Gabriele Habermann-Beltermann was a German nurse who specialized in the residential care of the elderly. In March 1992, she was hired as a night attendant in a retirement home by the German organization Arbeiterwohlfahrt, subsequently signing a contract, which clearly stipulated she was solely assigned to the night shift. A month after her hiring, she was absent from her job due to an illness from April 29 through June 12; her medical justification noted that she became pregnant two weeks before signing her employment contract. The parties stipulated that neither Habermann-Beltermann nor her employer were aware of the pregnancy at the time the contract was signed. According to German law, pregnant and breastfeeding women cannot be assigned overtime or work scheduled between 8:00 p.m. and 6:00 a.m. Arbeiterwohlfahrt went to German court to seek to have the contract nullified based on a German law that allows contracts to be rendered void when an employer signs a contract that they would not have signed if the employer had known about “an essential characteristic of the other party to the contract.” Habermann-Beltermann challenged this interpretation of German law as violating the principle of equal treatment guaranteed by the European Union (EU). This Council of Justice Directive 76/207/EEC requires equal treatment for men and women regarding employment access, vocational training and promotion, and working conditions. Prior precedent of the EU court noted that pregnancy discrimination was a form of gender discrimination. Because the German court was unsure if the EU directive precluded German law in this case, the EU court was asked to resolve the issue.

The court found that the key question in the case was related to “an employment contract for an indefinite period for the performance of night-time work, concluded between an employer and a pregnant employee, both of whom [sic] were unaware of the pregnancy.” Arbeiterwohlfahrt argued that excessive protection of mothers and pregnant women would lead to their abuse and

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discrimination against men who “did not have the same opportunity of being paid without having to work in return.” The court rejected this argument. The equal protection directive reflected the European Union’s interest in allowing member states, like Germany, to pass regulations consistent with equal treatment to protect pregnant women and mothers. They noted both laws shared an interest in “protecting a woman’s biological condition during and after pregnancy and, second, of protecting the special relationship between a woman and her child over the period which follows pregnancy and childbirth.” For the EU court, the fact that pregnancy and breastfeeding are temporary conditions and that the challenged contract was not limited to an identifiable term was significant. They determined that to void this contract on the grounds of pregnancy could not be justified by the fact she was temporarily prevented, by German statutory law, from working the night shift.1

Comparative Views of Pregnancy in the Workplace

While our legal system is generally insulated from the decisions and priorities manifested by the rest of the world, occasionally the United States is perceived as being so out of sync with peer nations that it draws intensive public attention. This is evidenced in discussions of our criminal justice system, particularly as greater attention has been placed on our system of mass incarceration and our death-penalty processes.2 The statutory protections for women in the workplace, more specifically in terms of the legislative protections surrounding pregnancy, have fallen under similar scrutiny. Barbara Gault, Heidi Hartmann, Ariane Hegewisch, Jessica Milli, and Lindsay Reichlin (2014) note,

Of 186 countries examined in Heymann and McNeill’s (2013) analysis of the World Policy Analysis Centre Adult Labour Database, 96 percent provide some pay to women during maternity leave. The United States is the only high-income country, and one of only eight countries in the world . . . , that does not mandate paid leave for mothers of newborns. Nearly every member of the European Union (EU) provides at least 14 weeks of job-guaranteed paid maternity leave, during which workers receive at least two-thirds of their regular earnings . . . Eighty-one countries extend paid leave to new fathers, through paternity leave (specific to fathers), through parental leave that can be taken by either parent, or through some combination of the two.3

By contrast, in the United States, a 2012 study discovered that only “about a third of employees work at worksites that offer paid maternity leave to all or most female employees (21.6 per cent for all employees [plus] 13.5 per cent for most employees).”4