

**Handels - og Kontorfunktionaerernes Forbund i Danmark, (on behalf of Birthe Vibeke Hertz ) v Dansk Arbejdsgiverforening, (on behalf of Aldi Marked K/S) C-179/88**

**1) Reference Details**

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from the Danish Supreme Court

Date of Decision: 3 October 1989

Link to full case:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61988J0179:EN:HTML>

**2) Facts**

Mrs Hertz worked as a part-time cashier and saleswoman for Aldi Marked K/S and in June 1983 gave birth to a child. During her pregnancy she had been absent for work for considerable periods due to pregnancy-related illness. On expiry of her maternity leave she returned to work but between June 1984 and June 1985 she went on further sick leave for 100 working days due to further illness related to her pregnancy.

On 27 April 1985 Aldi Marked K/S terminated her employment on the grounds of continual absence due to illness. The Maritime and Commercial Court dismissed Mrs Hertz's application. Mrs Hertz appealed.

**3) Law**

*European Community Law*

- Articles 5(1) and 2(1) of Council Directive 76/207/EEC of 9 February 1976 (Equal Treatment Directive)

**4) Legal Question referred to the ECJ**

1. Does Article 5(1) of the Directive together with Article 2(1) of the Directive cover dismissal on the grounds of absence due to pregnancy or confinement-related illness?
2. If the answer to (1) is in the affirmative, is any protection against dismissal on such grounds unlimited in time?

**5) Decision**

The ECJ held that although the dismissal of a female worker on the grounds of pregnancy will constitute direct discrimination on the grounds of sex, where an illness manifests itself after the conclusion of statutory maternity leave there will be no reason to distinguish a pregnancy or confinement-related illness from any other illness.

It went on to say that male and female workers are equally exposed to illness and while certain illnesses are specific to one or other sex the operative question should be whether a woman is dismissed on account of absence due to illness in the same way as a man. If that is the case there will be no direct discrimination on the grounds of sex.

Subsequently, Article 5(1) of the Directive together with Article 2(1) did not prohibit dismissals which are the result of absences due to an illness related to pregnancy or

confinement.

The Court held in answering question one that it was not necessary to consider question two.