

SUMMARY

Case C-531/15. Sex Discrimination

Are the rules on the burden of proof laid down in Article 19 of Directive 2006/54/EC applicable to the situation of risk during breastfeeding referred to in Article 26(4), in conjunction with Article 26(3), of the Law on the Prevention of Occupational Risks, which was adopted to transpose into Spanish law Article 5(3) of Council Directive 92/85? If question 1 is answered in the affirmative, can the existence of risks to breastfeeding when working as a nurse in a hospital accident and emergency department, established by means of a report issued by a doctor who is also the director of the accident and emergency department of the hospital where the worker is employed, be considered to be facts from which it may be presumed that there has been direct or indirect discrimination within the meaning of Article 19 of Directive 2006/54/EC? If question 2 is answered in the affirmative, can the fact that the job performed by the worker is included in the list of risk-free jobs drawn up by the employer after consulting the workers' representatives and the fact that the preventive medicine/prevention of occupational risks department of the hospital concerned has issued a declaration that the worker is fit for work, without those documents including any further information regarding how those conclusions were reached, be considered to prove, in every case and without possibility of challenge, that there has been no breach of the principle of equal treatment within the meaning of Article 19 of Directive 2006/54/EC? If question 2 is answered in the affirmative and question 3 is answered in the negative, which of the parties – the applicant worker or the defendant employer – has, in accordance with Article 19 of Directive 2006/54/EC, the burden of proving, once it has been established that performance of the job creates risks to the mother or the breast-fed child, (1) that the adjustment of working conditions or working hours is not feasible or that, despite such adjustment, the working conditions are liable to have an adverse effect on the health of the pregnant worker or breast-fed child (Article 26(2), in conjunction with Article 26(4), of the Law on the Prevention of Occupational Risks, which transposes Article 5(2) of Directive 92/85/EEC), and (2) that it is not technically or objectively feasible to move the worker to another job or that such a move cannot reasonably be required on substantiated grounds (Article 26(3), in conjunction with Article 26(4), of the Law on the Prevention of Occupational Risks, which transposes Article

5(3) of Directive 92/85/EEC)?

Creator: European Court of Justice (ECJ)

Verdict at: 2015-10-08

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