

Chapter 10: Equal pay and family friendly

Question 1

Fully flexible working will never be achieved until we abandon the idea that anything less than full-time work is less committed.

Commentary

You are given a lot of scope in this question to demonstrate your ability. On one level you need to show that you understand the law in relation to flexible working and can appreciate its limitations. It is open to you to discuss the Flexible Working Regulations but you may also wish to explore the indirect discrimination provisions in the Equality Act and the case law around this. Good students will probe deeper into the question and may be able to show some of the gendered assumptions lying behind our employment law, such as the fact that the right to request flexible working is merely a right to request a change to the default model of full-time, 9-5 working, which is a working pattern that many with childcare responsibilities would find difficult to meet.

Question 2

Beth is a litigation solicitor in a large commercial practice. She has worked for the firm for five years. When she told the partner with whom she worked most closely (Wendy) that she was pregnant, Wendy told her how she only took a few weeks leave when she had each of her children. Beth explained that she would like to take at least six months leave but Wendy told her that the risk is that her clients would get used to working with others in the team and might never go back to Beth. Beth is worried about losing her client base as she is keen to make a case for partnership soon. She takes Wendy's advice and takes only three months' maternity leave.

Since her return to work, Beth has found it increasingly difficult to manage with the long hours demanded of her. One recent transaction completed in the early hours of the morning yet Wendy asked Beth to be available for a client meeting at 9.30am that day. Beth has now made a formal request to work three days per week but Wendy has declined this over email saying 'Rather than bothering HR with this, I think it best to say no and save us both time. I appreciate that it is difficult to balance a baby and the demands of this job, but this is just how it is. I can't have you available to clients for only 60% of the week'.

The week after Beth received the email from Wendy, a team meeting was held in which colleagues were told that there would be some moving around of clients. Beth has been told that she will now be responsible for private individual rather than corporate clients. After the meeting Beth told Wendy that she was unhappy about this move. She explained that this would mean that she would not get repeat business so easily from private clients and the work would likely not be as lucrative so she would find it harder to meet her targets. Wendy said that she thought Beth would be happy as these clients might be less demanding but Beth is not convinced. As Beth suspected, she has not met her target in the past two months and has been called to a meeting with the area head to 'explain her under-utilisation'.

Beth seeks your advice on how she should handle this matter.

Commentary

A number of related issues are present in this question. To begin with, you will need to discuss the statutory right to maternity leave and pay, albeit that Beth has chosen not to take her full entitlement. Second, Beth has made a request to work flexibly and you should discuss the process that the employer ought to follow, which Wendy has breached. Good students will also be able to explore the limited remedy available under the Flexible Working Regulations and whether Beth may have a claim for indirect discrimination under the Equality Act. The final paragraph raises the more complex issue of whether Beth has been treated unfavourably on grounds of pregnancy/having taken maternity leave or for having made a flexible working request.

Question 3

The equal pay legislative regime does little to address the low pay of women in sectors such as caring, cleaning and catering which are highly segregated along gender lines.

Discuss.

Commentary

This question requires a good contextual understanding of the gendered nature of occupational segregation in certain industries such as care. The examiner is inviting a discussion of the practical difficulties of addressing low rates of pay where it is unlikely that a male comparator may be found. For this reason, potential claimants may fall at the first hurdle of not being able to show like work with a comparator. Good students will be able to extend the discussion into consideration of the effect of outsourcing and privatisation on certain feminised industries such as care. For example, it was common for local councils to employ carers directly to provide 'home help' services, but since the 1980s, these services are routinely provided by private companies who contract with the local authority to provide caring services on its behalf. This makes finding a comparator even more difficult. Excellent students might also reflect on the gendered nature of certain industries, and why feminised occupations may be valued less.