

In the Know....

Right to express milk at work?



Two female employees have recently won an indirect discrimination claim because their employer refused to allow them shorter shifts so that they could express milk at work. Here, we take a look at what this means for employers.

What were the facts of the case?

The employees both worked for Easyjet as flight attendants and had both recently had babies. The standard shift length for flight attendants is 12 hours and the employees had put a request in to their manager to reduce these to 8 hours. The reason for the request was so the employees could express milk either side of the shifts and avoid the increased risk of mastitis, a common breastfeeding infection.

Easyjet refused the request, saying that there could be unforeseen delays meaning that the employees may have to work for more than 8 hours. Unite, the trade union representing the employees, told the tribunal that Easyjet managers had done an internet search on 'breastfeeding risks' before refusing the request for reduced shift lengths, and had also ignored GP opinion on the issue.

The employees were offered ground duty for 6 months but an extension of this time was denied by Easyjet because they considered that expressing milk beyond that time was a "choice".

Interestingly, Unite pointed out that Easyjet, in its training material, acknowledged breastfeeding as being a "globally recognised human right" for its passengers but had failed to extend this view to its employees.

What did the Employment Tribunal say?

The tribunal found that Easyjet should have either reduced the lengths of the shift, found them alternative duties or suspended them on full pay. Its refusal to do these things meant that the employees had suffered indirect sex discrimination.

What does this mean for employers?

There is currently no legal requirement for employers to allow their employees time off work for breastfeeding or expressing milk, nor to provide facilities for doing such, however, guidance suggests that it could be seen as sex discrimination if this is not provided. This case may well set a precedent for claims of discrimination from other employees who have been denied these facilities. However, as the claim is one of indirect discrimination, employers are able to continue to refuse to offer provision for breastfeeding or expressing milk if there is a legitimate reason and no other less discriminatory way of dealing with the issue.

The fact that these employees were flight attendants posed practical problems for Easyjet which many other employers will not face because it is likely to be easier for other employers to allow their employees some time away from their workstation to express milk, though some will face continuity of production issues similar to those required by an airline.

Although this is only a first instance decision and therefore is not binding on other tribunals dealing with the same issue, employers should still consider its implications because discrimination claims have no upper limit on compensation and take into account the injury to the employee's feelings caused by the employer's behaviour.

The content of this briefing is correct at the time of publishing.

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