

15 June 2013



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Dear Mr Bevan

Consultation response: proposal to exclude pregnant workers from s.69 ERA 2013

APIL welcomes the opportunity to comment on the HSE's consultation on the exemption (from s.69 Enterprise etc Act 2013) for pregnant workers and those who have recently given birth or who are breastfeeding.

APIL is a not-for-profit organisation with a 23-year history of working to help injured people gain access to justice they need and deserve. We have around 4,000 members committed to supporting the association's aims and all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

Our comments on your consultation are as follows:

Article 12 of the Pregnant Workers directive states that,

"Member States shall introduce into their national legal systems such measures as are necessary to enable all workers who should [consider] themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process (and/or, in accordance with national laws and/or practices) by recourse to other competent authorities"

We approve of any proposed exemption to s.69 Enterprise & Regulatory Reform Act 2013, but it will place personal injury lawyers in a difficult situation when they first assess the status of any new, female, clients, so as to ascertain whether the exemption applies.

This is an explicit requirement to ensure that member States must enable such workers to enforce their rights in the event that they believe they have been wronged by a failure to comply with duties in a directive. However, we are concerned that the EU principle of equality will be undermined by this exemption.

President

Matthew Stockwell

Vice President

John Spencer

Secretary

Stuart Kightley

Treasurer

Nigel Tomkins



INVESTOR IN PEOPLE

The EU principle of equality means in its broadest sense that persons in similar situations are not to be treated differently unless difference in treatment is objectively justified.

While we would prefer that all employees should be able to rely upon statutory breaches there is another unintended consequence of the effects of s.69 upon injured people.

Where an individual is an employee of an emanation of the State (Police, NHS and so on) who is injured, then that individual will still be able to rely upon breaches of the original Directive in his/her claim for compensation. This means that employees of the State will be treated differently from non-pregnant women and men who are not employees of emanations of the State, as they will still be able rely upon breaches of European health and safety Directives in any event. Those who are not pregnant or who work in the private sector, will not be in such a fortunate position. Equally two women injured in the same accident by the same breach of statutory duty could have claims with totally different outcomes if one was pregnant and one was not.

This clearly breaches the EU principle of equality. We invite the HSE to consider this anomaly.

Yours sincerely



Helen Blundell

Legal Services Manager