THE GREEK OMBUDSMAN
INDEPENDENT AUTHORITY

Special report
Prejudicial unilateral imposition of job rotation on employees after maternity leave

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Summary

Since 2011, the Greek Ombudsman (GO) has handled a considerable number of complaints related to employers' unilateral decision to place women working in the private sector, returning to work from maternity leave, on job rotation *(meaning, depriving them of their right to full weekly employment, and restricting them to working only for few days per week, with the corresponding reduction in earnings).* The relevant legislation provides that the employer can, instead of terminating the labour contract, impose a unilateral system for job rotation in his enterprise, the length of which cannot exceed nine (9) months in the same year, only if the following cumulative conditions prevail:

a) downsizing of the enterprises' activities and financial shrinking
b) prior briefing and consultation with the employees' legal representatives.

At this point it must be reminded that less beneficial handling of employees due to pregnancy or maternity, with regard to their terms and conditions of employment, is deemed to be discriminatory on the basis of gender and thus forbidden.

The Ombudsman ascertains that:-

1. More and more enterprises, without abiding by legal conditions but invoking vague financial reasons, illegally and improperly exercise job rotation on employees returning to work from maternity leave but still under protection against dismissal.
2. Job rotation is an employment system which cannot be implemented exclusively on one employee (male/female), as this would constitute a single case of unilateral deterioration of the terms of the employee's labour contract.
3. Before exercising their right to job rotation, employers must prove that the financial shrinking of the business is sizeable enough to justify job loss; rotation is proposed as a softer option, in order to avoid this job loss. Moreover, there must be uniform distribution of reduction in working days to all employees regardless of sex. By imposing job rotation only on the working mothers, on the one hand the regulations pertaining to job rotation

are infringed; on the other, the regulations pertaining to gender discrimination in the workplace are infringed and thirdly, the regulations related to maternity protection are infringed.

4. According to the law, the Labour Inspectorate (SEPE) exercises merely a formal check on the procedure, by endorsing the consultation minutes and the staff work schedule available for job rotation, without being in a position to examine if there is indeed a "downsizing" of the enterprise's activities, since this concept is elusive and not defined by law. This ambiguity allows employers to put forward general financial difficulties without providing specific details/evidence from which downsizing can be determined. In order for SEPE to instigate an in-depth survey, the affected employee must be the one to question the existence of financial difficulties. In other words, the burden of proof is placed on the employee, who is not in a position to access the financial data of the enterprise, particularly when both briefing and consultation required by law are general and vague.

For these reasons, the Ombudsman suggests:-

- The introduction of specific monitoring criteria related to the financial status of the enterprise, so that it can be determined whether job rotation is justified and legal.
- SEPE to conduct regular monitoring of employees on job rotation to determine if the declared work schedule is implemented or if there is an infringement.
- The law to introduce criteria pertaining to the reduction in working hours so that the corresponding reduction in wages does not put the employee to a precarious financial situation (i.e. one day/week work)
- Strict monitoring to determine whether the employer has distributed reduced working days equally among all employees or if there is selective reduction in working hours of those pregnant or during the protected maternity period.
- To introduce criteria for the endorsement by the unemployment bureau (Manpower Employment Organization-OAED) of the declaration of voluntary job quitting filed by employers, given that unbeknown to the employee, the employer often lodges this declaration during sick leave or similar cases of brief absence, without the employee's signature, creating presumptive evidence against the employee.