

SUMMARY

Case C-103/16. Maternity

On a proper construction of Article 10(1) of Directive 92/85, does the notion of ‘exceptional cases not connected with their condition which are permitted under national legislation and/or practice’, constituting an exception to the prohibition of dismissing pregnant workers and workers who have recently given birth or are breastfeeding, correspond to the notion of ‘one or more reasons not related to the individual workers concerned’ referred to in Article 1(1)(a) of Directive 98/59/EEC on collective redundancies, or is it more restricted?

In the event of collective redundancy, in order to decide whether exceptional cases exist that justify the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding, in accordance with Article 10(1) of Directive 92/85, is there a requirement that the worker affected cannot be reassigned to another work post or is it sufficient that proof should be given of economic, technical and productive reasons that affect her work post?

Is legislation, such as the Spanish legislation, that transposes that prohibition by providing a guarantee by virtue of which, failing any proof of reasons justifying her dismissal, the dismissal is declared void (reparative protection), but does lay down a prohibition of dismissal (preventive protection), compatible with Article 10(1) of Directive 92/85?

Is legislation, such as the Spanish legislation, which does not provide for priority for retention in the undertaking in the event of collective redundancy for pregnant workers and workers who have recently given birth or are breastfeeding, compatible with Article 10(1) of Directive 92/85?

For the purposes of Article 10(2) of Directive 92/85, is national legislation compatible with this provision if it treats as sufficient a letter of dismissal like that in these proceedings, whereby a worker who is pregnant is dismissed by virtue of the decision to effect a collective termination of contracts, even though that letter makes no reference whatsoever to the existence of any exceptional grounds over and above those which prompted the collective redundancy?

Creator: European Court of Justice (ECJ)

Verdict at: 2016-02-19

Case number: C-103/16