

Employers urged to assess workplace agreements on pregnancy discrimination

11 March 2011

The Fair Work Ombudsman today urged employers to check their workplace agreements to ensure they are not inadvertently breaching federal workplace laws on pregnancy discrimination.

The warning follows the recent discovery that supermarket giant Coles was unwittingly contravening the law by transferring pregnant employees to lower-paid "safe jobs".

Coles had a Collective Agreement, made before the introduction of the National Employment Standards (NES), that contained the following subclause: "Where a team member is pregnant ... (she can be) transferred to a safe job at the rate and on the conditions attached to that job with no other change to the team member's terms and conditions of employment".

However, the Fair Work Act stipulates that where a pregnant employee with at least 12 months service is transferred to a safe job, it must be with no change to her terms and conditions of employment.

Fair Work Ombudsman Executive Director Michael Campbell urged other employers to check their own Collective Agreements as he believed it could be a common provision in hundreds of agreements, placing employers in a similar position to Coles and in breach of Section 81(3) of the Fair Work Act.

"The Coles experience should serve as a reminder to other employers to check their own compliance. While the subclause may be lawfully relied on where the employee has less than 12 months service, the NES entitlement exists for those workers who have been employed for more than a year," he said.

Coles has admitted contravening workplace laws in October 2009 when it transferred a fresh produce manager at one of its stores in NSW to the role of service assistant on \$67.40 a week less pay.

The company took the action on the basis that it was a "safe job" after the employee produced medical evidence regarding lifting restrictions associated with her pregnancy.

"When we alerted Coles to the problem, the company promptly took steps to conduct an audit, undertake training and change the company policy," Mr Campbell said.

After an investigation by the Fair Work Ombudsman, Coles has voluntarily:

- Ensured its management teams in all stores understand the National Employment Standards (NES),
- Completed a review of company policy in relation to the transfer of pregnant employees to safe jobs to ensure it complies with the NES,
- Launched Online training for all line managers regarding the company's obligations to pregnant employees,
- Audited its payroll system to determine if any other pregnant employees transferred to safe jobs were also underpaid, and
- Apologised to the affected employees for taking action against them.

As part of an Enforceable Undertaking, published on the Fair Work Ombudsman website, Coles has also:

- Reimbursed other pregnant workers found to have been underpaid as a result of the former policy,
- Agreed to post a notice about the rights of pregnant employees in all its stores for a period of at least 30 days,
- Trained supervisors on company obligations to pregnant employees, and
- Agreed to donate \$20,000 to Jobwatch Australia to fund educational activities for pregnant employees about their rights under the Fair Work Act.

Mr Campbell says Enforceable Undertakings are a mechanism by which the Agency can still achieve strong outcomes without court proceedings.

The Fair Work Ombudsman has information on the minimum National Employment Standards and other useful resources on its website at www.fairwork.gov.au or employers can call the Infoline on 13 13 94 from 8am to 6pm weekdays.

The Fair Work Ombudsman has had the power to investigate discrimination in the workplace since July 1, 2009.

Fair Work inspectors can investigate allegations of discrimination on the grounds of pregnancy, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

Pregnancy ranked second of all discrimination matters investigated by the Agency in 2009-10, with 74 complaints.

Discrimination can include a range of employer behaviours, such as failing to let an employee take parental leave, declining to keep a job open, demotion during pregnancy or on return from parental leave or refusing to promote a pregnant employee.

Threatening to engage in any of these acts may also constitute discrimination.

Copy of undertaking: [Coles Pty Ltd Undertaking \(PDF 406.3KB\) \(www.fairwork.gov.au/ArticleDocuments/719/Enforceable-Undertaking-Coles-Supermarket-Australia-Pty-Ltd.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/719/Enforceable-Undertaking-Coles-Supermarket-Australia-Pty-Ltd.pdf.aspx)

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