

transferee of the part of the undertaking in which the aforementioned worker was principally employed, or as meaning that, if the provisions of the Directive cannot be interpreted in any of the aforementioned ways, there is no transfer to any transferee of the rights and obligations arising from the employment contract of the aforementioned worker, which is also the case if it is not possible to determine separately the extent of the worker's employment in each of the transferred parts of the undertaking?

## Case C-366/18, Maternity and Parental Leave

José Manuel Ortiz Mesonero – v – Unión Temporal de Empresas Luz Madrid Centro, reference lodged by the Juzgado de lo Social de Madrid (Spain) on 5 June 2018

Do Articles 8, 10 and 157 of the Treaty on the Functioning of the European Union, Article 3 of the Treaty on European Union, Article 23 and Article 33(2) of the Charter of Fundamental Rights, and Article 1 and Article 14(1) of Directive 2006/54, all taken in conjunction with Directive 2010/18 implementing the Framework Agreement on parental leave, preclude a rule of national law such as Article 37(6) of the Workers' Statute, which makes it a requirement that in order to exercise the right to reconcile family life and working life so as to be able to care directly for children or family members for whom they are responsible, workers must in all cases reduce their ordinary working hours, with a consequent proportional reduction in salary?

## Case C-396/18, Age Discrimination

Gennaro Cafaro – v – DQ, reference lodged by the Corte suprema di cassazione (Italy) on 15 June 2018

1. Is the national legislation set out in the Prime Ministerial Decree of 9 September 2008, in implementation of the third paragraph of Article 748 of the Navigation Code, which regulates the limitations on employment for DQ aircrew and in particular provides for the automatic termination of the employment relationship once a pilot reaches the age of 60, contrary to Regulation No 1178/2011 in so far as that regulation sets 65 years as the age limit for employing pilots in commercial air transport, and would that regulation, if the special national legislation were to be disapplied, be applicable to the present case?

2. In the alternative, if that regulation is held not to be applicable *ratione materiae* to the present case, is the aforementioned national legislation contrary to the principle of non-discrimination on the ground of age laid down in Directive 2000/78 and in Article 21(1) of the Charter of Fundamental Rights of the European Union, to which Directive 2000/78 gives practical expression?

## Case C-397/18, Disability Discrimination

Ana María Páez Juárez – v – Nobel Plásticos Ibérica SA, reference lodged by the Juzgado de lo Social de Barcelona (Spain) on 15 June 2018

1. Must workers who are categorised as 'particularly susceptible to certain risks' be regarded as persons with a disability for the purposes of the application of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, as interpreted by the case-law of the Court of Justice of the European Union, where, owing to their own personal characteristics or known biological condition, those workers are particularly susceptible to occupational risks and, for that reason, are unable to perform certain jobs on the ground that such jobs would entail a risk to their own health or to other individuals?
2. If the answer to the first question is in the affirmative, the following questions are referred:
  - a. Does the decision to dismiss a worker on economic, technical, organisational and production grounds constitute an act of direct or indirect discrimination, within the meaning of Article 2(2)(b) of Directive 2000/78, if the person concerned has a recognised disability, in that she is particularly susceptible when it comes to performing certain jobs on account of her physical impairments, and therefore has difficulties achieving the productivity levels required in order to avoid being put forward for dismissal?
  - b. Does the decision to dismiss a worker on economic, technical, organisational and production grounds constitute an act of direct or indirect discrimination, within the meaning of Article 2(2)(b) of Directive 2000/78, if the person concerned has a recognised disability, in that she has been recognised as being particularly susceptible when it comes to performing certain jobs on account of her physical impairments, and the decision is taken, among other selection criteria, on the basis of multi-skilling in all jobs, including those which the disabled person is unable to perform?