PREGNANCY DISMISSALS AND THE WEBB LITIGATION

Dismissals from employment for reasons connected with pregnancy have long given the courts, legislature, policy makers and feminist scholars great difficulties, but the issue is of increasing importance. Discrimination against women in the workplace is increasingly directed at pregnant women and women with children. The corollary of this is that women without dependants have similar patterns of work and earnings to men, particularly at the early stages of their working lives.

Thus, whereas once discrimination affected women on their marriage, it is now clear that it is upon becoming pregnant that women particularly encounter discrimination in the workplace: the replacement of the "marriage bar" with the "baby bar".

Such discrimination is, effectively, endorsed by many. Indeed, a recent survey of women members of the Institute of Directors found that more than half of those surveyed said that women's employment

1 See, for example, The Life Cycle of Inequality — Women and Men in Britain in 1995 (London: Equal Opportunities Commission (hereinafter EOC), 1995), 13, which details the differential and substantial impact of having children on women's employment prospects. In addition, see K. Figes, Because of Her Sex (London: Pan Books, 1994), 82, who refers to research by the Policy Studies Institute showing that 4,000 women each year are dismissed from employment because of pregnancy, and to statistics from the EOC from 1991 showing that complaints to the EOC regarding pregnancy discrimination that year had risen by 50%.

2 See The Life Cycle of Inequality, ibid., at 13 and 19, where it is stated that women in their 20s and 30s without children have "broadly equivalent employment patterns to men". See also P. Elias and T. Hogarth, "Families, Jobs and Unemployment", in R. Lindley, ed., Labour Market Structures and Prospects for Women (London: EOC, 1994), 92, and S. Innes, Making it Work — Women, Change and Challenge in the 90s (London: Chatto & Windus, 1995), 179-182.

3 This may be one reason why women are increasingly choosing to have children later in life. See The Life Cycle of Inequality, supra n.1, at 17: "Over the 1980s there has been a steady increase (39%) in the number of women who have their first child in their early 30s. There has also been a marked rise (66%) between 1981 and 1991 in the number of women having their first child in their late 30s."

4 See The Independent, 27th March 1996.
prospects had been hindered by the Pregnant Workers Directive. The directive, together with the higher awards for sex discrimination being granted in the industrial tribunals, had resulted, they said, in the appearance that women were “different and more expensive to employ”. Equally unsurprising is the fact that such views were exactly those expressed at the time when protection against pregnancy dismissal was first mooted in 1975, leading to the conclusion that the legislation has done little to alter attitudes. In addition to the very real impact which pregnancy discrimination and having children may have on women’s employment, the mere fact of continuing pregnancy discrimination, and its condonation by many, itself represents an important signal to women regarding their perceived role and value in the workplace.

The purpose of this article is to highlight the fact that over the course of the last twenty years of legislative action in the field of pregnancy dismissals, the dominant assumption of the legislature and courts has been that such dismissals are legitimate measures taken by employers to preserve the economic viability of their businesses, and, it will be argued, this approach still prevails. Although progress has been made, it is suggested that cultural attitudes have generally not kept pace with such favourable developments, and that dismissals for reasons of pregnancy will continue until the dominance of the business perspective is reduced.

There are two principal legal regimes which protect women from dismissal on the grounds of pregnancy: unfair dismissal legislation and sex discrimination provisions. This article will consider, first, the unfair dismissal legislation, highlighting the fact that the premise of such legislation is that employees must earn employment protection rights, and that protection from pregnancy dismissal is no different. Secondly, recent developments in UK and EC sex discrimination law regarding pregnancy dismissals will be considered, with particular emphasis on the path-breaking Webb litigation. This analysis will focus on two principal

8 Carole Webb v. EMO Air Cargo (U.K.) Limited (No. 1), [1990] I.C.R. 442