

Discrimination based on pregnancy and family leave

1. Discrimination on the basis of pregnancy and family leave continues to be a considerable concern in Finland. A major share of cases concerning the labour market brought to the attention of the Ombudsman for Equality concern suspicions of discrimination in connection with pregnancy and family leave.
2. The Committee on the Elimination of Discrimination against Women – most recently in 2008 while considering the fifth and sixth periodic reports of Finland – has also expressed its concern over the realization of employment protection for pregnant workers or workers on family leave in Finland. The Committee urged the Government of Finland to take concrete measures to prevent the practice of illegal dismissal of women in cases of pregnancy and childbirth. The seventh periodic report of Finland does not contain any such concrete measures.
3. With regard to discrimination based on pregnancy and family leave, the seventh periodic report of Finland merely makes reference to national legislation. The report does not deal with concerns that appear with the realization of this legislation.
4. The widespread nature of discrimination on the basis of pregnancy, childbirth and family leave has also become apparent in surveys carried out by trade unions. Pregnancy is also a common basis for discrimination in lawsuits concerning the application of the Act on Equality between Women and Men (hereafter the Equality Act). Likewise, discrimination based on pregnancy is most often involved when a court of law applies the prohibition of occupational discrimination, as defined in the penal code, on the basis of gender.
5. The amendments to the Equality Act made in the 1990s aimed at clarifying the provisions on discrimination based on pregnancy, particularly in fixed-term employment and to make the sanctions for this type of discrimination commensurate with sanctions for any other action taken by an employer that is prohibited in the Equality Act.
6. Typical situations of discrimination based on pregnancy and family leave take place during the recruitment process or where the employment contract of a fixed-term employee is not renewed when her pregnancy comes to light. Furthermore, it is not uncommon that the duties of an employee returning to work from family leave have “disappeared” or the employee has been replaced by a substitute, despite the fact that the Employment Contracts Act provides the employee the right to return to her previous duties.
7. In order to increase the effectiveness of the provisions pertaining to this matter, and to make them better-known particularly on the workplace

level, the Ombudsman for Equality proposed in 2005 to the then Ministry of Labour that the Employment Contracts Act be amended in order to specifically prohibit employers from not renewing fixed-term employment contracts or limiting their duration on the basis of pregnancy or family leave.

8. The prohibition of discrimination included in the Equality Act complements the provisions of the Employment Contracts Act. Sanctions for unlawful practices can be determined on the basis of both the Employment Contracts Act and the Equality Act. By contrast, prohibition of the practice of not renewing a fixed-term employment contract on the basis of pregnancy or family leave, along with the prohibition of the practice of drawing up a fixed-term employment contract to be terminated at the start of maternity leave, paternity leave, or family leave, are, however, only provided for in the Equality Act, along with the sanctions imposed for them.

9. The fact that the Employment Contracts Act does not include a provision on the protection of the status of fixed-term employees is still deemed a shortcoming by the Ombudsman for Equality, who is of the opinion that the Employment Contracts Act needs to be amended in this respect. Such a provision would be equally important to fixed-term employees as is the provision already included in the Employment Contracts Act, whereby an employer cannot give notice of termination of a permanent employment contract on the basis of pregnancy or because an employee exercises his or her right to family leave.

10. In December 2012, the Ombudsman for Equality started a campaign against pregnancy discrimination called *Justice for Those Expecting* (www.oikeuttaodottaville.fi). The campaign's objective was, on the one hand, to increase women's awareness of their rights with regard to pregnancy and family leave. On the other hand, the Ombudsman for Equality wanted to alert employers to adjust their attitudes towards employees who are pregnant or on family leave and ensure the legality of their actions. Due to her limited resources, the Ombudsman's advertisement campaign lasted for a two week period only on public transport in the largest commuting areas of Helsinki, Espoo, Vantaa, Turku and Tampere.

- As discrimination on the basis of pregnancy and family leave continues to be a considerable concern in Finland, the Government of Finland should take legislative and other concrete measures necessary (e.g. nationwide awareness raising campaigns) to prevent and abolish discrimination on the basis of pregnancy and family leave.

- The Government of Finland should consider amending the Employment Contracts Act with a specific provision prohibiting the practice of not renewing a fixed-term employment contract on the basis of pregnancy or family leave, and with a provision prohibiting the practice of drawing up a fixed-term employment contract to be terminated at the start of maternity leave, paternity leave, or family leave.

Pay discrimination

11. With regard to the question of equal pay, the seventh periodic report of Finland makes reference for example to the Equal Pay Programme that has been drawn up to bridge the gender pay gap. The gender pay gap is not, however, the same as pay discrimination under the Equality Act.

12. The Ombudsman for Equality is of the view that the seventh periodic report of Finland ought to have dealt with the issue of pay discrimination on the basis of sex or gender as well, in particular as the Committee on the Elimination of Discrimination against Women expressed its concern about women's disadvantaged situation in the labour market when the Committee considered the fifth and sixth periodic reports of Finland in 2008.

13. The Ombudsman for Equality regularly receives inquiries from persons who suspect that they have been discriminated against in terms of pay because of their sex or gender.

14. One way to promote gender equality in pay is through the pay survey that each gender equality plan should contain.

15. According to the Equality Act, a gender equality plan shall be drawn up if an employer regularly employs at least 30 people. The equality plan is primarily concerned with promoting equality in pay and other terms of employment. The purpose of the pay survey, which is an essential and mandatory part of the equality plan, is to ensure that there are no unjustified pay differences between women and men at the workplace.

16. As referred to in the replies of Finland to the list of issues, a working group that drafted amendments to the provision of equality planning as laid down in the Equality Act finalized its work in June 2013. The Ombudsman for Equality has given her comments on the report. In her comments, the Ombudsman underlines the need to amend the provision on pay surveys. The proposed provision contains, however, certain elements that may cause unnecessary confusion and that are, unnecessarily, open to various interpretations. One such provision is, for example, the statement according to which reasons for possible pay differences based on sex or gender would need to be explained only in case of *an apparent* difference in pay.

17. An effective supervision carried out by the Ombudsman for Equality by means of initiatives, advice and counselling of pay surveys drawn up at work places would support the quality of pay surveys. The Ombudsman for Equality lacks, however, the resources necessary for an efficient carrying out of this duty.

18. The report acknowledges, however, this lack of resources by noting that an effective and credible supervision of the provision on equality planning requires adequate resources. In line with the Parliament's

statement of March 2011, it is particularly stated that an effective supervision requires a strengthening of the Ombudsman's resources.

- The Government should ensure that the amendments to the provision of equality planning as contained in the Equality Act do not contain elements that may cause unnecessary confusion and that are, unnecessarily, open to various interpretations.
- In order to ensure an effective and credible supervision of the quality of equality plans drawn up at workplaces, the Government should propose a strengthening of the resources of the Ombudsman for Equality.