

EMPLOYERS - KNOW THE LAW

## The Costs of Discrimination!

Specialising in Employment Law, Maxine Orr, a Partner with Worthingtons Solicitors, discusses pregnancy in the work place.



Maxine Orr of  
Worthingtons  
Solicitors

Discrimination on the grounds of pregnancy has been illegal since 1976 yet employers, thirty years on, still ignore the law - to their detriment. A recent decision of the Court of Appeal in England has confirmed a judgement of the Employment Tribunal and Employment Appeal Tribunal which awarded damages of £25,000.00 to an employee for injury to feelings payable personally by the Manager for the acts of the discriminatory treatment not only on her own behalf but those of fellow managers.

Janine Gilbank was employed by Quality Hairdressing Ltd from 1997, originally a trainee hairdresser and in due course was promoted to senior hair designer and trainee manager. Ms Miles was the director and majority shareholder for Quality Hairdressing Limited; she was also Ms Gilbank's direct line manager throughout her employment with the Company. In February 2004, Ms Gilbank became pregnant and notified Ms Miles on the 20th February, thereafter the work atmosphere changed. Ms Miles made unsympathetic comments like "you're not ill you're just pregnant", and failed to make a risk assessment or adjust working practices or arrange breaks to assist Ms Gilbank. She was ignored and despite her concerns regarding administering bleach she was still required to do so. No adjustments to appointments were facilitated to allow for antinatal appointments - indeed on one occasion Ms Miles told her "a hairdresser of your calibre can juggle it" and "no one wants to be with a fat bird". On another occasion when Ms Gilbank believed

she was threatening to miscarry her baby another manager instructed her to attend to a customer; Ms Gilbank was subsequently admitted to hospital for over seven hours. Due to this continued mistreatment, Ms Gilbank issued employment tribunal proceedings for sex discrimination on the grounds of pregnancy.

The Tribunal upheld her complaint holding that the Company was liable

Ms Miles appealed the decision on the grounds that the award was "manifestly excessive" and that the tribunal had erred in making an award against her personally. The Appeal Tribunal dismissed her appeal and she appealed to the Court of Appeal. The Court of Appeal stated that Ms Miles "had consciously fostered and encouraged within the salon a discriminatory culture that targeted Ms Gilbank". She had made it clear to the other managers,

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for the actions of its Employees being Ms Miles and the other managers and it also held Ms Miles to be personally liable for her own discriminatory acts and those of the other managers because she had aided them to commit an unlawful act contrary to the legislation. The Tribunal decided that there had been an "inhumane and sustained campaign of bullying and discrimination". This campaign was "targeted, deliberate, repeated and consciously inflicted" and "not only demonstrated a total lack of concern for the welfare of the Claimant herself, but a callous disregard for the life of her unborn child". The Tribunal awarded £25,000.00 in respect of injury to feelings, and £3,550.00 in respect of unpaid maternity pay.

both in the manner in which she dealt with Ms Gilbank's complaints about them and through her own discriminatory conduct that their treatment of her was acceptable. The appeal was dismissed.

This decision is particularly interesting not only because of the amount of the damages awarded but also due to the fact that the manager was held personally liable. What I would also highlight is that at the time of the hearing the company was not represented as it was no longer trading.

Given the Court of Appeal's award in this case - employers should always seek professional advice before taking any course of action with employees. 