DLA CLIFFE DEKKER HOFMEYR

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# EMPLOYMENT ALERT

## THOU SHALT NOT FALL PREGNANT…

In the recent case of *Memela and Mnomiya v Ekhamanzi Springs (Pty) Ltd (case number D 582-08, unreported judgment handed down on 8 June 2012*) the Labour Court (Court) categorically stated that our labour legislation's protection from dismissal by reason related to pregnancy is not a preserve of married women. The Court also reaffirmed the employer's common law duty to receive an employee into service.

Ekhamanzi Springs (Pty) Ltd (the Company) operates a business of bottling spring water from the premises of the KwaSizabantu Mission (the Mission). One of the terms of the Mission's code of conduct is that unmarried women staying or working on its premises are not allowed to fall pregnant. Given that the Company utilised the Mission's premises for its business, the Company's employees were subject to this code of conduct.

Both Applicants are single women that fell pregnant. In April 2008, they were prevented by security guards from entering the Missions' premises. As a result, the Applicants were unable to reach their work stations or perform their duties. This culminated in the termination of their employment with the Company. Subsequent to the termination of their employment, the Applicant's claimed that their dismissal was automatically unfair, as the reason for their dismissal was their pregnancy or a reason related to their pregnancy.

The one employee's case was dismissed due to her non-attendance at Court. With regard to the second employee's claim, the Court found that it was necessary for her to not only prove the existence of a dismissal but also produce sufficient evidence that her dismissal was due to a reason related to her pregnancy.

The basis of her case was that the dismissal was for reasons related to her pregnancy in that her manager failed to intervene when the Mission's security guards denied her access to the workplace. The security guards blocked her access due to her pregnancy.

In considering the issue before it, the Labour Court was satisfied that the second employee's dismissal was premised on her manager's refusal to intervene when she was being denied access to the workplace by the Mission's security guards. The Court held that one of an employer's duties was to receive an employee into service. Accordingly, by entering into an employment relationship with the employee, the Company acquired an obligation to receive her into service. The Company could therefore not abdicate its responsibilities by hiding behind the Mission's code of conduct.

In light of the above, the manager's refusal to intervene when requested to do resulted in the termination of the second employee's contract of employment, and therefore constituted a dismissal.

Turning to the issue of whether the dismissal related to her pregnancy, the Court found the second employee had led sufficient evidence to prove that her dismissal was related to her pregnancy while she was an unmarried woman.

The Court held that the Company cannot be allowed to abdicate its responsibilities towards unmarried women employees by allowing the Mission to violate the rights of such employees. The Court held further that the Company owed a responsibility to its unmarried employees for the duration of the employment relationship.

The Court went further to state that the labour legislation's protection from dismissal by reason related to pregnancy is not a preserve of married women. All women enjoy legal protection of not losing their jobs when they fall pregnant. It was accordingly therefore the Company's obligation to negotiate with the Mission so as to ensure that its female employees are protected against dismissal for reasons related to their pregnancy.

The Court accordingly found the dismissal of the second employee to be automatically unfair. She was awarded compensation of 10 months' remuneration. The employer was ordered to pay her legal costs.

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