

# Sex discrimination: Failure to provide workplace facilities to express breastmilk was sexual harassment

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An employment tribunal has held that failing to provide a private space for an employee to express breastmilk at work, forcing her to express in the toilets or her car, was sex harassment, but it was not direct or indirect discrimination.

## THE FACTS

Mrs Mellor was employed as a teacher by The MFG Academies Trust. Before and after her return from maternity leave, she requested access to a room in which she could express breast milk. No room was provided for her, and she started using the toilets or her car at lunch time to express. Her lunch break was 25 minutes and it took her 20 minutes to express, so she had to eat her lunch at the same time as expressing. She used the toilet more often than the car, either because she did not have the car in school or because it was too cold, and because she was worried about being seen in the car. The toilets were often dirty, and she had to sit on the floor in the toilet to express and eat her lunch. Mrs Mellor found this unhygienic and disgusting, and one of the school's witnesses described the fact that she had to express in the toilets as "mortifying".

Mrs Mellor claimed in the employment tribunal that she had suffered direct and indirect discrimination and sex harassment.

Mrs Mellor's claim of sex harassment was successful. The tribunal found that Mrs Mellor had genuinely and reasonably had no choice but to use the toilets or her car to express. She had not been given access to somewhere to express, and the alternative to her car or the toilet was that she would experience an embarrassing leakage (and this had happened on at least one occasion). She had also believed, rightly or wrongly, that failing to express milk during the day would cause or exacerbate mastitis. The school's conduct in forcing her to express in her car or the toilets was unwanted and it had the effect of creating a degrading or humiliating environment.

However, the tribunal dismissed Mrs Mellor's claims of direct and indirect discrimination. The tribunal considered that her direct sex discrimination claim failed because she could not show that the treatment she had received was because of her sex: the school's failure to provide suitable facilities to express milk was due to administrative incompetence rather than because Mrs Mellor was a woman. Her indirect discrimination claim failed because the provision, criterion or practice of not providing suitable facilities for expressing breast milk did not place women at a particular disadvantage compared with men "as biological men have no interest in the provision of facilities for expressing breastmilk" and (relying on existing case law) the tribunal held that the PCP identified must be capable of being applied meaningfully to both men and women for a comparative disadvantage to arise.

## WHAT DOES THIS MEAN FOR EMPLOYERS?

While only a tribunal decision, so not binding in other tribunals who might decide differently this case shows the risk to employers of not providing breastfeeding employees with a private, clean space in which to breastfeed or express breast milk. We do think there is an argument this is direct sex discrimination as only women can breast feed. There are also wider employee relations risks in failing to provide suitable facilities for returning mothers.

[Mrs T Mellor v The MFG Academies Trust](#)

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