



\$52,000 fine for denying new mother "fundamental entitlement"

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Roy Morgan Research Ltd has been fined \$52,000 for denying a director's request for flexible hours following her return from maternity leave, before then making her redundant.

Federal Circuit Court Judge Suzanne Jones said it was a "fundamental entitlement" of an employee to take parental leave to care for a child and not be prejudiced or disadvantaged for exercising that right in the workplace.

"I am satisfied that prevailing community standards demand recognition of the fundamental entitlement of an employee to take (parental) leave to care for their child or children, safe in the knowledge that their employment and future will not be prejudiced because they have exercised their right to take (parental) leave, including to request flexible working arrangements," Judge Jones said.

The judge said that the operations director had exercised a workplace right to take maternity leave and was entitled under [s84](#) to return to her pre-parental leave position.

She found Roy Morgan took adverse action for a reason, which included as a "substantial and operative" reason the director's request for flexible working arrangements.

She fined Roy Morgan \$52,000 for its "serious" contraventions and ordered that the penalties be paid to the director.

Judge Jones also awarded the director \$20,000 for the loss of enjoyment, loss of reputation and distress she experienced in the wake of the dismissal.

"I am satisfied that community standards now recognise the distress and suffering an employee will experience when those statutory rights are contravened by an employer," she said.

Director in vulnerable position

Roy Morgan dismissed the national customised operations director in June 2014, claiming her position had been made redundant following a company restructure (see [Related Article](#)).

While Roy Morgan had undergone a restructure of its organisation in response to financial circumstances, another employee continued to act in the director's pre-parental leave position until August 31.

That employee was then transferred to work in an operations role on various projects which formed part of the director's previous duties, and was later appointed manager of Roy Morgan's call centre operations.

Judge Jones said that despite the major restructure and the large scale redundancies that followed, Roy Morgan had created an expectation that the director would be redeployed in the research centre on her return from maternity leave.

"The evidence is that there was a process under way by which the [employer] and [director] were considering the transfer or redeployment of the [director] to the Research Centre.

"This process ended when the [employer] terminated the [director's] employment on 27 June 2014," she said.

Roy Morgan's failure to return the director to her pre-parental leave position contravened [s340\(1\)](#) of the Act, Judge Jones found.

Judge Jones also found that at the time of her dismissal, the director was in a vulnerable position.

"She was on maternity leave, with a young baby, seeking to return to work with the Respondent in a senior position which she derived substantial enjoyment from.

"Prior to the termination she had occupied positions of responsibility and it is logical to assume her reputation and status was part of the enjoyment of employment," the judge said.

Judge Jones said the decision would act as enough of a deterrent to prevent any future or similar contraventions by like-minded organisations.

"I have no doubt that the publication of the Liability Judgement and this decision will be seen by the [employer] as damaging to its reputation and consequently it will be motivated to avoid future repetition of like contraventions," the judge said.

The matter has been listed for a directions hearing and returns to court on September 19 to consider compensation.

[Heraud v Roy Morgan Research Ltd \(No 2\) \[2016\] FCCA 1797 \(15 July 2016\)](#)

[Orders](#)

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