



### **The Sanctity of Maternity Leave**

An employee fell pregnant and agreed with her Employer to return to work a month later after she had given birth. She gave birth to twins who suffered from colic. Two to three days before she was required to return to work, she requested she be given a further month off to look after her twins. Her Employer was prepared to grant her an extra two weeks which the Applicant refused to accept. The employee was subsequently dismissed. She declared a dispute of automatically unfair dismissal to the Labour Court.

The Court explained the purpose of s 187 (1) (e) as follows:

“Section 187 (1) (e) of the LRA must be seen as part of social legislation passed for the specific protection of women and to put them in equal footing with men. I have no doubt that it is often a considerable burden to an employer to have to make the necessary arrangements to keep a woman’s job open for her while she is absent from work to have a baby, but this is a price that has to be paid as a part of the social and legal recognition of the equal status of women in the workplace. If an employer dismisses a woman because she is pregnant and is not prepared to make the arrangements to cover her temporary absence from work the dismissal is automatically unfair.”

The Judge went further and stated that “A dismissal will not in my view escape being automatically unfairly dismissed by the argument that the woman is being dismissed not because of her pregnancy, but because of her unavailability for work that results from her pregnancy.

Whilst section 187 (1) (e) imposes an evidential burden upon the employee to produce evidence which is sufficient to raise a credible possibility that an automatically unfair dismissal has taken place. Although her maternity leave had been agreed with her, the agreement was in conflict with the maternity leave provisions of BCEA.

The Court awarded the Employee 20 months’ salary.