Case C-320/01

Wiebke Busch

v

Klinikum Neustadt GmbH & Co. Betriebs KG

(Reference for a preliminary ruling
from the Arbeitsgericht Lübeck)

(Equal treatment for men and women — Article 2(1) of Directive 76/207/EEC — Protection of pregnant women)

Summary of the Judgment

1. *Social policy — Men and women — Access to employment and working conditions — Equal treatment — Return to work by a pregnant woman before the end of parental leave — Obligation to inform her employer of her pregnancy — None*
(Council Directive 76/207, Art. 2(1) and (3), and Council Directive 92/85, Arts 4(1) and (5))

2. *Social policy — Men and women — Access to employment and working conditions — Equal treatment — Return to work by a pregnant woman before the end of parental leave — National legislation allowing the employer to rescind its consent on the ground that it was unaware of the employee's pregnancy — Not permitted (Council Directive 76/207, Art. 2(1))*

1. Article 2(1) of Council Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions is to be interpreted as precluding a requirement that an employee who, with the consent of her employer, wishes to return to work before the end of her parental leave must inform her employer that she is pregnant in the event that, because of certain legislative prohibitions, she will be unable to carry out all of her duties.

When an employer takes an employee's pregnancy into consideration in the refusal to allow her to return to work before the end of her parental leave, that constitutes direct discrimination on grounds of sex. Since the employer may not take the employee's pregnancy into consideration for the purpose of applying her working conditions, she is not obliged to inform the employer that she is pregnant.

Such discrimination, which may not be justified by temporary prohibitions on performing certain work duties for which she was hired, would be contrary to the objective of protection pursued by Article 2(3) of Directive 76/207 and Articles 4(1) and 5 of Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding and would rob those provisions of any practical effect. Nor can such discrimination be justified by the financial consequences which might ensue for the employer from the obligation to reinstate the employee, nor by the fact that, in asking to return to work, she intended to receive a maternity allowance higher than the parental leave allowance, as well as the supplementary allowance paid by the employer.

(see paras 39-40, 43-44, 46-47, operative part 1)

2. Article 2(1) of Council Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions is to be interpreted as precluding an employer from contesting under national law the consent it gave to the reinstatement of an employee to return before the end of her parental leave on the grounds that it was in error as to her being pregnant.

If an employer may not take an employee's pregnancy into consideration in the refusal to reinstate her before the end of her parental leave, nor can the employer plead that its consent to that reinstatement was vitiated because it was not aware that she was pregnant. Any national provision which might serve as a basis for such a claim must be set aside by the national court in order to ensure the full effect of Directive 76/207.

(see paras 49-50, operative part 2)