

Pregnant woman refused remote work during Covid awarded €45k

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The Workplace Relations Commission has said it could find no lawful reason why a “particularly vulnerable” employee couldn’t be allowed work from home during the pandemic, ordering her employer, St John of God’s, to pay €45,000 in compensation.

Ann Doherty’s complaint was made under the Employment Equality Act, alleging that she was discriminated against by being refused permission to work from home while pregnant during the Covid-19 pandemic.

She was working as an employment support instructor in St John of God Community Services in Celbridge, Co Kildare and was pregnant with her second child when the service “went into lockdown” on March 13, 2020. Adjudication officer Kevin Baneham said he could see no reason that the complainant could not have also been formally allowed work from home and be paid for doing so, “given that she was already working from home, there was work to do and many others were so facilitated”.

“IMPRESSIVE COGENCY”

The complainant commenced working for the respondent in 2016 and her employment there ended shortly before the adjudication of the complaint in November 2021.

The complaint relates to family status as the complainant was caring for a one-year-old child in 2020 and was also pregnant. The respondent denied discrimination on all the grounds under the Act.

AO Baneham said there were conflicts of evidence between the parties. A “striking feature” of the case was that the complainant gave “such cogent and persuasive evidence”. Because of this, the AO said, “I resolve the conflicts of evidence entirely in the complainant’s favour”.

PUT “ON THE SPOT”

The AO said the matter commenced with the complainant being on annual leave when the lockdown was introduced. The respondent had not identified why it was necessary to immediately withdraw approval for the already approved annual leave. This had the effect of “putting the complainant on the spot” in deciding what to do next, i.e. whether to take sick leave or unpaid parental leave. The respondent would not facilitate her to work from home.

The AO said the complainant was left with the “only viable option of going on sick leave to ensure she was paid”.

The AO noted that the mission of employment services was to facilitate access to the workplace for respondent service users. He saw no reason why the complainant could not have also been formally allowed work from home and be paid for doing so, “given that she was already working from home, there was work to do and many others were so facilitated”.

“LESS FAVOURABLE”

In the absence of documentation setting out the respondent’s thinking, the AO was “unable to fathom how the complainant’s situation was assessed” compared to colleagues who did not have childcare responsibilities and who were allowed work from home.

“This was evidence not only of less favourable treatment on grounds of family status and gender, but that it was precisely because she had a one year old child at home and because she was pregnant that the complainant was denied the facility of working from home, a facility afforded to others. The respondent has, therefore, not rebutted the inference of discrimination,” the AO said.

“All this means is that from March 2020 the complainant should have continued to work (and from home until August 2020) and continued to be on full pay until the 14th August 2020.”

In August 2020 the respondent mooted that the complainant transfer to a named facility. The AO said the complainant raised reasonable concerns about the appropriateness of this transfer, “given the physical layout of the setting, the fact that service users would not be wearing masks or social distancing and her advanced stage of pregnancy”.

“PROPORTIONATE” REDRESS

The AO ordered the respondent to pay to the complainant €45,000 by way of compensation. He also noted her “valiant efforts” to explain how she could work from home. Redress has to be “proportionate, dissuasive and effective”, he said.

St John of God Community Services submitted that its day services were shut down during the pandemic and staff were redeployed according to their underlying health conditions, childcare duties and other circumstances. This was in line with HSE policy, it’s representative said. It is understood to be appealing the WRC decision. (ADJ-00029771. *Ann Doherty was self-represented ; St John Of God Services was represented by Eoin Haverty, Ibec*).