

CASE DECISION SUMMARIES

FAMILY RESPONSIBILITIES

INAPPROPRIATE QUESTIONING OF PROSPECTIVE EMPLOYEES MAY LEAD TO DISCRIMINATION.

Ballarat University College v Bridges and Anor
Supreme Court of Victoria October 1993

Selection panels need to have someone sitting on them who is conversant with the principles of EEO and techniques for avoiding bias.

The complainant was asked questions as “icebreakers” relating to her family background and commitments. She was so flustered and confused by them that she performed poorly during the interview.

DEMAND TO COMMIT TO FULL TIME EMPLOYMENT IN SENIOR POSITION CONSTITUTED INDIRECT DISCRIMINATION

Hickie v Hunt and Hunt
Human Rights Equal Opportunity Commission decision 7.3.98

A senior female solicitor and contract partner in a law firm returned to work on a part time basis and was subsequently stripped of work she had built up over a period of years and her partnership.

The firms requirement for senior solicitors to work full time was a requirement with which a substantially higher proportion of men comply or were able to comply and Ms Hickie was unable to comply due to family responsibilities. This constituted indirect discrimination.

EMPLOYER REFUSED A REQUEST TO JOB SHARE IN SENIOR NURSING POSITION WHICH CONSTITUTED INDIRECT DISCRIMINATION

Bogle v Metropolitan Health Services Board
ET 3/99 7th January 2000
Equal Opportunity Tribunal WA

Ms Bogle adopted a child and requested part time work in a Charge Nurse position upon her return to the workplace. Employer denied her the position and offered a lower position on a part time basis, or full time work as a Charge Nurse.

No proper consideration given to the requirements of the position and alternative work arrangements.

Tribunal found that Ms Bogle had been discriminated against and ordered reinstatement to Charge Nurse position on job share basis, as well as damages.

REFUSAL TO PROPERLY CONSIDER REQUEST FOR PART TIME WORK FOLLOWING RETURN FROM PARENTAL LEAVE WAS CONSIDERED DISCRIMINATORY

Reddy v International Cargo Express
NSW Administrative Decisions Tribunal 218 2004

The first decision in which a tribunal has found that refusing to consider a request for part time work can amount to discrimination because of caring responsibilities.

The judgement does not imply that there is a right to return to part time work after parental leave, but it does state that an employer should properly consider a request as well as alternatives. Employers could be expected to trial a part time plan where this hasn't been tried before

EMPLOYEE DENIED FLEXIBLE FINISH TIMES TO CARE FOR HER CHILD. EMPLOYER DIRECTED TO CONDUCT A TRIAL OF THE PROPOSAL.

Community and Public Sector Union v Commonwealth Serum labs
Australian Industrial Relations Commission C2002/2562 August 2002

The Australian Industrial Relations Commission recently permitted an employee to work part-time hours for a trial period of three months.

The complainant had worked for Commonwealth Serum Laboratories (CSL) for 14 years. However, after returning from maternity leave, CSL would not let her leave at 3pm in order to care for her school aged child even though she had offered to commence at 7.30am.

CSL argued that Ms Angelis had to perform mail distribution duties after 3pm but the commission disagreed. It found that the manager of the team simply preferred not to break up the tasks and assign them to someone else.

The commission was not satisfied that CSL had properly considered alternatives that would allow Ms Angelis to leave by 3pm.

EMPLOYEE REFUSED LATER START TIME FOR SHORT TERM ACTING POSITION DUE TO FAMILY RESPONSIBILITIES.

Parsons v South Metropolitan Health Service
ET 2004 – 000018 31st December 2004
Equal Opportunity Tribunal WA

Employee offered short term acting position as Clerical Coordinator. Employee argued for later start time than 7.30am, due to family responsibilities. Employer refused as inherent requirements of the position required her to be present to organise relief for absences before services opened to the public.

Alternatives were not considered or trialled as job was short term acting position which distinguished it from other cases.

Tribunal upheld the employers decision.