving during the year might cause disruption to the education of the children.

Mrs Blundell worked until December 2003 and had her baby in January 2004. Because she was absent from the workplace, Mrs Assid did not ask Mrs Blundell what her preferences were for the coming school year like she had asked all other members of staff. Upon returning to work in autumn there were discussions about the role and duties of Mrs Blundell and she was offered a "floating" role or a class teacher of year two. Mrs Blundell was not happy with this, although accepted the role of a class teacher of year two. She issued tribunal proceedings for sex discrimination for the treatment she was afforded by Mrs Assid claiming that, in law, she was entitled to return to the same job she had left in the previous December, namely that of a teacher of Reception Yellow.

The question before the Tribunal was what is the proper meaning of the "same job" to which legislation gives a right to return? The Tribunal dismissed Mrs Blundell's complaints - "whatever class the Claimant was allocated would be one she was contractually required to teach". Insofar as it is relevant, "the job in which she was employed before her absence" means her job as teacher, not the temporary position as teacher of reception class". Mrs Blundell appealed.

The Employment Appeal Tribunal agreed with the Tribunal in this respect and dismissed this aspect of her claim stating "The nature of her work, according to her contract, was as a teacher. The place of work could not be said to be the Reception Classroom, but the school; it seems plain to us that, where a precise position is variable, a Tribunal is not obliged to freeze time at the precise moment its occupant takes maternity leave, but may have regard to the normal range within which variation has previously occurred." The Appeal Tribunal however did hold that Mrs Blundell had been subjected to a detriment under the Sex Discrimination legislation by the failure of the Principal to give her an opportunity to state her preference as was given to all other members of staff and therefore this amounts to unlawful discrimination on the grounds of sex.

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