

Parents' rights

Mother's victory could give 6m

European Court upholds case of woman who resigned from her job when she was denied time off work to look after her disabled son

Frances Gibb Legal Editor

The mother of a disabled boy won a crucial legal victory yesterday that could lead to new rights to flexible working for Britain's six million carers.

Sharon Coleman, 41, says that she was forced to resign from her job as a legal secretary, working at a London law firm, in 2005 after her employers refused her the same flexible working hours as other staff.

Ms Coleman says that she was called "lazy" when she needed to take time off to care for her son Oliver, now 5, who suffers from a rare breathing condition and is deaf, and that she was threatened with disciplinary action. But yesterday the chief legal adviser to the European Court of Justice in Luxembourg ruled that treating some employees less favourably than others because of their caring responsibilities for a disabled — or elderly — relative was unlawful.

The case will now go before the judges of the European Court of Justice for ratification. In 80 per cent of cases the court follows the Advocate-

General's opinion. A decision is expected by May.

At a press conference in London, Ms Coleman, who now works for a local authority, said: "The decision is brilliant. It is one step on the road but a very important step."

She said that her treatment when working at the solicitors' firm Attridge Law had left her "feeling absolutely horrendous" and "lying on the floor crying because I couldn't both work and be a carer".

Her claim was not about compensation but the principle, she added, although, if she is ultimately successful she would be in line for a payment. Colleagues with children who were not disabled were allowed to work "around their children but it was made very difficult for me", she said.

She took a claim for constructive dismissal to an employment tribunal in London, which in turn referred the case to the European Court of Justice for a ruling on whether she was protected under equality laws. The



Sharon Coleman said she went to the European Court "over a principle"

key issue was whether the laws outlawing discrimination at work went beyond the protection of the disabled or elderly themselves to cover those who face discrimination because they are associated with a disabled or elderly person.

The European Court had heard that comments were made at Ms Coleman's workplace, that her "***** child" was "always ***** sick" and that she was using her son to manipulate her working conditions.

John Wadham, the legal director of the Equality and Human Rights Commission which is backing the case, said: "People want to work and need to work and should not be forced to choose between their jobs and their loved ones."

He added: "This is not about employers having to provide flexible working hours for all their employees, so employers don't need to be concerned.

"What it is about is being fair: if employers provide systems, they must apply across the board."

"What this [opinion] says is that you have to treat people fairly, without prejudice, and equally — and not harass them on grounds of the disability of their children or other persons they care for. It is a simple message."

Lucy McLynn, solicitor with Bates Wells & Braithwaite, the firm acting

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right to flexitime

for Ms Coleman, said that the opinion was "extremely encouraging". The law at present was inconsistent, she said.

If someone was discriminated against at the workplace because of their links with another person on the grounds of religion, race or sexual orientation, they had the protection of the law. But that had not been the case where age or disability were involved.

She said that the Advocate-General's ruling meant that the European directive on equal treatment at work now also covered disability discrimination by association.

Anthony Fincham, head of employment at the City law firm CMS Cameron McKenna, said that if the European Court backed the opinion it would be "a quite remarkable and far-reaching extension of our disability discrimination laws". An estimated one in four people in the workforce had caring responsibilities, he said.

An employer would be under a legal obligation to make reasonable adjustments for employees who care for the disabled when not at work if other employees enjoyed those arrangements, he added.

Nick Thomas, an employment lawyer with Jones Day, said: "It has for many years been accepted that it is unlawful to discriminate against one person on the grounds of another per-



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Sharon Coleman, mother of Oliver, 5, above

son's race; for example, by refusing to serve a white customer in a bar because they are accompanied by a black friend. But it has never before been applied in disability discrimination cases."

Imelda Redmond, the chief executive of the charity Carers UK, said: "This landmark legal opinion means that employers will have to alter the way they treat carers in their workforce. There are nearly 4.5 million carers of working age in Britain, of whom 2.5 million are in employment."

In his opinion Miguel Poiras Maduro, the Advocate-General, added: "Directly targeting a person who has a particular characteristic is not the only way of discriminating against him or her; there are also other, more subtle and less obvious ways of doing so."

"One way of undermining the dignity and autonomy of people ... is to target not them, but third persons who are closely associated with them."

Anita Rai, an employment solicitor at Fox Solicitors, welcomed the decision as fair but gave warning that a knock-on effect could be that employers could face increased absences from employees. "Employers will have to guard against the few employees who might abuse this right and become serial absentees," she said. "There will have to be a degree of trust."