

Pregnancy Discrimination in the Workplace: Legal Framework and Review of Legal Decisions 1999 to 2008

Joanne Banks & Helen Russell

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Foreword by the Acting Director of the HSE Crisis Pregnancy Programme

Pregnancy Discrimination in the Workplace: Legal Framework and Review of Legal Decisions 1999 to 2008 forms part of a wider research project investigating the influence of women's employment experiences on pregnancy and parenting. The project was commissioned by the HSE Crisis Pregnancy Programme in partnership with the Equality Authority.

This report provides a comprehensive understanding of the legal framework for maternity and employment protection in Ireland. The entire period of pregnancy and maternity leave is a special protected period - pregnant employees are protected by national legislation and EU directives, which prohibit pregnancy related discrimination and dismissal on the grounds of equality.

It is important to acknowledge that the harmful effects that the risk of dismissal from employment can have on the physical and mental state of a pregnant woman have been recognised in rulings from the European Court of Justice, including the particularly serious risk that she can be prompted voluntarily to terminate her pregnancy. From the point of view of the CPP, this is a significant recognition of the critical role that employment issues can have on reproductive decision-making.

The report also explores decisions taken on fifty-four cases of pregnancy-related discrimination brought before the Equality Tribunal and Labour Court under Employment Equality law. This concise analysis provides a thought-provoking insight into cases that reach the formal legal system and highlights some of the factors relating to successful outcomes for the women involved.

I would like to express thanks to the authors, Dr Helen Russell and Dr Joanne Banks of the Economic and Social Research Institute and to the staff of the Equality Tribunal and the Labour Court for assisting with this report.

I would like to thank Laurence Bond, Head of Research with the Equality Authority and Maeve O'Brien of the CPP Research & Policy team for their invaluable contribution throughout all stages of this project.

Lastly, I would like to thank the Board of the Crisis Pregnancy Agency and Caroline Spillane, former CPP Director, for their involvement in the project's initiation.

Dr. Stephanie O'Keeffe

Acting Director

HSE Crisis Pregnancy Programme

Foreword by the CEO of the Equality Authority

Pregnancy Discrimination in the Workplace: Legal Framework and Review of Legal Decisions 1998-2008 provides a summary of the legal protections in place for pregnant women in employment. It also examines 54 pregnancy related cases decided under equality legislation over a recent ten year period. Specifically it provides a detailed profile of the characteristics of the women who brought these cases, their employment and the nature of their experience in the workplace that led to the case.

This report is the second of three outputs from a major research project exploring women's experience in paid work during and after pregnancy, commissioned by the HSE Crisis Pregnancy Programme and the Equality Authority. It is illegal for women to be discriminated against at work because they are pregnant or for a reason relating to their pregnancy. Despite this, pregnancy discrimination remains a significant barrier to full equality for women in the Irish labour market. The Equality Authority is very pleased, therefore, to have had the opportunity to work with the HSE Crisis Pregnancy Programme in this project.

The Equality Authority is committed to ensuring that people at risk of discrimination know that they have rights under equality legislation and that the law can provide significant redress where discrimination occurs. This report makes an important contribution to this goal. More broadly, the enforcement of the law in this area needs to be underpinned by a culture of compliance and an informed public opinion that forthrightly rejects discrimination whenever and wherever it occurs. Authoritative evidence on inequality and discrimination plays an indispensable role in informing public opinion and in building public support for equality in the workplace and in society. On behalf of the Equality Authority therefore, I would like to thank the authors, Dr Joanne Banks and Dr Helen Russell of the Economic and Social Research Institute, for their expert and insightful report.

I would also like to thank Dr Margret Fine-Davis of TCD, Caroline Spillane, Maeve O'Brien and Dr Stephanie O'Keeffe of the Crisis Pregnancy Programme, and Laurence Bond, Head of Research at the Equality Authority for all their work on this project.

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Introduction

The experience of being in employment while pregnant or returning to work after having a child is not well researched in Ireland or indeed internationally. This report forms part of a major new research study on women's experiences in the workplace during and after pregnancy commissioned by the HSE Crisis Pregnancy Programme and the Equality Authority. In addition to this report, the research involved a literature review examining a range of literature on pregnancy at work (Russell & Banks, 2011) and a nationwide survey of 2,300 women who gave birth between July 2007 and June 2009 (Russell, Watson, Banks, forthcoming). The broad objective of the research was to investigate the influence of pregnancy and childbirth on women's employment experiences, including an assessment of pregnancy-related discrimination in Ireland, and how these experiences are shaped by organisational factors and women's attitudes and characteristics.

Studies in Ireland and in other countries show that a significant proportion of women experience negative or unfair treatment in the workplace during pregnancy (Adams, 2005; La Valle *et al*, 2008; Russell and Banks, 2011; Russell, Watson, Banks, forthcoming). Such treatment can range from the extreme of dismissal on notification of pregnancy, unfair selection for redundancy or missing out on a promotion to more subtle forms of unequal treatment, such as changes in attitude from employers or co-workers. This also includes incidents of discrimination or dismissal after the birth of the child, where women are dismissed on return to work, sidelined or demoted in their job, or refused a change in their working hours by employers.

This report aims to provide an overview of the legal framework for maternity and employment protection in Ireland and to study cases of pregnancy discrimination brought to the Equality Tribunal and the Labour Court under employment equality legislation between 1999 and 2008. Chapter 1 sets out a general overview of the legal framework covering the rights of women employed during pregnancy in Ireland. It aims to demonstrate the framework within which the pregnancy-related legal provisions may operate and is not intended to be an authoritative statement of the law.

Chapter 2 contains an analysis of complaints of pregnancy-related discrimination, including cases of dismissal, decided by the Equality Tribunal and Labour Court over a 10-year period, 1999–2008. The aim of this analysis is to present a profile of workplace pregnancy-related discrimination as it is brought through the formal legal system in order to develop an understanding of claimants' and respondents' characteristics.

1.1 Introduction

The legal framework covering the rights of women employed during pregnancy in Ireland is an amalgam of domestic and European law, based on numerous pieces of legislation, statutory instruments and case law. This Chapter outlines the legislation that governs pregnancy, maternity and employment protection. It is not intended as an authoritative statement of the law but to show the framework within which the pregnancy and maternity-related legal provisions may operate.

In section 1.2, we describe the relevant national legislation and European directives relating to pregnancy-related discrimination including dismissal and we outline the regulations in place concerning health and safety during pregnancy. The provisions for maternity, paternity and parental leave in Ireland and Europe are examined in Section 1.3; these are important elements of the legal protection that employed women are afforded during pregnancy and childbirth. Maternity and parental leave not only compensate women for the break in employment necessitated by childbirth, they also regulate women's entitlement to return to their previous employer. Section 1.4 sets out procedures for redress for women who report cases of workplace pregnancy-related discrimination or dismissal.

1.2 Legal Framework for Pregnancy Related Discrimination at Work

The Employment Equality Acts, 1998 to 2008, prohibit pregnancy related discrimination in Ireland. These Acts promote equality and prohibit discrimination across nine grounds: gender, religion, civil status¹, age, family status, disability, sexual orientation, race² and membership of the Traveller community. The Acts define discrimination as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds. They prohibit discrimination, harassment, sexual harassment and victimisation and require appropriate measures for people with disabilities and allow positive action measures to ensure full equality in practice across the nine grounds.

Both the public and the private sector are referred to in the Employment Equality Acts, including vocational bodies, professional and trade organisations and organisations of workers and employers. The Acts cover remuneration; access to employment and interviews; conditions of employment; training and experience in relation to employment; promotion and the re-grading or classification of posts. They also govern the activities of work agencies and professional or labour-related bodies and the advertising of posts. In essence, they address all aspects of a person's employment relationship.

Irish equality law is also shaped by EU Directives and decisions of the European Court of Justice interpreting the Directives and rights under the EU Treaty. Pregnancy-related discrimination case-law from the European Court of Justice has been used to a considerable extent in hearings in Ireland. One of the key cases, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen* (ECJ 177/88), states that discriminatory acts related to pregnancy are directly discriminatory on the gender ground and that a pregnant woman cannot be compared to either a sick man or a non-pregnant woman. The Court found that since pregnancy is a uniquely female condition, where a woman experiences unfavourable treatment on grounds of pregnancy such treatment constitutes direct discrimination on the grounds of gender within the meaning of the Equal Treatment Directive (76/207/EEC)³, even though there is no male comparator. Cases of pregnancy-related discrimination taken under the Equality Employment Acts are generally taken on the gender ground, but may also be taken on the family-status ground⁴ or on more than one ground.

Pregnancy Related Dismissal

Discriminatory dismissal - i.e. less favourable treatment in respect of dismissal on any of the nine grounds - is prohibited under the Employment Equality Acts. Within the Irish legislation, claimants of pregnancy-related dismissal are also protected by the Unfair Dismissals Acts (1977 to 2005) which were amended by the Maternity Protection

1 From 1 January 2011, with the commencement of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act the ground of "marital status" in the original versions of the equality legislation was changed. It has been renamed "civil status" and the definition of the ground has been expanded to include being in a civil partnership or being a former civil partner in a civil partnership that had ended by death or been dissolved.

2 The 'race' ground includes race, colour, nationality, or ethnic or national origins.

3 With effect from the 15th August, 2009 the Recast Directive 2006/54 replaced Directives 75/117 (Equal Pay), 76/207 (Equal Treatment) and 97/80 (Burden of Proof).

4 Defined as being pregnant or caring for a child.

Acts (1994 and 2004). This legislation implements the provisions of the Pregnancy Directive (92/85/EEC), which provides for special protection to be given to women, by prohibiting dismissal from the beginning of pregnancy until the end of maternity leave except for reasons unconnected with the pregnancy.

In pregnancy discrimination and dismissal cases heard in Ireland, claimants often cite the European Court of Justice cases, *Browne v Rentokil* (1998 ECRI/4185) and *Webb v EMO Cargo* (C-32/94), where the Court ruled that the entire period of pregnancy and maternity leave is a *special protected period* during which both the Equal Treatment Directive (76/207/EEC) and the Pregnancy Directive (92/85/EEC) prohibit pregnancy-related dismissal on the grounds of equality. This is in view of the harmful effects which the risk of dismissal may have on the physical and mental state of pregnant women, including the particularly serious risk that they may be prompted voluntarily to terminate their pregnancy (*Webb v EMO Cargo*, 1994).

Under the Unfair Dismissals Acts (1977 to 2005) employees generally are only covered if they have one year's continuous service. However this restriction does not apply to employees who are pregnant in which case a claim under the Acts can be brought regardless of the length of service.⁵ There is no service requirement for an employee to bring a claim under the Employment Equality Acts (1998 to 2008).

Health and Safety Legislation

Poor treatment of pregnant women at work may also be liable under health and safety legislation. Pregnancy can change the ability of a worker to do the job for which she is employed. She may suffer more sickness than normal and find it extremely difficult to perform the full range of duties associated with their job; in a minority of cases, they may find it impossible.

The Maternity Protection Acts (1994 and 2004) were introduced to give effect to the Pregnancy Directive (92/85/EEC), which sought the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast feeding. These Acts provide for health and safety leave under certain circumstances and contain provisions regarding time off for medical visits relating to the pregnancy. The Pregnancy Directive states that pregnancy-related illness is not to be treated in the same way as normal illness where pay is reduced when absences exceed a certain duration. Any less favourable treatment in relation to pay while pregnant and being unfit for work due to pregnancy-related illness is contrary to Article 141 of the Directive.

The Pregnancy Directive (92/85/EEC) also obliges the employer to conduct a risk assessment of the working environment with specific reference to the potential risk of that environment for pregnant workers. Article 5 of the Directive requires an employer, in circumstances where an assessment reveals a risk to the health and safety of a pregnant employee, to avoid exposure to the risk by temporarily adjusting the working conditions and/or working hours of that employee, or where such adjustment is not feasible to reassign the employee to alternative work. Should reassignment to alternative employment not prove feasible, employers should grant Health and Safety Leave⁶ to employees in accordance with national legislation and practice. These matters are provided for in Irish law by the Safety, Health and Welfare at Work (General Application) Regulations 2007.⁷

Pregnancy-related cases can also be brought under the Organisation of Working Time Act (1997), which is viewed primarily as a piece of safety, health and welfare-at-work legislation, designed to protect and maintain employees' health and safety against excessive hours and to provide for breaks, rest periods and holidays to allow for rest and recovery.

5 The Unfair Dismissal Acts (1977 & 2005) will apply to the dismissal of an employee who has less than 12 months continuous service if the dismissal results wholly or mainly from Trade Union membership or activity. The requirement of one year's continuous service does not apply where the dismissal results from:

- the exercise or proposed exercise by an employee of a right under the Maternity Protection Acts, 1994 and 2004;
- an employee's entitlements, future entitlements, exercise or proposed exercise of rights under the National Minimum Wage Act, 2000;
- the exercise or proposed exercise by an employee of the right to adoptive leave or additional adoptive leave under the Adoptive Leave Act, 1995;
- the exercise or proposed exercise by an employee of the right to parental leave or force majeure leave under the Parental Leave Act, 1998;
- the exercise or proposed exercise by an employee of the right to carer's leave under the Carer's Leave Act, 2001.

6 During health and safety leave, employers must pay employees their normal wages for the first three weeks, after which Health and Safety Benefit may be payable by the Department of Social and Family Affairs. Payment is made up of a personal rate with extra amounts for a qualified adult and/or child dependents. Health and Safety Benefit entitlements depend on the level of earnings for the relevant tax year.

7 These regulations are made under the Safety, Health and Welfare at Work Act (2005).

Entitlement to Return to Work

Entitlement to return to previous employment following a period of maternity leave is a central element of maternity protection, which is provided for in the Maternity Protection Acts (1994 and 2004). It is a crucial entitlement for women to avoid unemployment, occupational downgrading or deterioration in employment conditions following childbirth (Russell & Banks, 2011).

After the period of paid maternity leave and additional unpaid maternity leave (which currently stands at a total of 42 weeks), an employee is entitled to return to work⁸:

- With the same employer, or the new owner (if there was a change of owner)
- To the same job
- Under the same contract and
- Under terms and conditions that i) are not less favourable than those that would have applied to the employee, and ii) incorporate any improvement to the terms and conditions to which the employee would have been entitled if she had not been absent.

Where it is not “reasonably practicable” for an employer to allow an employee to return to their previous job, the employee is entitled to be offered by the employer suitable alternative employment under a new contract. The terms and conditions of the new contract cannot be less favourable than the original contract and again must incorporate any improvement to the terms and conditions that the employee would have been entitled to if she had not been absent.

1.3 Maternity, Paternity and Parental Leave

Working mothers in Ireland have a legal right to both paid and unpaid maternity leave and working parents have a legal right to unpaid parental leave. Paternity leave is not recognised in employment law in Ireland. Compared to other European countries, the overall extent of paid and unpaid maternity, paternity and parental leave is relatively low.

Leave Provisions in Ireland

Statutory and other leave provisions for parents in Ireland are set out in Table 1. The Maternity Protection Acts (1994 and 2004) confer statutory minimum entitlements to maternity leave. Since March 2007, women in employment are entitled to 26 weeks paid maternity leave and 16 weeks unpaid maternity leave. Payment is normally provided through maternity benefit, a Department of Social Protection payment which an employee is entitled to receive if they have sufficient PRSI contributions on their social insurance record⁹ and are in insurable employment up to the first day of maternity leave. The last day of work can be within 16 weeks of the end of the week in which the baby is due.¹⁰ The amount of money paid to employees through the scheme is dependent on their previous earnings. The amount is calculated by dividing gross income in the relevant tax year by the number of weeks worked in that year. A total of 80 per cent of this is payable weekly, subject to a minimum payment and a maximum payment. In January 2011, the maximum payment of maternity benefit in Ireland was €262 and the minimum was €217.80. Some employment contracts allow for additional payment rights during the leave period; for example, the employee receives full pay minus the amount of maternity benefit payable, however employers are not obliged to do this.

In Ireland, there is no legislative or statutory entitlement for fathers to paid paternity leave. However the civil service and some other employers provide limited (typically 3 days) paid paternity leave for fathers. Both parents are legally entitled to unpaid parental leave. The Parental Leave Acts (1998 and 2006) allow parents or persons acting in *loco parentis* to take parental leave from employment in respect of children up to 8 years old or up to 16 years in the case of a child with a disability. These Acts introduced a statutory entitlement equally for mothers and fathers to

⁸ From the Equality Authority's About the Maternity Protection Act 1994 and 2004, which is available at <http://www.equality.ie>

⁹ At least 39 weeks' PRSI paid in the 12-month period before the first day of maternity leave, or in the relevant tax year - the second last complete income tax year before the year in which maternity leave starts.

¹⁰ Maternity Benefit is a payment for those employed and self-employed. Women who are dismissed or lose their job during the first 24 weeks of pregnancy are not entitled to Maternity Benefit but may be entitled to Unemployment Benefit depending on PRSI contributions from the previous year. Maternity leave can commence, at the earliest, 22 weeks before the end of the week before the baby is due but maternity benefit will only be paid from the 24th week of pregnancy onwards.

take 14 weeks of unpaid leave. Where an employee has more than one child, parental leave is limited to 14 weeks in a 12-month period. The EU Parental Leave Directive (96/34/EC), on which the parental leave legislation is based, allows individual countries to decide whether the leave should be paid or unpaid (see Table 1). Ireland chose to have unpaid parental leave (Evans, 2001). The Acts also provide for a limited amount of paid leave in the case of family emergencies amounting to 3 days in 12 consecutive months, or five days in 36 consecutive months. This is called *force majeure* leave.

Leave Provisions in Europe

Table 2 highlights the variations in leave periods across the EU15 (excluding Luxembourg). Regardless of the member state in which women are employed, they are entitled to at least 14 weeks continuous maternity leave. This must include at least two weeks before the birth and two weeks after the birth. Differences in maternity leave and benefit entitlement between EU member states are clearly influenced by different social policy agendas, views of the parent/workplace relationship and workplace demographics (James, 2004).

Among the countries compared here, maternity leave entitlements range from 14 weeks paid leave in Sweden and Germany to 39 weeks in the United Kingdom. On closer examination however, Sweden and Germany have more generous parental leave periods (see Table 2). At the other end of the scale, the UK and Ireland have 39 and 26 weeks paid maternity leave respectively, but no paid parental leave. Ireland and the UK also have the longest unpaid maternity leave periods at 16 and 13 weeks respectively.

Countries' paid paternity leave ranges from two days in the Netherlands to two weeks in Spain. However, other than Ireland, countries with no statutory paternity leave entitlements, tend to offer paid, shared parental leave periods instead (e.g. Norway, Austria, Germany and Italy). As mentioned above, parental leave policies tend to reflect the level of maternity and paternity entitlements.

Parental leave policies differ greatly across these EU member states. In the Netherlands, parents may each choose between taking 13 weeks of unpaid, full-time leave or six months of part-time leave before the child's eighth birthday.¹¹ Thus, new parents can take a total of over 42 weeks (for birth parents) or 34 weeks (for adoptive parents) of child-related leave per annum (Ray, 2008). By far the most generous parental-leave entitlements are in Germany and Sweden; they offer the most generous combination of time and financial support to parents. In Germany, parents are entitled to three years shared parental leave, where benefits received drop to 67% of the parent's usual salary (Ray, 2008). Sweden guarantees 14 weeks of paid maternity leave and approximately two weeks of paid paternity leave, as well as 18 months of paid parental leave for each qualifying employee. Parents of children under age eight may reduce their working hours by 25 per cent (Ray, 2008).

¹¹ It is common, however, for employers to provide parental-leave pay; civil servants can earn up to 70% of their usual salary during this period (Ray, 2008, p21).

Table 1: Statutory and Other Leave Provisions in Ireland for Parents, 2011

Type of Leave	Paid/Unpaid	Paid for by	Time taken	Age of child by which leave should be taken	Other leave
Maternity	Payment by employers depends on employees contract. Employees are entitled to Maternity Benefit when they have sufficient PRSI contributions.	Maternity Benefit paid for by Department of Social Protection. No obligation for employers to top up benefit.	26 consecutive weeks of maternity leave (2 weeks to be taken before the birth and 4 weeks after).	Minimum of two weeks before the birth of the child.	A pregnant employee is also entitled to 16 consecutive weeks additional unpaid maternity leave beginning immediately after the end of the 26 weeks. Also see parental leave.
Paternity	Unpaid with no statutory right to payment for leave. Granted at employers discretion.	Employer if applicable. If leave is due to death of the mother, payment is subject to previous social insurance payments.	If the mother dies within 24 weeks of the birth of the child, then father is entitled to the remainder of her maternity leave. If the mother's death occurs after 24 weeks following the birth, then the father is entitled to leave up until the end of the 40th week.	N/A for ordinary leave. Must be taken within 7 days of mother's death in other cases.	See parental leave.
Parental	Unpaid.	N/A.	14 weeks per parent. This can be taken consecutively or, with the agreement of employer, broken up over a period of time.	Leave must be taken before the child is 8 years of age, or 16 years of age in the case of children with disabilities.	N/A.
Force Majeure (for family illness or emergency)	Entitled to full pay.	Employer.	An employee may not be absent on <i>force majeure</i> leave for more than 3 days in any 12 consecutive months, or 5 days in any 36 consecutive months.	N/A.	N/A.

Source: <http://www.equality.ie/index.asp?locID=19&docID=-1> the Citizens Information Board's website, http://www.citizensinformation.ie/en/employment/employment_rights_and_conditions, 2011.

Table 2: Maternity, Paternity and Parental Leave Periods in Europe

Country	Paid and Unpaid Maternity Leave Periods	Paid/Unpaid Paternity Leave Periods	Paid/Unpaid Parental Leave Periods
Austria	16 weeks at 100% of usual salary.	0 days.	Maximum 104 weeks unpaid between mother and father. If earnings <€14,600 a flat rate is paid.
Belgium	15 weeks - 82% for first 30 days then 75%.	Paid 2 weeks 100% of earnings for first 3 days and 75% for remainder.	Paid leave at a flat rate and non-transferable. Parents have a choice of continuous leave (3 months), half-time leave (50% reduced work hours for 6 months) or 20% reduction in work hours (15 months).
Denmark	18 weeks 30-90% of usual salary.	Paid 2 weeks (30-90% of usual salary).	Paid 32 weeks equal to 60% of payment while on maternity and paternity leave. Divided between both parents.
France	16 weeks at 100% of usual salary.	Paid 11 days at 100% of usual salary.	Paid with up to 3 one year increments taken by either parent (156 weeks). Payment depends on earnings and how much parents work during this period.
Germany	14 weeks at 100% of usual salary.	0 days.	Paid 18 months parental leave for each parent at 67% of parents usual salary up until the child's 3rd birthday (156 weeks).
Greece	20 weeks at 100% in the public sector and 17 weeks at 100% private sector.	Paid by employers 3 days 100% salary in public and private sectors.	Unpaid and non-transferable 2 years in the public sector. 13 weeks for each parent in the private sector.
Ireland	26 weeks paid at 80% 16 weeks unpaid.	0 days.	Unpaid and transferable. 14 weeks for each parent.
Italy	22 weeks at 80% of usual salary.	0 days.	Non-transferable 6 months per parent (max of 11 months per child). During 6 of the 11 months parents receive 30% of usual salary.
The Netherlands	16 weeks at 100% of usual salary.	2 days at 100% of usual salary by employer.	13 weeks full-time leave or 6 months part-time leave. No legal guarantee for pay however it is common for employers to provide parental leave.
Norway	See <i>parental leave</i> .	See <i>parental leave</i> . Fathers also have an additional 2 weeks unpaid leave.	Paid 54 weeks (80%) or 44 weeks (100%), employment guaranteed leave which they can divide between maternity and paternity leave. Each parents can also take an additional one year unpaid leave.
Portugal	16 weeks at 100% of usual salary.	One week compulsory at 100% of usual salary.	17 weeks which are paid if taken by the father.
Spain	16 weeks at 100% of usual salary.	Paid 2 weeks at 100% of usual salary.	Parents entitled to unpaid childcare leave on a full-time or part-time basis until the child's 3rd birthday (156 weeks).
Sweden	14 weeks at 100% of usual salary.	Paid 2 weeks at 100% of usual salary.	Paid 18 months parental leave for each parent which can be full-time or part-time.
UK	39 weeks paid at 100% of usual salary, 13 weeks unpaid.	Paid 2 weeks at a fixed amount (as of March 2009 = £123.06).	13 weeks per parent which are unpaid and non-transferable between parents.

Sources include: Ray, 2008, McGinnity and Calvert, 2008, OECD, 2007

1.4 Processes of Redress for Pregnancy Related Discrimination or Dismissal

Claims of discrimination under the Employment Equality Acts (1998 to 2008) are generally brought in the first instance to the Equality Tribunal, with the Equality Officer's decision appealable to the Labour Court. However those claiming discrimination on the gender ground may seek redress in the Circuit Court instead of the Equality Tribunal. While under the Employment Equality Act 1998 discriminatory dismissal claims were initially brought to the Labour Court rather than the Tribunal, jurisdiction in this matter also was transferred to the Equality Tribunal by the Equality Act 2004.

In order for a case to be pursued, the Equality Tribunal requires that claims must be registered with them within six months of the alleged act of discrimination taking place.¹² In the first instance, the Tribunal obtains statements from claimants and respondents and mediation is offered. The mediation process is completely voluntary and generally much faster than a full investigation with an Equality Officer. Most claims are settled through mediation or withdrawn before they reach a full tribunal hearing; but mediation settlements are not open to public scrutiny and therefore it is not possible to assess how many claims are pregnancy-related and how many are successful for the claimant.¹³

A full investigation and hearing with an Equality Officer takes place when mediation is declined or has been unsuccessful. Claimants and respondents are entitled to be present at hearings and legal representation is allowed but not obligatory. For full investigations, many claimants choose representation by a trade union, business association or another non-legal representative while many choose to appear unrepresented. Claimants may also apply for representation to the Equality Authority¹⁴ which, in addition to providing the public with information on Irish equality legislation¹⁵, has an in-house legal service and subject to defined strategic criteria, in some cases provides free legal assistance to persons making complaints of discrimination.

The decisions of the Equality Tribunal's Equality Officers are binding and enforceable at law. All decisions may be appealed to the Labour Court within 42 days of the date of a decision. Where a determination is made by the Labour Court on an appeal, either party may appeal to the High Court on a point of law. Details of decisions are available to the public online (<http://www.equalitytribunal.ie>). Some decisions are anonymised in order to protect the privacy of those affected (for example, in sexual harassment and some disability and sexual orientation cases).

The Rights Commissioner and the Employment Appeals Tribunal

Pregnancy-related grievances brought under the Maternity Protection Acts 1994 and 2004, the Parental Leave Acts 1998 and 2006, the Organisation of Working Time Act 1997 and the Safety, Health and Welfare at Work Act 2005 always go to Rights Commissioner Service of the Labour Relations Commission in the first instance. Cases under the Unfair Dismissals Acts 1977 to 2005 may also be brought to the Rights Commissioner, or either party to the case may instead decide to bring it to the Employment Appeals Tribunal. A decision by a Rights Commissioner under any of the above Acts can be appealed. Appeals are either brought to the Employment Appeals Tribunal or to the Labour Court depending on the specific legislation. The Employment Appeals Tribunal's determinations under the Unfair Dismissals Act can be appealed to the Circuit Court while its decisions under other legislation can be appealed to the High Court on a point of law. Decisions by the Labour Court may not be appealed themselves however an individual can appeal their case to the High Court or the European Court of Justice on a point of law.

12 If there are 'exceptional circumstances', claimants may be allowed to extend this period up to 12 months from the date of alleged discrimination/dismissal.

13 The details and results of mediation agreements are not made public.

14 The Equality Authority is an independent public body set up under the Employment Equality Act 1998. Its objectives are to achieve positive change in the situations and experiences of groups and individuals experiencing inequality.

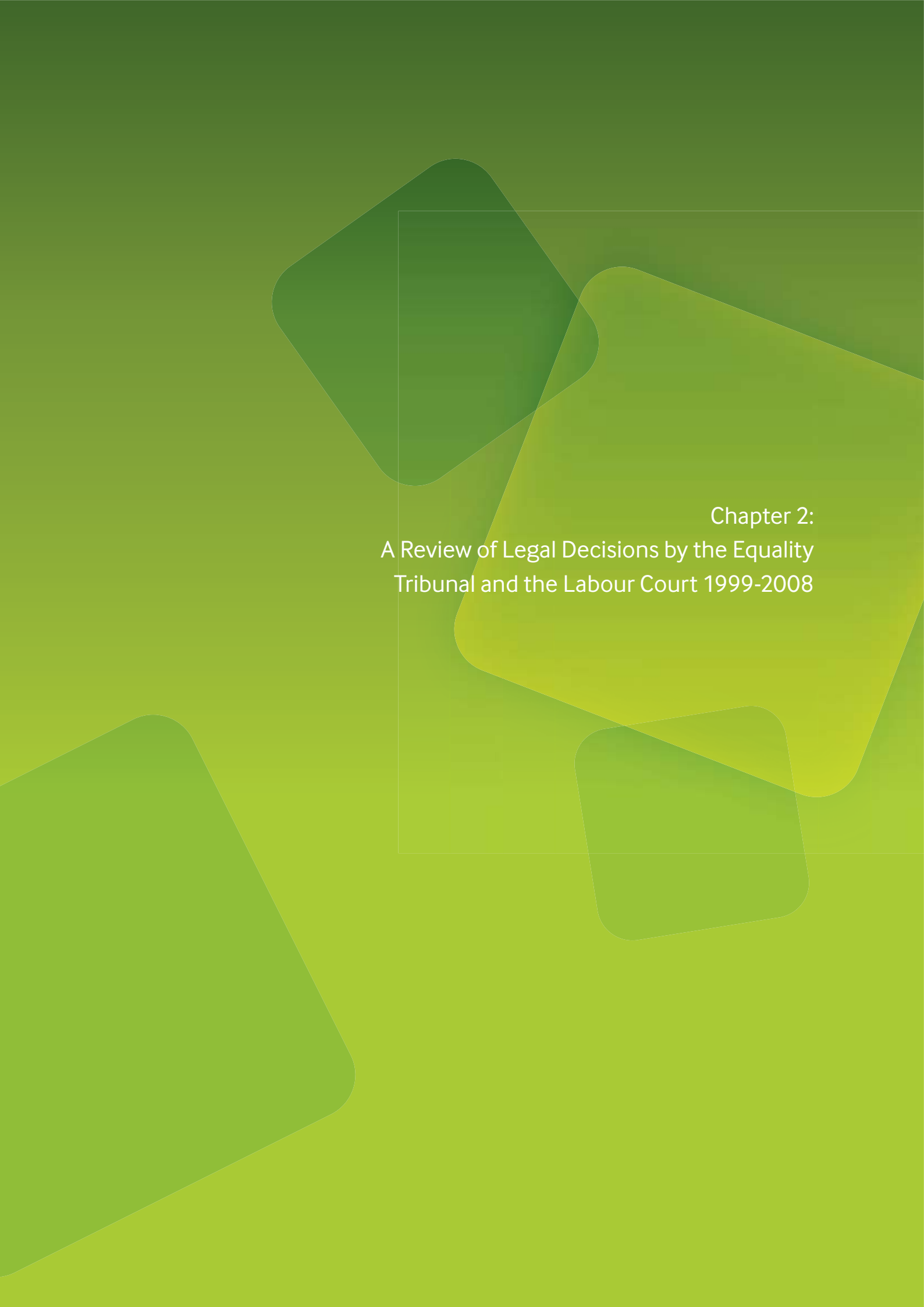
15 Such as the Employment Equality Acts 1998 to 2008, the Equal Status Acts 2000 and 2004, the Maternity Protection Acts 1994 and 2004, the Adoptive Leave Acts 1995 and 2005, and the Parental Leave Acts 1998 and 2006.

1.5 Conclusion

This Chapter has outlined the general legal framework for the protection of women who are employed during pregnancy in Ireland. The law in this area is contained in a number of pieces of primary legislation, in European legislation, in statutory instruments and case law. These legal instruments recognise that the periods of pregnancy, child-birth and subsequent return to employment are times when women in the workplace are vulnerable to unfair treatment or dismissal and specific health and safety risks. This discussion of the legal framework provides the context for the pregnancy-related discrimination and dismissal cases analysed in the following chapter.

The maternity and parental-leave provision in Ireland is also described and compared to entitlements elsewhere in Europe. Maternity and parental-leave legislation is crucial in protecting women's employment rights, as well as protecting the rights of young children. This legislation preserves women's employment relationship for the duration of the leave period through the right to return to work. Maternity and parental-leave legislation is therefore a key factor in maintaining women's occupational security, pay and conditions in both the short and the longer term. The review of provision elsewhere in Europe shows that, despite recent improvements, the entitlements of employed women in Ireland are considerably lower than in many other EU countries.

Finally, the Chapter outlined the processes of redress available to women who wish to take a formal legal case against their employer for pregnancy discrimination and/or dismissal. In the next chapter we investigate the cases brought under the Employment Equality Acts that were decided by the Equality Tribunal and the Labour Court over the ten year period 1999-2008.

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Chapter 2: A Review of Legal Decisions by the Equality Tribunal and the Labour Court 1999-2008

2.1 Introduction

The purpose of this chapter is to provide detailed data on cases relating to pregnancy-related discrimination at work decided under equality legislation by the Equality Tribunal and Labour Court over a ten year period 1999-2008. This review is not intended to be a legal analysis of these cases. Rather it provides a profile of the characteristics of the claimants, their employment and the nature of their experiences in the workplace that led to the legal case, insofar as this can be ascertained from the information that is publicly available.

Reviewing pregnancy-related discrimination cases highlights the complexity of discrimination and the various forms in which it can manifest. Some cases involved overt and observable employment discrimination such as victimisation, being unfairly selected for redundancy or dismissal on notification of pregnancy. Cases of dismissal also included constructive dismissal, where an employee terminated their contract of employment, with or without prior notice, due to the conduct of their employer.¹⁶ Other forms of discrimination were more subtle, such as being turned down for a job while pregnant, employer inflexibility on return to work or a claimant being unsuccessful in getting a promotion while pregnant or on return from maternity leave.

Analysis of legal caseloads is an important tool for the investigation of discrimination in society that has been used in a number of settings and contexts (Darity and Mason, 1998; O'Sullivan and McMahon, 2009). Nevertheless, the nature of the information that such caseloads provide is clearly circumscribed. While the cases decided in favour of the claimant provide evidence of discrimination that meets stringent legal definitions, the incidents of discrimination that reach the court system are highly selective.

Studies of pregnancy-related discrimination in the UK show that only 13% of those who experienced a problem took a formal action i.e. went to an employment tribunal, followed an internal grievance procedure, spoke to a union, Citizens Advice Bureau or lawyer, a further 34% raised the issue with an employer/manager and the remaining 55% took no action or spoke informally to friends, family and colleagues (Adams *et al*, 2005). Similarly, in a study of discrimination across all grounds, Russell *et al* (2008) found that only 6% of Irish respondents who felt they had been discriminated against in the last two years had taken any formal action (official complaint or legal action).

It is therefore important to recognise that using Equality Tribunal and Labour Court cases only represents women who chose to litigate. Claimants are either pregnant or will have recently given birth and it cannot be assumed that the employment tribunal system is easily accessible to women who have experienced pregnancy-related discrimination (James, 2004). Many women may take no action, either because they are unaware of the discrimination or the existence of a remedy or because they wish to avoid stress during or after their pregnancy (Gregory, 2004). It is also important to recognise that only a proportion of pregnancy-related discrimination complaints brought under equality legislation result in decisions, as many cases are resolved at the mediation stage or withdrawn or settled before a decision is reached.¹⁷

2.2 Methodology

Data for this chapter has been compiled using Internet searches of cases on the websites of the Equality Tribunal and Labour Court (See www.equalitytribunal.ie and www.labourcourt.ie). Cases for hearings under all nine discrimination grounds¹⁸ are accessible online and it is possible to distinguish between cases by the Acts in which they fall within (e.g. Employment Equality Acts (1998 to 2008) and/or the Equal Status Acts (2000 to 2008).

The period selected for the study was 1999 to 2008, the starting point of 1999 was chosen as that was the year the Equality Tribunal (then called the Office of the Director of Equality Investigations, ODEI) was set up. The Employment Equality Act (1998) commenced in 1999 and the ODEI/Equality Tribunal was set up on October 18th of that year. Decisions from the Equality Tribunal and Labour Court for the period 1999 to 2008 were assessed and all employment equality pregnancy-related cases were included in the study.

16 In constructive dismissal cases, an employer's conduct must be such that it is reasonable for the employee to terminate their contract without giving notice.

17 Details of cases that are settled or are withdrawn before a final judgement are not made public. Cases that are settled through the mediation service also remain private. The annual report of the Equality Tribunal (2009) records that there were 44 mediated agreements settled under equality legislation in 2008.

18 The nine grounds of discrimination include gender, civil status (previously marital status), family status, sexual orientation, religion, age, disability, race, Traveller community.

In the 'Database of Decisions' section of the Equality Tribunal website, a 'pregnancy' and 'employment' word search over the period 1999 to 2008 located 39 cases that related specifically to pregnancy-related discrimination (See Table 3).¹⁹ On the Labour Court website, 15 cases referred to pregnancy-related dismissal were decided between 1999 and 2008. Additional checks of all decisions taken by the Equality Tribunal and the Labour Court under Employment Equality legislation were undertaken to identify any further relevant cases. All of the combined 54 cases of Equality Tribunal and Labour Court have been used in this study (See Appendix 1).²⁰ Over three quarters of these cases were brought under the gender ground only, the remainder came under multiple grounds of gender and family status and gender and marital status with one which came under the grounds of gender, family status, age and race.

There is an element of interpretation involved in selecting cases that are pregnancy related. Where discrimination took place during pregnancy or while the claimant was on maternity leave and this was cited in the case, all such cases were included. Discrimination that occurred on return to work can be more ambiguous. Maternity legislation, as described in Chapter 1, regulates the timing and conditions under which women re-enter employment following maternity leave. If such rights are contravened then these cases can be included as pregnancy-related discrimination. However in two cases the discrimination in question occurred some time after the claimant returned to work, which was outside the period covered by maternity legislation, and therefore it was decided not to include these cases in the analysis.²¹

Table 3 outlines the total number of decisions²² made under employment equality legislation by the Equality Tribunal and the Labour Court between 1999 and 2008. The distribution of cases between the two bodies reflects the implementation of the legislation over the period. During the period, 654 Employment Equality Decisions were made by the Equality Tribunal, 39 of which involved pregnancy related discrimination. Between 1999 and 2008 the Labour Court made decisions on 58 cases of discriminatory dismissal under equality legislation, and 15 of these cases were pregnancy related. In 2004, the majority of discriminatory dismissal claims were moved from the Labour Court to the Equality Tribunal, therefore the majority of relevant cases from the Labour Court date from 1999 to 2004. However one pregnancy-related dismissal case was decided by the Labour Court in 2006 under Section 77 of the Employment Equality Act, 1998.

19 On the Equality Tribunal website a word search provides 67 cases or references to 'pregnancy' and 'employment' however on closer inspection it emerged that many referred to cases of discrimination and service provision under the Equal Status Act. Similarly the Labour Court website produced 37 cases using the word searches 'pregnancy' and 'employment' out of which only 16 related to pregnancy discrimination at work. One of these, a case of constructive dismissal taken by *A Worker v Michael Guiney's* (Labour Court, 2000), was excluded from the base data as it did not fall under equality legislation. Appeals of Equality Tribunal Decisions to the Labour Court and Equal Status cases, which deal with access to services, are not included in this analysis (see below for more details).

20 As discussed in Chapter 1, claimants can also bring cases of pregnancy-related dismissal directly to the Employment Appeals Tribunal (EAT) under other employment legislation. Information on decisions from the EAT is only available online from 2006. A search of this online database for the period 2006 to 2008 shows 31 claims of pregnancy-related dismissal were brought to EAT over the three year period. Information on decisions at the Employment Appeals Tribunal before this period is only available in hard copy at the EAT.

21 In the case of *Glennon v Board of Management* (ET 2003), the claimant had returned to work and subsequently did not receive a promotion and argued that her time taken on three periods of maternity leave had contributed to a case of discrimination on family grounds. This claim was not successful. In the case of *Geasley v Waterman* (ET 2001) the claimant had returned to work on reduced hours as agreed with the employer but claimed that she was subsequently discriminated when not offered full-time hours later that year. This case was also unsuccessful.

22 The Labour Court uses the term "Determinations" rather than Decisions, however for consistency we have used the term decisions to signify cases that reached a ruling in either the Labour Court or Equality Tribunal.

Table 3: Number of Decisions taken under Employment Equality Legislation 1999 to 2008

Year	Equality Tribunal		Labour Court	
	Employment Equality Decisions	Pregnancy Related	Employment Equality Decisions - discriminatory dismissal	Pregnancy Related Discriminatory Dismissal
1999	98	3	0	0
2000	45	0	1	1
2001	43	4	7	0
2002	56	1	13	6
2003	60	2	17	6
2004	77	3	10	1
2005	62	4	7	0
2006	63	7	2	1
2007	77	6	1	0
2008	73	9	0	0
Total	654	39	58	15

Note: All cases in 1999 and all but one case in 2000 were taken under the 1974 Equal Pay Act and the Employment Equality Act 1977. From 2001 onwards nearly all cases were taken under the 1998 Employment Equality Act and subsequently under the 2004 Equality Act. As noted in the text the majority of discriminatory dismissal cases moved from the Labour Court to the Equality Tribunal in 2004.

Source: Equality Tribunal and Labour Court, Annual Reports and on-line data bases 1999-2008.

The case reports provide rich and detailed information on the nature of the dispute in each of the cases and some of this individual case information is summarised in the Appendix to this report. Drawing on this information, the analysis below examines the outcomes of these cases, the type of discrimination involved (distinguishing between dismissal cases and other forms of discrimination), and the timing of discrimination (distinguishing between cases arising at the point of recruitment; at work during pregnancy; during maternity leave; and on return to work after maternity leave). It also examines some characteristics of the claimants and their employers. The information in the databases allows analysis of claimants' occupational group, length of time in the job, full-time/part-time status and the industrial sector of the employer (there is no information on the personal characteristics of claimants such as age, education or number of children). Finally it examines aspects of the court process including representation and compensation awarded.

2.3 Case Outcomes

The cases can be divided into successful and unsuccessful on the basis of the outcome for the claimant. While in some cases, claimants were successful on one discrimination ground but not on another, for the purpose of this report only claimants that succeed in their claim of pregnancy discrimination are classified as successful. Therefore if the claimant is successful on another ground and unsuccessful in relation to claim of pregnancy discrimination it is classified as unsuccessful. The outcomes refer to the judgement in the initial hearing and are not adjusted to take account of the result of appeals.²³

This study shows that in 34 cases (63%) the claimants were successful (see Table 4 for breakdown). In the remaining 20 cases (37%), the Equality Tribunal or the Labour Court did not find adequate evidence of discrimination or

²³ As discussed in Chapter 1, Equality Tribunal decisions can be appealed to the Labour Court. Examples include an appeal against an Equality Tribunal decision in the case *North Western Area Health Board v McKenna* (2001) which was brought to Labour Court and then referred by the Labour Court to the European Court of Justice where the decision of the Equality Tribunal was set aside, i.e. the European Court ruled that North Western Area Health Board had not discriminated against McKenna by docking her wages after she took sick leave due to a pregnancy-related illness. Other appeals were made to the Labour Court by employers including *Pamela Scott v Costello* (2004) and by claimants such as *Carroll v Limerick City Council* (2008) and *Sweeney v HSE Midlands Area* (2008) all of which were upheld (i.e. the original decisions by the Equality Tribunal were confirmed and the appeals were rejected).

dismissal related to pregnancy. A useful distinction can be made between cases involving dismissal, which account for 25 (46%) of the cases and those involving other types of pregnancy-related discrimination, which account for 29 cases (54%). Cases of discriminatory dismissal had an 80% success rate while pregnancy related discrimination cases that do not involve dismissal are less likely to be successful for the claimant (48% of such cases were successful).²⁴

The pattern of outcomes differs somewhat across the two bodies in that 59% of the cases heard by the Equality Tribunal were successful compared to 73% of the cases heard by the Labour Court. However, when only dismissal cases are considered, the success rate in the Equality Tribunal is 90%; this is not statistically different from the figure for the Labour Court.

Table 4: Breakdown of Cases by Type, Hearing and Outcome for the Claimant

	Equality Tribunal		Labour Court		All	
	N Cases	Successful	N Cases	Successful	N Cases	Successful
Dismissal	10	9 (90%)	15	11 (73%)	25	20 (80%)
Other Discrimination	29	14 (48%)	N/A	N/A	29	14 (48%)
<i>All Discrimination</i>	<i>39</i>	<i>23 (59%)</i>	<i>15</i>	<i>11 (73%)</i>	<i>54</i>	<i>34 (63%)</i>

Source: Equality Tribunal and Labour Court, 1999-2008

2.4 Timing of Discrimination

The decisions can be usefully categorised on the basis of when the pregnancy-related discrimination takes place. Here we categorise cases into four distinct periods; at the point of recruitment; at work during pregnancy; during maternity leave; and on return to work following a period of maternity leave.²⁵ Just over two thirds of the cases (68.5%) referred to discrimination at work during pregnancy (Table 5), with 13% occurring during maternity leave and a further 13% arising on return to work. Claims of discrimination on recruitment are relatively uncommon accounting for only 3 (5.6%) of cases examined. Job candidates often have incomplete information about the selection process and the qualifications of the successful candidate, which makes it more unlikely that they will pursue a legal case (see McGinnity *et al*, 2009 for a study of discrimination in recruitment based on a field experiment).

Of 37 cases related to discrimination while women were at work during their pregnancy, 21 (56.8%) involved claims of discriminatory dismissal and 16 (43.2%) concerned other types of discrimination which included being sidelined in employment, having a change of working arrangement or being unfairly placed on Health and Safety Leave following notification of pregnancy. Dismissal at work during pregnancy accounted for the vast majority of all dismissal claims (84%) with the remaining four dismissal cases all arising during maternity leave. In these two periods, dismissal cases accounted for a majority of cases (57%) while no dismissal cases arose on return to work or, by definition, at the point of recruitment.

²⁴ This difference in the success rates of dismissal and 'other discrimination' cases is statistically significant (chi-square $P=0.023$).

²⁵ A small number of cases related to women who experienced discrimination in more than one of these periods. Cases are categorised according to when the main act of discrimination or dismissal took place.

Table 5: Type of Dispute by Timing of Dispute

	Dismissal		Other Discrimination		All cases	
	No.	%	No.	%	No.	%
Point of recruitment	N/A	N/A	3	10.3	3	5.6
At work during pregnancy	21	84.0	16	55.2	37	68.5
During maternity leave	4	16.0	3	10.3	7	13.0
On return to work	0	0.0	7	24.1	7	13.0
All	25	100.0	29	100.0	54	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

Claims in respect of discrimination 'during maternity leave' were less likely to succeed than those in regard to the other periods (Table 6). This was true of both 'dismissal' and 'other discrimination' cases. Two of four (50%) dismissal claims arising during maternity leave were successful compared to 86% (18 of 21) of claims of dismissal occurring 'at work during pregnancy'. None of the claims of 'other discrimination' during maternity leave were successful compared to 50% (8 of 16) of those arising at work during pregnancy and over 60% in the other two periods.²⁶

Table 6: Outcomes of Cases by Timing of Dispute

	Successful	Unsuccessful	All	Success Rate
	No.	No.	No.	%
Point of recruitment	2	1	3	66.6
At work during pregnancy	26	11	37	70.3
During maternity leave	2	5	7	28.6
On return to work	4	3	7	57.1
All	34	20	54	63.0

Source: Equality Tribunal and Labour Court, 1999-2008

2.5 Characteristics of Claimants and Employers

In this section, cases are analysed by the occupational group and employment sector of claimants, whether claimants are in full-time or part-time work, and their length of service in the relevant employment.

Occupational Group

The majority of claims were from women employed in 'Personal Services and Sales' (37%), 'Clerical and Secretarial' (22%) and 'Professional/Associate Professional' (22%) occupational groups (Table 7). These three groups are also the largest occupational categories for women in the labour force. Overall the distribution of legal cases of pregnancy discrimination reflects the distribution of female employment. Due to the small number of cases the deviation from the figures for all female employees are not statistically significant.²⁷ A study of pregnancy related legal cases in England and Wales between 1996 and 2002 (James 2004) also found that allegations of pregnancy-related discrimination were spread across the range of occupations where women were employed.

²⁶ Difference between outcomes by the timing of the incident was not statistically significant.

²⁷ There are large standard errors attached to the estimates from a sample of this size. For example, the confidence intervals for the proportion of women from personal service occupations ranges from 24% to 51%, which encompasses the labour force figure of 29%. However as the data is not a random sample these intervals are indicative.

Table 7: Occupational Group of Claimants

	No of Cases	% of cases	% Labour Force (female)
Managers and Administrators	4	7.4	11.6
Professional, Assoc. Professional & Technical	12	22.2	25.6
Clerical and Secretarial	12	22.2	21.2
Craft and related	2	3.7	1.3
Personal Services and Sales	20	37.0	29.1
Plant and Machine Operatives	0	0	2.6
Other (Unskilled & unknown)	4	7.4	8.1
Total	54	100.0	99.9

Source: Equality Tribunal and Labour Court, 1999-2008, Statistical Yearbook of Ireland, 2009, figures for 2008

There appears to be some difference in the occupational composition of dismissal cases and other discrimination cases.²⁸ Just over half of all the pregnancy related dismissal cases related to women employed in 'Personal Services and Sales' compared to one quarter of the 'other discrimination' cases (Table 8). These occupations tend to be lower skilled, more insecure and with a higher rate of job turnover, and therefore a greater risk of dismissal in general. Dismissal cases are less common among the professional/associate professional group.

Table 8: Type of Dispute by Occupation

	Dismissal		Other Discrimination	
	No.	%	No.	%
Managers and Administrators	2	8.0	2	6.9
Professional, Assoc. Professional & Technical	2	8.0	10	34.5
Clerical and Secretarial	5	20.0	7	24.1
Craft and Related	2	8.0	0	0.0
Personal Services and Sales	13	52.0	7	24.1
Unknown	1	4.0	3	10.3
Total	25	100.0	29	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

The figures in Table 9 suggest that there may be variation in outcomes depending on the occupational group of the claimant, however because of the small number of cases involved these differences are not statistically significant.

²⁸ The difference in occupational distribution by dispute type has a significance level of .07.

Table 9: Case Outcomes by Occupation

	Successful	Unsuccessful	All	Success Rate
	No.	No.	No.	%
Managers and Administrators	4	0	4	100.0
Professional, Assoc. Professional & Technical	5	7	12	41.6
Clerical and Secretarial	7	5	12	58.3
Craft and related	1	1	2	50.0
Personal Services and Sales	14	6	20	70.0
Plant and Machine Operatives	0	0	0	N/A
Other (Unskilled & unknown)	3	1	4	75.0
Total	34	20	54	63.0

Source: Equality Tribunal and Labour Court, 1999-2008

Employment Sector

An analysis of the employment sectors in which claimants worked suggests that the 'Wholesale and Retail' sector is over-represented in comparison to its share in the labour market in cases of pregnancy-related discrimination and dismissal (See Table 10 – 35% in the sample compared with 16% in the labour market).²⁹ The second largest group are women working in 'Finance and Other Business Services' (20%); the size of this group is close to the proportion in the labour market.

Table 10: Employment Sector of Claimants

Economic Sector (NACE)	No.	% of sample	% of All Female Employees
Agriculture	1	1.9	1.3
Other Production Industries	0	0.0	9.2
Construction	0	0.0	1.5
Wholesale & Retail Trade	19	35.2	16.0
Hotels and Restaurants	8	14.8	8.1
Transport & Communication	0	0.0	3.0
Financial & Business Services	11	20.4	16.4
Public Admin. & Defence	4	7.4	6.0
Education	5	9.3	11.6
Health	4	7.4	19.4
Other Services	2	3.7	7.5
Total	54	100.0	100.0

Source: Equality Tribunal and Labour Court, 1999-2008, % female employees from Russell et al., 2009

The type of dispute appears to vary somewhat by sector (Table 11). In the Hotel & Restaurant sector all the cases involved dismissal. While in the education sector all cases involved other types of discrimination on the basis of pregnancy. In most sectors the majority of cases were 'other discrimination' with the exception of financial services, where more than half the cases involved dismissal. Due to small numbers these differences are not statistically significant, however such variation does emerge when the sectors are collapsed into public and private (see Table 14 below).

²⁹ The confidence intervals for this estimate would be 22% to 48%, which suggests the difference is statistically significant.

Table 11: Type of Dispute by Employment Sector

Economic Sector (NACE)	Dismissal		Other Discrimination	
	No.	%	No.	%
Agriculture	0	0	1	3.4
Wholesale & Retail Trade	8	32.0	11	37.9
Hotels and Restaurants	8	32.0	0	0
Transport & Communication	0	0	0	0
Financial & Business Services	6	24.0	5	17.2
Public Administration & Defence	1	4.0	3	10.3
Education	0	0	5	17.2
Health	1	4.0	3	10.3
Other Services	1	4.0	1	3.4
Total	25	100.0	29	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

Note: Production, Construction and Transport/Communication Sectors not included as there were no pregnancy-related cases in these sectors.

Hearing outcomes by the industrial sector of the employer are presented in Table 12. In the public administration sector none of the cases were successful for the claimants (although in one case the claimant was successful on appeal), while cases relating to the Hotel and Restaurant sector were all successful. The numbers are too small for statistical significance however if we collapse the categories into public and private sectors we find that cases relating to the private sector are significantly more likely to result in a successful outcome for the claimant than those in the public sector (see Table 15 below).

Table 12: Case Outcomes by Employment Sector

Economic Sector (NACE)	Successful	Unsuccessful	Total	Success Rate
	No.	No.	No.	%
Agriculture/production/construction	1	0	1	100.0
Wholesale & Retail Trade	10	9	19	52.6
Hotels and Restaurants	8	0	8	100.0
Financial & Business Services	8	3	11	72.7
Public Administration & Defence	0	4	4	0
Education	3	2	5	60.0
Health	2	2	4	50.0
Other Services	2	0	2	100.0
Total	34	20	54	63.0

Source: Equality Tribunal and Labour Court, 1999-2008

Note: Production, Construction and Transport/Communication Sectors not included as there were no pregnancy-related cases in these sectors.

Public /Private Sector

Forty-three of the 54 pregnancy-related discrimination cases were located in the private sector. The private sector share of cases (80%) is somewhat higher than the 74.1% of female employees who work in the private sector (NCP/ESRI, Changing Workplace Survey 2003). However given the small numbers, this difference between litigants and all employees may be due to chance.³⁰ Out of the private sector cases, 44% were in the areas of 'Wholesale and Retail Trade', 19% in 'Hotels and Restaurants' and a further 26% in 'Financial & Business services'.

Eleven of the 54 cases involved public sector organizations and five of these were in 'Education'. The remaining public sector employees were working in 'Health' (2 cases) and in 'Public Administration and Defence' (4 cases).

Table 13: Public or Private Sector

	No of Cases	% of cases	% of All Female Employees
Public	11	20.4	25.7
Private	43	79.6	74.1
Total	54	100	100.0

Source: Equality Tribunal and Labour Court, 1999-2008 and NCP/ESRI Changing Workplace Survey, 2003.

Just 1 of the 11 public sector cases related to dismissal compared to 24 of the 43 cases in the private sector (Table 14). The difference in the level of dismissal cases in the public and private sector is statistically significant and is likely to be related to differences in security of tenure in the public and private sector; for example in 2009, 21% of public sector workers felt their job was insecure compared to 32% of private sector workers (O'Connell *et al* 2010, p36). Nevertheless, a significant minority of public sector workers are on fixed-term/temporary contracts and are therefore exposed to the risk of dismissal.³¹ The fact that fewer public sector employers are brought to the Equality Tribunal and Labour Court in cases of discriminatory dismissal may also be related to the well 'developed equal opportunities policies, tried and tested internal grievance procedures and the knowledge, experience and resources to fulfil their employment obligations' (Gregory, 2004, p11). O'Connell and Russell (2005) found that, in Ireland, public sector employees are more likely to have formal equality policies in place.

Table 14: Type of Dispute by Public/Private Sector

	Dismissal		Other Discrimination	
	No.	%	No.	%
Public	1	4.0	10	31.0
Private	24	96.0	19	69.0
All	25	100	29	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

Cases brought by private sector workers were more likely to be successful for the claimant (72%) than public sector cases (28%), however this difference is due to the higher incidence of dismissal claims among women working in the private sector.

³⁰ The 95% confidence intervals for the percentage of private sector workers in a random sample of 54 employees would range from 71 to 92%.

³¹ In 2009 16% of public sector employees were on fixed-term or temporary contracts compared to 10% of private sector employees (O'Connell *et al* 2010, p36).

Table 15: Case Outcomes by Public/Private Sector

	Successful	Unsuccessful	All	Success Rate
	No.	No.	No.	%
Public	3	8	11	27.2
Private	31	12	43	72.1
Total	34	20	54	63.0

Source: Equality Tribunal and Labour Court, 1999-2008

Full-time / Part-time Work

In relation to claims by full or part-time staff, 47 (87%) of the women worked full-time at the point of the alleged act of pregnancy-related discrimination or dismissal (Table 16). Given that national figures suggest that 32% of women work in part-time employment (QNHS, 2007), these figures are perhaps surprising.³² This may indicate that full-time workers are more likely to pursue actions at tribunals rather than suggesting that they are more vulnerable to discrimination. Alternatively, barriers to taking a case of pregnancy discrimination may be more entrenched among part-time workers. Moreover, the rate of full-time work is higher among those without children and so the results could indicate that discrimination is more common during first pregnancy (Adams *et al.*, 2005). In total, seven of the fifty-four cases involved part-time workers, three of whom were employed in 'Personal Services and Sales', two in 'Clerical and Secretarial' jobs and another two in 'Associate Professional Technical Occupations'.

Table 16: Full-time and Part-time Work

	No of Cases	% of cases	% of All Female Employees
Full-time	47	87.0	68.3
Part-time	7	13.0	31.7
Total	54	100.0	100.0

Source: Equality Tribunal and Labour Court, 1999-2008 and NCPP/ESRI Changing Workplace Survey 2003

There was no significant difference in the broad type of dispute between full-time and part time employees (Table 17). Of the full-time cases, 22 (47%) related to dismissal, of which 19 occurred during pregnancy. Although the numbers are small, three (42%) of the part-time cases related to dismissal and the remaining four cases concerned other forms of discrimination.

Table 17: Type of Dispute by Full-time and Part-time Work

	Dismissal		Other Discrimination	
	No.	%	No.	%
Full-time	22	88.0	25	86.2
Part-time	3	12.0	4	13.8
All	25	100.0	29	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

³² This difference is significant at the 5% level

There was no significant difference in the success rates of case outcomes between claimants working full time and part-time (Table 18).

Table 18: Case Outcomes by Full-time and Part-time Work

	Successful	Unsuccessful	All	Success Rate
	No.	No.	No.	%
Full-time	30	17	47	63.8
Part-time	4	3	7	57.1
All	34	20	54	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

Length of Service

This section examines the relationship between length of service and women's treatment at work when pregnant. The findings indicate that those pursuing pregnancy-related discrimination claims to a decision are likely to have shorter length of service in their employment; 37% of all claimants had less than a year's service with their employer (Table 19). This compares to 16.2% of all female employees who have job tenures of less than one year (NCPP/ESRI Changing Workplace Survey, 2003). A difference of this size is statistically significant.³³ Fifteen women who brought claims of dismissal during pregnancy and five who pursued claims of other discrimination during pregnancy had less than one year's service. Women with longer job tenures appear to be less vulnerable to discrimination during pregnancy. Women who have been with their employer for more than 5 years account for almost half of employees but only 13% of the cases.

Table 19: Length of Time in Employment

	All	% of cases	% of All Female Employees
Less than 1 yr	20	37.0	16.2
1 to 5 yrs	20	37.0	38.1
6 to 10 yrs	2	3.7	42.9
More than 10 yrs	2	3.7	
Not known	7	13.0	2.7
Job application	3	5.6	N/A
Total	54	100.0	100.0

Source: Equality Tribunal and Labour Court, 1999-2008 and NCPP/ESRI Changing Workplace Survey, 2003, authors' analysis.

Claims of discriminatory dismissal were particularly concentrated among women with short job tenures: 60% of claims came from employees less than one year in their job making up 15 out of a total of 25 cases of dismissal. Employees in this group claimed they were either dismissed shortly after notifying their employers of their pregnancy, were unfairly selected for redundancy or were forced to resign by employers change in behaviour or unfair treatment (constructive dismissal). This may be due to a misperception amongst employers that those with less than 12 months service are not protected from unfair dismissal. However, as we saw in Chapter 1, there is no length of service requirement for any employee bringing a claim under the Employment Equality Acts and a pregnant worker can bring a claim under Unfair Dismissal legislation regardless of the length of service. These findings correlate with studies in the UK, which suggest that length of time in employment may be an important factor in a woman's treatment at work when pregnant (Adams *et al*, 2005, Pagonis, 2002, James, 2004). Other forms of pregnancy-related discrimination were also less common among those with more than five years service (See Table 20). Only 14% of women taking 'other discrimination' cases had over 5 years service with their current employer, compared to 43% of all female employees.

³³ The confidence interval around the 37% estimate for a random sample of employees would be 24 to 50%.

Table 20: Type of Dispute by Length of Time in Employment

	Dismissal		Other Discrimination	
	No.	%	No.	%
LT 1yr	15	60.0	5	17.2
1 to 5 yrs	9	36.0	11	37.9
6 to 10 yrs	0	0.0	2	6.9
Over 10 yrs	0	0.0	2	6.9
Job app.	0	0.0	3	10.3
Unknown	1	4.0	6	20.7
Total	25	100.0	29	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

Length of tenure did not significantly affect the outcomes of the discrimination cases (see Table 21) nor did the pattern of successful outcomes vary significantly according to the type of judicial body in which claims were processed. Claimants with less than one year's employment who brought cases to the Equality Tribunal were as likely to succeed as those brought to the Labour Court (63% and 68% respectively).³⁴

Table 21: Case Outcomes by Length of Time in Employment

	Successful	Unsuccessful	All	Success Rate
	No.	No.	No.	%
Less than 1 yr	13	7	20	65.0
1 to 5 yrs	11	9	20	55.0
6 to 10 yrs	0	2	2	0.0
More than 10 yrs	2	0	2	100.0
Not known	6	1	7	85.7
Job application	2	1	3	66.7
All	34	20	54	63.0

Source: Equality Tribunal and Labour Court, 1999-2008 and NCPP/ESRI Changing Workplace Survey, 2003, authors' analysis.

2.6 Representation of Claimants

Change in the labour market in recent decades has meant that the form of representation chosen by employees in cases of alleged discrimination has become increasingly diverse. Rapid increases in overall employment, higher female participation and labour force growth of non-Irish nationals during the period 1999 and 2008 have resulted in greater variation in the types of employment disputes and more specialist forms of representation being used. In relation to employment equality law in general, O'Sullivan and MacMahon (2009) find that in addition to trade unions, the most common type of representation in Ireland is legal representation (O'Sullivan and MacMahon, 2009).

In the cases of pregnancy related discrimination reviewed here, the Equality Authority provided legal representation to 16 claimants (30%) and a further 15 claimants (28%) were represented by private solicitors (See Table 22). Eleven claimants (20%) used trade union representation and a further 11 claimants (20%) represented themselves. One claimant (2%) was represented by the Migrant Rights Centre. Claimants were just as likely to represent themselves

³⁴ This analysis does not control for the content of individual cases.

in dismissal cases as in cases involving other forms of discrimination. However, trade unions were more likely to represent 'other discrimination' cases while the Equality Authority was more likely to represent claimants in discriminatory dismissal cases.³⁵

The majority of claimants in the Equality Tribunal were represented by themselves (28%), a trade union (28%) or a private solicitor (26%) with the Equality Authority representing 15% of these cases. Other forms of representation at the Equality Tribunal included the Migrant Rights Centre (one case which was successful). In all 15 dismissal claims decided by the Labour Court the claimant had legal representation either through the Equality Authority (11 cases) or through private solicitors (4 cases), and all self represented dismissal cases were heard in the Equality Tribunal

Table 22: Type of Dispute by Representation of Claimants

	Dismissal		Other Discrimination		All cases	
	No .	%	No.	%	No.	%
Equality Authority	11	44.0	5	17.2	16	29.6
Private Solicitor	8	32.0	7	24.1	15	27.8
Trade Union	0	0.0	11	37.9	11	20.4
Self	5	20.0	6	20.7	11	20.4
Migrants Rights Centre	1	4.0	0	0.0	1	1.9
All	25	100	29	100.0	54	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

When using such a limited sample of cases it is difficult to determine whether representation influences case outcomes (O'Sullivan and MacMahon, 2009). Seventy-three per cent of cases where claimants represented themselves were successful as were 11 out of 16 cases (69%) represented by the Equality Authority, compared to just over half of cases represented by private solicitors and trade unions (53% and 55% respectively). However because of the small number of cases these differences are not statistically significant.³⁶

Table 23: Case Outcomes by Representation of Claimants

	Successful	Unsuccessful	All	Success Rate
	No.	No.	No.	%
Equality Authority	11	5	16	68.8
Private Solicitor	8	7	15	53.3
Union	6	5	11	54.5
Self	8	3	11	72.7
Migrants Rights Centre	1	0	1	100.0
All	34	20	54	63.0

Source: Equality Tribunal and Labour Court, 1999-2008

³⁵ The difference in representation by type of dispute is statistically significant ($p=.007$).

³⁶ We also tested whether there were differences in outcomes by representation by type of dispute (dismissal and other discrimination). No such differences were found for example, 73% of dismissal cases taken by the Equality Authority were successful compared to 75% of dismissal cases where the respondent represented herself.

2.7 Awards

The amount of compensation made to successful litigants may be one factor influencing an individual's decision to pursue a court case or tribunal hearing. Compensation received across all 34 pregnancy discrimination and dismissal cases judged in favour of the claimants are outlined in Table 24. The maximum amount of compensation arising from a claim made under the Employment Equality Acts, 1998 and 2004 for acts of discrimination cannot exceed a sum calculated as being not greater than 104 weeks pay. Costs cannot be awarded to either party for legal representation and therefore fees are deducted from claimants' compensation, which means the amount ultimately received by the claimant is reduced. Just over half of claimants who received compensation received between €5,000 and €15,000.

Table 24: Value and Number of Awards in Successful Cases

Compensation	No. of cases 1999-2008	% of Cases
Under €5,000	3	8.8
€5,000 - €9,999	9	26.5
€10,000 - €15,999	9	26.5
€16,000 - €19,999	7	20.6
€20,000 and over	6	17.6
Total	34	100.0

Source: Equality Tribunal and Labour Court, 1999-2008

The average amount of compensation paid was higher in cases of dismissal than for other forms of discrimination, as discriminatory dismissal tends to entail greater financial loss for the victim. The average compensation paid for dismissal cases over the 10 year period was €16,142 compared to €14,284 for successful claims of other discrimination.

Despite this the average compensation of €17,173 paid at the Equality Tribunal between 1999 and 2008 was higher than the average of €11,623 awarded at the Labour Court. Just over 40% of successful claimants at the Equality Tribunal received compensation over €15,000 compared to 27% of claimants at the Labour Court. Comparing only dismissal cases the difference in the average compensation awarded by the Equality Tribunal and the Labour Court is even wider (see Table 25). There are a number of reasons for this, firstly the occupational profile of the Equality Tribunal claimants is higher than Labour Court claimants which means compensation based on earnings should be higher, secondly the more recent cases are concentrated in the Equality Tribunal and the comparison makes no correction for wage inflation over the period. Finally, two high compensation pay-outs also have a big affect on the average due to the small number of cases.

Table 25: Value of Awards by Judicial body and Dispute Type (€)

	Equality Tribunal	Labour Court	All cases
	€	€	€
Dismissal	21,667	11,623	16,142
Other Discrimination	14,284	N/A	14,284
Total	17,173	11,623	15,377

Source: Equality Tribunal and Labour Court, 1999-2008

2.8 Conclusion

The aim of this chapter is to analyse pregnancy-related discrimination and dismissal at work based on the sample of cases heard at the Equality Tribunal and Labour Court between 1999 and 2008. This review of decisions provides detailed information about the types of discrimination experienced and the factors related to successful outcomes. Cases have been analysed according to when the discrimination or discriminatory dismissal took place such as at the point of recruitment, at work during pregnancy, during maternity leave or on return to work. This chapter also examined the occupational group and employment sector of claimants, whether they are in full-time or part-time work and how long they have been employed with the respondents. In addition, the cases provide an insight into the type of representation used by claimants and the compensation awarded to successful claimants.

The review of cases and their outcomes highlights the range of negative situations experienced by women during pregnancy, on maternity leave and on their return to work. The analysis also highlights some indicative trends on pregnancy discrimination cases brought to the Labour Court and Equality Tribunal under Equality Legislation during the relevant period.

The chapter highlights that by far the greatest number of claims (69% of all claims) brought to the Equality Tribunal and Labour Court related to discrimination *during* women's pregnancy. A further 13% cases related to discrimination while on maternity leave, 13% on return to work and 6% at the point of recruitment. The cases were almost equally divided between dismissal (46%) and other forms of unfavourable treatment (54%), eg. demotion, deterioration in working conditions/hours, denial of promotion. All of the Labour Court cases involve dismissal.

Overall, 63% of the cases covered in the study were successful for the claimant at the initial hearing (we do not take into account appeals that may over-turn the original decision). Cases involving discriminatory dismissal were more likely to be successful (80%) than those involving other forms of discrimination (48%). For dismissal cases there was no difference in outcomes between the two judicial bodies.

The study highlights a number of findings regarding the characteristics of claimants and respondents. Overall the occupational distribution of claimants reflects the profile of women in the Irish labour force. However, there appears to be a difference in occupational composition by the type of dispute, in that women from personal service and sales occupations are over-represented in cases involving dismissal. There was no significant difference in outcomes between occupational groups.

There is little evidence that legal cases of discrimination are concentrated in specific sectors, rather the sectors of employment broadly reflect women's employment. The exceptions found were that the retail and wholesale sector is over-represented across all cases and that cases of discriminatory dismissal were less common in the public than the private sector. However the number of cases involved is small so these conclusions are cautious.

The results show that full-time workers are over-represented among litigants as are women with short job tenures. Nearly three-quarters of all claimants were working less than five years with their employer (37% from women with job tenures less than one year). For women working with their employer longer than five years, the number of claims falls significantly. Cases of discriminatory dismissal are particularly concentrated amongst those with short tenures.

While there was a good deal of variation in the type of representation across the 54 cases examined there was no evidence that type of representation influenced the outcomes. As with all the results, the numbers are small and cannot be generalised to other cases taken to either body. The level of compensation awarded to claimants in successful cases ranged from €2,000 to €85,000. The average amount of compensation was higher in cases of dismissal.

Given that there are only a small number of cases and that the cases are confined to women that have taken the decision to litigate, the risk factors identified in the current study (full-time employment, short job tenure, retail sector, personal service jobs) need to be tested on a larger more representative sample of women. Such issues will be addressed in *Pregnancy at Work: A National Survey* (Russell, Watson & Banks, forthcoming) commissioned by the Crisis Pregnancy Programme and the Equality Authority.

The legal cases discussed in this report are likely to represent only a small fraction of instances of pregnancy-related discrimination and dismissal in the workplace. The analysis does not include cases of pregnancy dismissal brought directly to the Employment Appeals Tribunal under Unfair Dismissal legislation, nor does it include cases settled through mediation or settled informally/withdrawn before the Labour Court or Equality Tribunal hearing. More significantly in terms of the numbers involved, an analysis of legal cases does not cover incidents of discrimination where women did not pursue formal claims through the legal system. In an Irish study covering the general population and all grounds of discrimination found that only 6% of respondents who felt they had been discriminated against in the preceding two years made an official complaint or took a legal action (Russell *et al.*, 2008). Barriers face all employees in taking cases against their employer including fear of damaging their current and future employment prospects, lack of knowledge of rights, inadequate resources and stress. However it is likely that some of these disincentives, such as the mental and physical strain of pursuing a legal case, will be intensified in the case of women who are pregnant or caring for a baby.

While legal cases are unrepresentative of the range of discrimination experienced, they provide evidence of discrimination that has a high level of validity. The successful cases outlined above have been judged to involve discrimination by an independent third party within a strict set of rules and definitions, and involving the presentation and assessment of evidence. The legal cases described here also provide a level of detail on the actions of both employer and employee that is unavailable in large-scale surveys. Therefore studies of formal legal cases provide a valuable addition to our knowledge about women's experiences at work during and post-pregnancy.

Appendix 1: Pregnancy Related Discrimination Decisions made by the Equality Tribunal and the Labour Court, 1999 – 2008

Hearing	Year	Claimant	Respondent	Type of Dispute	Public/ Private	Tenure	FT/PT	Outcome
ET	1999	Brennan	St Michael's House	Unsuccessful in an interview	Public	Job app.	FT	Unsuccessful
ET	1999	Cullen	Oxtron (SuperValu)	Unfavourable treatment on notification of pregnancy, during pregnancy and maternity leave	Private	1 to 5 yrs	PT	Unsuccessful
ET	1999	Employee	An Employer	Unfavourable treatment on return from maternity leave demoted, less favourable working conditions plus sexual harassment	Public	1 to 5 yrs	FT	Unsuccessful
LC	2000	Mulcahy	Waterford Leader Partnership	Dismissal while on maternity leave	Public	LT 1yr	FT	Unsuccessful
ET	2001	O'Malley	Golden Vale	Dismissal on notification of pregnancy	Private	1 to 5 yrs	FT	Successful
ET	2001	Weldon	Primera Soft Furnishings Ltd	Not promoted, demoted and less favourable working conditions due to pregnancy	Private	1 to 5 yrs	FT	Unsuccessful
ET	2001	McKenna	North Western Health Board	Took sick leave during pregnancy - pay was reduced	Private	Unknown	FT	Successful
ET	2001	Walsh	Tesco Ireland/Quinnsworth	Refusal to sanction part-time hours on return from maternity leave	Private	6 to 10 yrs	FT	Unsuccessful
ET	2002	Black	Tesco Ireland	Failed to provide with part-time work following maternity leave	Private	over 10 yrs	FT	Successful
LC	2002	A worker	A company	Dismissal on notification of pregnancy	Private	LT 1yr	FT	Successful

Hearing	Year	Claimant	Respondent	Type of Dispute	Public / Private	Tenure	FT/PT	Outcome
LC	2002	A worker	Emerdale Ltd	Constructive dismissal, demoted, job advertised while still working	Private	LT 1yr	FT	Successful
LC	2002	McKay	Employer	Dismissal while on maternity leave	Private	1 to 5 yrs	FT	Successful
LC	2002	McNern	Blooms Hotel	Dismissal on notification of pregnancy	Private	LT 1yr	FT	Successful
LC	2002	A worker	Café Vienna	Dismissal, employer did not sign form at beginning of maternity leave to state employee was returning	Private	1 to 5 yrs	FT	Successful
LC	2002	Carroll	Paul Cullen	Dismissal on notification of pregnancy	Private	1 to 5 yrs	FT	Successful
ET	2003	Fearn	Emerald Cleaners	Side lined in employment on notification of pregnancy	Private	LT 1yr	FT	Successful
ET	2003	Costello	Pamela Scott	Second round interview cancelled at short notice after claimant informed employer of pregnancy	Private	Job app.	FT	Successful
LC	2003	Mason	Winston's Jewellers	Dismissal due to pregnancy-related illness	Private	LT 1yr	FT	Unsuccessful
LC	2003	Corcoran	Assico Assembly Ltd	Dismissal on notification of pregnancy	Private	LT 1yr	FT	Successful
LC	2003	Finnerty	Dollymount Creche	Dismissal while on maternity leave	Private	1 to 5 yrs	PT	Successful
LC	2003	Fox	Peking House	Dismissal on notification of pregnancy	Private	1 to 5 yrs	FT	Successful
LC	2003	O'Sullivan	Harco Investments	Dismissal due to pregnancy performance related	Private	LT 1yr	FT	Successful
LC	2003	Coleman	QResonance Ltd	Dismissal on notification of pregnancy	Private	LT 1yr	FT	Unsuccessful
ET	2004	Quigley	John Dickinson	Selection for promotion made while on maternity leave	Private	6 to 10 yrs	FT	Unsuccessful

Hearing	Year	Claimant	Respondent	Type of Dispute	Public / Private	Tenure	FT/PT	Outcome
ET	2004	Livingstone	Costcutter Express	Change in working arrangement during pregnancy	Private	LT 1yr	FT	Unsuccessful
LC	2004	Millett	Charles Shinkwin	Dismissal on notification of pregnancy	Private	1 to 5 yrs	FT	Successful
ET	2004	Doorty	UCD	Placed on health and safety leave during pregnancy no pay as job was unsafe	Public	1 to 5 yrs	FT	Successful
ET	2005	Swift	Tesco	Unsuitable working hours on return from maternity leave	Private	1 to 5 yrs	PT	Unsuccessful
ET	2005	Murray	Scoil Mhuire	Unsuccessful in an interview	Public	Job app.	FT	Successful
ET	2005	Deveraux	Bausch and Lombe	Unsuccessful in promotion due to maternity leave	Private	Unknown	PT	Successful
ET	2005	Harrington	Board of Management	Not allowed to withdraw application for career break due to pregnancy	Public	over 10 yrs	FT	Successful
ET	2006	Maye	ADM Ringaskiddy	Change in working arrangement during pregnancy	Private	Unknown	FT	Successful
ET	2006	Gardiner	Mercer HR Consulting	Change in working arrangement on return from maternity leave	Private	Unknown	FT	Successful
ET	2006	Byrne	Gorey Credit Union	Unsuccessful in promotion while pregnant and missed promotion while on maternity leave	Private	1 to 5 yrs	FT	Unsuccessful
ET	2006	Swift	Wyatt Hotel	Unfavourable treatment on notification of pregnancy, did not return after maternity leave	Private	LT 1yr	FT	Successful
ET	2006	Pedreschi	Xerox (Europe) Ltd	Unfavourable treatment on notification of pregnancy, unfairly selected for redundancy	Private	1 to 5 yrs	FT	Successful

Hearing	Year	Claimant	Respondent	Type of Dispute	Public / Private	Tenure	FT/PT	Outcome
LC	2006	O Ramos	Promowear Ltd.	Dismissal while on maternity leave	Private	1 to 5 yrs	FT	Unsuccessful
ET	2006	Pegley-Swanson	Glor na Mara National School	On her return from maternity leave, unsuccessful in her application to be made permanent.	Public	1 to 5 yrs	PT	Unsuccessful
ET	2006	Jones	Norwich Union	Unsuccessful in getting promotion during pregnancy	Private	Unknown	FT	Successful
ET	2007	McGuirk	Irish Garden Publishers	Dismissal during pregnancy	Private	LT 1yr	FT	Unsuccessful
ET	2007	O Connell	Flowers by Kay	Dismissal during pregnancy	Private	LT 1yr	FT	Successful
ET	2007	Shelley	Europa Hotel	Dismissal during pregnancy	Private	Unknown	PT	Successful
ET	2007	Carroll	Limerick City Council	Change in working arrangements during pregnancy	Public	1 to 5 yrs	FT	Unsuccessful
ET	2007	Hogan	Jean Scene	Dismissal on notification of pregnancy	Private	LT 1yr	FT	Successful
ET	2007	McBrierty	National University of Ireland	Contract not renewed due to pregnancy	Public	1 to 5 yrs	FT	Unsuccessful
ET	2008	Rabbitte	EEC Direct	Dismissal on notification of pregnancy	Private	LT 1yr	PT	Successful
ET	2008	Hennessey	Cherub Creche Ltd	Unfavourable treatment on notification of pregnancy, told to take early maternity leave	Private	LT 1yr	FT	Successful
ET	2008	Bermingham	Colour's Hair Team	Dismissal on notification of pregnancy	Private	LT 1yr	FT	Successful

Hearing	Year	Claimant	Respondent	Type of Dispute	Public / Private	Tenure	FT/PT	Outcome
ET	2008	Lane	MBNA	Missed promotion while on maternity leave, different job on return to work	Private	1 to 5 yrs	FT	Successful
ET	2008	Kearney	Lettertec Ireland Ltd	Change in working arrangements during pregnancy	Private	LT 1yr	FT	Unsuccessful
ET	2008	Seesan	Thai Thanie	Dismissal on notification of pregnancy	Private	1 to 5 yrs	FT	Successful
ET	2008	Sweeney	HSE Midlands Area	Removed from duty during pregnancy placed on health and safety leave	Public	Unknown	FT	Unsuccessful
ET	2008	Lavery	HSE	Unsuccessful in getting promotion during pregnancy	Public	LT 1yr	FT	Unsuccessful
ET	2008	McGarvey	Intrum Justita	Unfairly selected for redundancy during pregnancy	Private	LT 1yr	FT	Successful

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