



Luxembourg, 8 May 2019

Judgment in Case C-486/18
RE v Praxair MRC SAS

Press and Information

The calculation of compensation payments for dismissal and redeployment of an employee who is on part-time parental leave must be carried out on the basis of the full-time salary

Conflicting national law results in indirect discrimination on grounds of sex

Ms RE commenced employment, on 22 November 1999, as a sales assistant with Praxair MRC, under a fixed-term and full-time contract, then under a full-time contract of indefinite duration from 1 August 2000. She took a first period of maternity leave, followed by a period of child-care leave of two years. She then took a second period of maternity leave, followed by a period of child-care leave, in the form of her working hours being reduced by one fifth. That last period of child-care leave was due to end on 29 January 2011.

On 6 December 2010, Ms RE was made redundant as part of a collective redundancy on economic grounds. She accepted redeployment leave for a period of nine months.

After having relinquished the right to a reduction in her working hours with effect from 1 January 2011, RE left Praxair MRC on 7 September 2011.

Ms RE challenges the method for calculating compensation for dismissal and for the redeployment leave allowance which were paid to her in the context of her dismissal on economic grounds which took place during her part-time parental leave.

Hearing the dispute, the Cour de cassation (France) decided to refer questions for a preliminary ruling to the Court of Justice in order to ascertain whether the framework agreement on parental leave¹ precludes, where a worker employed full-time and for an indefinite duration is dismissed at the time he takes part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the reduced salary which he receives when the dismissal takes place. The Cour de cassation also asks the Court of Justice, insofar as a far greater number of women than men choose to take part-time parental leave, whether the indirect discrimination which results therefrom as regards the receipt of redundancy pay and redeployment leave allowance infringes Article 157 TFEU on the principle of equal pay for male and female workers for equal work or work of equal value.

In today's judgment, the Court of Justice states that the framework agreement on parental leave constitutes an undertaking by the two sides of industry to introduce measures to offer both men and women an opportunity to reconcile their work responsibilities with family obligations and that it applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.

¹ Framework agreement on parental leave concluded on 14 December 1995, which is set out in the annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4) as amended by Council Directive 97/75/EC of 15 December 1997 (OJ 1998 L 10, p. 24).

The Court of Justice also notes that, where a worker employed full-time and for an indefinite duration is dismissed at the time he takes part-time parental leave, his compensation payment for dismissal must be determined entirely on the basis of the full-time salary of that worker. National legislation which would result in the rights flowing from the employment relationship being reduced in the event of parental leave could discourage workers from taking such leave and could encourage employers to dismiss workers who are on parental leave rather than other workers. This would run directly counter to the aims of the framework agreement on parental leave, one of the objectives of which is to make it easier to reconcile working and family life.

In those circumstances, **the framework agreement on parental leave precludes a national provision which involves taking into account the reduced salary received by a worker on part-time parental leave when the dismissal takes place.**

As regards the redeployment leave allowance, the Court of Justice finds that that remuneration constitutes a right derived from the employment relationship, which the worker is entitled to claim from the employer. The mere fact that the payment of such an allowance is not automatic and that that payment takes place during the period of redeployment leave which exceeds the notice period does not appear to be capable of altering that finding. In those circumstances, the framework agreement on parental leave is applicable to a benefit such as the redeployment leave allowance.

Accordingly, the Court of Justice concludes that in the same way as for the compensation payment for dismissal, **a benefit such as the redeployment leave allowance must, pursuant to the framework agreement on parental leave, be determined entirely on the basis of the full-time salary of that worker.**

On the question of the compliance with Article 157 TFEU of the difference of treatment linked to parental leave, the Court states, firstly, that the concept of 'pay' referred to in that article must be interpreted broadly and that, consequently, benefits such as the compensation payment for dismissal and the redeployment leave allowance must be categorised as 'pay' within the meaning of Article 157 TFEU.

The Court reiterates, secondly, that indirect discrimination on grounds of sex arises where a national measure, albeit formulated in neutral terms, puts considerably more workers of one sex at a disadvantage than the other. Such a measure is compatible with the principle of equal pay only if the difference in treatment between the two categories of workers to which it gives rise is justified by objective factors unrelated to any sex discrimination.

The Cour de cassation (France) indicated, in the context of the reference for a preliminary ruling, that a far greater number of women than men choose to take part-time parental leave, since, in France, 96% of workers taking parental leave are women. In such a case, national legislation, such as the French legislation, is compatible with the principle of equal treatment only if the difference in treatment between female workers and male workers thus created is, as the case may be, capable of being justified by objective factors unrelated to any sex discrimination. The Court of Justice finds that no objectively justified factor has been put forward by the Member State concerned and therefore concludes that the **legislation at issue appears not to comply with the principle of equal pay for male and female workers for equal work or work of equal value, as provided for in Article 157 TFEU.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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