

WORK-LIFE BALANCE

- Protective measures for pregnant women;
- Maternal leave;
- Parental leave



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DIRECTIVES

- 2006/54/EC
- 2010/41/EU
- 92/85/EEC
- 97/81/EC
- 2010/18/EU (to be repealed as of 2 August 2022)

NEW – DIRECTIVE (EU) 2019/1158

- Minimum ten working days of paternity leave paid equal to sick pay
- Two months of non-transferable paid parental leave
- Five working days of leave for carers
- Flexible working arrangements, including remote working arrangements

- Entered into force on 2 August 2019
- Member States to transpose this Directive by 2 August 2022

REASONS FOR NEW DIRECTIVE ADOPTION

- Achieving work-life balance to contribute to:
- Gender equality by promoting the participation of women in the labour market;
- Equal sharing of caring responsibilities between men and women;
- Closing of the gender gaps in earnings and pay.

CAUSES

- Men are not encouraged enough to take parental leave;
- Increasing prevalence of extended working hours and changing work schedules have a negative impact on women's employment;
- When they have children, women are likely to work fewer hours in paid employment and to spend more time fulfilling unpaid caring responsibilities;
- Having a sick or dependent relative has a negative impact on women's employment and results in some women dropping out of labour market entirely.

PATERNITY LEAVE

1. Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognised by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.
2. The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.
3. The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.

PARENTAL LEAVE I

- 1. Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months that is to be taken before the child reaches a specified age, up to the age of eight, to be specified by each Member State or by collective agreement. That age shall be determined with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.
- 2. Member States shall ensure that two months of parental leave cannot be transferred.
- 3. Member States shall establish a reasonable period of notice that is to be given by workers to employers where they exercise their right to parental leave. In doing so, Member States shall take into account the needs of both the employers and the workers.
- Member States shall ensure that the worker's request for parental leave specifies the intended beginning and end of the period of leave.
- 4. Member States may make the right to parental leave subject to a period of work qualification or to a length of service qualification, which shall not exceed one year. In the case of successive fixed-term contracts within the meaning of Council Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.

PARENTAL LEAVE II

- 5. Member States may establish the circumstances in which an employer, following consultation in accordance with national law, collective agreements or practice, is allowed to postpone the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer. Employers shall provide reasons for such a postponement of parental leave in writing.
- 6. Member States shall take the necessary measures to ensure that workers have the right to request that they take parental leave in flexible ways. Member States may specify the modalities of application thereof. The employer shall consider and respond to such requests, taking into account the needs of both the employer and the worker. The employer shall provide reasons for any refusal to accede to such a request in writing within a reasonable period after the request.
- 7. Member States shall take the necessary measures to ensure that when considering requests for full-time parental leave, employers shall, prior to any postponement in accordance with paragraph 5, offer, to the extent possible, flexible ways of taking parental leave pursuant to paragraph 6.
- 8. Member States shall assess the need for the conditions of access to and the detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.

CARERS' LEAVE

- 1. Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of five working days per year. Member States may determine additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that right may be subject to appropriate substantiation, in accordance with national law or practice.
- 2. Member States may allocate carers' leave on the basis of a reference period other than a year, per person in need of care or support, or per case.

FLEXIBLE WORKING ARRANGEMENTS I

- 1. Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.
- 2. Employers shall consider and respond to requests for flexible working arrangements as referred to in paragraph 1 within a reasonable period of time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.

FLEXIBLE WORKING ARRANGEMENTS II

- 3. When flexible working arrangements as referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.
- 4. Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.

PROTECTION FROM DISMISSAL AND BURDEN OF PROOF

- 1. Member States shall take the necessary measures to prohibit the dismissal and all preparations for the dismissal of workers, on the grounds that they have applied for, or have taken, leave, or have exercised the right to request flexible working arrangements.
- 2. Workers who consider that they have been dismissed may request the employer to provide duly substantiated reasons for their dismissal. With respect to the dismissal of a worker who has applied for, or has taken leave, the employer shall provide reasons for the dismissal in writing.
- 3. Member States shall take the measures necessary to ensure that where workers who consider that they have been dismissed on the grounds that they have applied for, or have taken leave, before a court or other competent authority, facts capable of giving rise to a presumption that they have been dismissed on such grounds, it shall be for the employer to prove that the dismissal was based on other grounds.
- ...
- 5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or competent body to investigate the facts of the case.
- 6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member States.

REVISED FRAMEWORK AGREEMENT ON PARENTAL LEAVE – ANNEX TO DIRECTIVE 2010/18/EU

- Art. 5
- At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.
- Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply.
- Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave.
- In order to ensure that workers can exercise their right to parental leave, Member States and/or social partners shall take the necessary measures to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice.

Art. 2 LABOUR ACT

- The Labour Act transposes:
- Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

DIRECTIVE 2019/1152 ON TRANSPARENT AND PREDICTABLE WORKING CONDITIONS IN EU

- Of 20 June 2019
- Deadline for compliance 1 August 2022
- Art. 8
- **Maximum duration of any probationary period**
- 1. Member States shall ensure that, where an employment relationship is subject to a probationary period as defined in national law or practice, **that period shall not exceed six months.**
- 2. In the case of **fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work.** In the case of **the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.**
- 3. Member States may, on an exceptional basis, provide for **longer probationary periods where justified by the nature of the employment or in the interest of the worker.** Where **the worker has been absent from work during the probationary period, Member States may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence.**

CJEU-174/16 I

- 1. Clause 5(1) and (2) of the revised Framework Agreement, within Annex to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC must be interpreted as **precluding rules of national law, such as those at issue in the main proceedings, which subject definitive promotion to a managerial post in the civil service to the condition that the candidate selected successfully carries out a prior two-year probationary period in that post, and by virtue of which, in a situation where such a candidate was on parental leave for most of that period and still is, that probationary period ends by operation of law after two years with no possibility of extending it and the person concerned is consequently, on her return from parental leave, reinstated in the post, at a lower level both in status and in terms of remuneration, occupied before that probationary period.** The infringements of that clause **cannot be justified by the objective** pursued by the probationary period, which is **to enable the assessment of suitability for the managerial post to be assigned permanently.**

CJEU C-174/16 II

- 2. **It is for the referring court, if necessary by disapplying the rules of national law** at issue in the main proceedings, **to ascertain**, as required by Clause 5(1) of the revised Framework Agreement within Annex to Council Directive 2010/18, **whether**, in circumstances such as those of the main proceedings, **it was not objectively possible for the *Land* concerned, in its capacity as an employer, to enable the person concerned to return to her post at the end of her parental leave and, if so, to ensure that she is assigned to an equivalent or similar post consistent with her employment contract or relationship, without that assignment of a post being made conditional upon holding a new selection procedure beforehand.** It is also for that court **to ensure that the person concerned may, at the end of parental leave, continue, in the post thus returned to or newly assigned, a probationary period** under conditions that are in compliance with the requirements of Clause 5(2) of the revised Framework Agreement.

CJEU C-595/12

- 1. Article 15 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as precluding national legislation which, on grounds relating to the public interest, excludes a woman on maternity leave from a vocational training course which forms an integral part of her employment and which is compulsory in order to be able to be appointed definitively to a post as a civil servant and in order to benefit from an improvement in her employment conditions, while guaranteeing her the right to participate in the next training course organised, the date of which is nevertheless uncertain.
- 2. Article 14(2) of Directive 2006/54 does not apply to national legislation, such as that at issue in the main proceedings, which does not limit a specified activity solely to male workers but which delays access to that activity for female workers who have been unable to receive full vocational training as a result of compulsory maternity leave.
- 3. The provisions of Article 14(1)(c) and Article 15 of Directive 2006/54 are sufficiently clear, precise and unconditional to have direct effect.

DIRECTIVE PROTECTING PREGNANT WOMEN

- Art. 10
- Prohibition of dismissal
- In order to guarantee workers the exercise of their health and safety protection rights as recognized under this Article, it shall be provided that:
- Member States SHALL TAKE THE NECESSARY MEASURES TO PROHIBIT THE DISMISSAL of workers during the period from the beginning of their pregnancy to the end of the maternity leave
- SAVE IN EXCEPTIONAL CASES NOT CONNECTED WITH THEIR CONDITION which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent;
- If a worker is dismissed, the employer must cite duly substantiated grounds for her dismissal in writing;
- Member States shall take the necessary measures to protect workers from consequences of dismissal which is unlawful.

ART. 2 OF LABOUR ACT

- Transposing:
- Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

PROHIBITION OF DISMISSAL UNDER LABOUR ACT / ZR-U I

- During pregnancy, maternity, parental leave and adoption leave, half-time work, part-time work due to intensive childcare, leave of a pregnant or breastfeeding woman, and leave or part-time work required for caring responsibilities for children with severe developmental disabilities, that is during a period of fifteen days after the cessation of pregnancy or the cessation of the exercise of such rights, the employer shall not cancel the employment contract of a pregnant woman and a person exercising any of the abovementioned rights.
- Infringement!
- The employment contract of such persons, during the bankruptcy procedure carried out in compliance with special regulation, may be cancelled due to business reasons.

PROHIBITION OF DISMISSAL UNDER LABOUR ACT / ZR-U II

- A dismissal shall be void if, on the day of dismissal, the employer was aware of the abovementioned circumstances or if the worker notifies his or her employer thereof, within a period of fifteen days following the receipt of the notice of dismissal, enclosing an appropriate certificate signed by an authorised physician or another authorised body.

CJEU C-103/16 I

- 1. Article 10(1) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) must be interpreted as not precluding national legislation which permits the dismissal of a pregnant worker because of a collective redundancy within the meaning of Article 1(1)(a) of Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.
- 2. Article 10(2) of Directive 92/85 must be interpreted as not precluding national legislation which allows an employer to dismiss a pregnant worker in the context of a collective redundancy without giving any grounds other than those justifying the collective dismissal, provided that the objective criteria chosen to identify the workers to be made redundant are cited.

CJEU C-103/16 II

- 3. Article 10(1) of Directive 92/85 must be interpreted as precluding national legislation which does not prohibit, in principle, the dismissal of a worker who is pregnant, has recently given birth or is breastfeeding as a preventative measure, but which provides, by way of reparation, only for that dismissal to be declared void when it is unlawful.
- 4. Article 10(1) of Directive 92/85 must be interpreted as not precluding national legislation which, in the context of a collective redundancy within the meaning of Directive 98/59, makes no provision for pregnant workers and workers who have recently given birth or who are breastfeeding to be afforded, prior to that dismissal, priority status in relation to being either retained or redeployed, but as not excluding the right of Member States to provide for a higher level of protection for such workers.

CJEU C-14/83-VON COLSON AND CAMANN

- 1. Directive No. 76/207/EEC does not require discrimination on grounds of sex regarding access to employment to be made the subject of a sanction by way of an obligation imposed on the employer who is the author of the discrimination to conclude a contract of employment with the candidate discriminated against.
- 2. As regards sanctions for any discrimination which may occur, the directive does not include any unconditional and sufficiently precise obligation which, in the absence of implementing measures adopted within the prescribed time-limits, may be relied on by an individual in order to obtain specific compensation under the directive, where that is not provided for or permitted under national law.
- 3. Although Directive No. 76/207/EEC, for the purpose of imposing a sanction for the breach of the prohibition of discrimination, leaves the Member States free to choose between the different solutions suitable for achieving its objective, it nevertheless requires that if a Member State chooses to penalize breaches of that prohibition by the award of compensation, then in order to ensure that it is effective and that it has a deterrent effect, that compensation must in any event be adequate in relation to the damage sustained and must therefore amount to more than purely nominal compensation such as, for example, the reimbursement only of the expenses incurred in connection with the application. It is for the national court to interpret and apply the legislation adopted for the implementation of the directive in conformity with the requirements of Community law, in so far as it is given discretion to do so under national law.

CJEU C-407/14

- Article 18 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained.

CC ZG GŽ R-627/2019, 7 May 2019 I

- In the opinion of this court of second instance, the adoption of the request in the part that requires elimination of discrimination and its effects, ordering the respondent to conclude a new successive employment contract with the claimant, that is to reinstate the claimant in his former post (engine driver) in compliance with the Contract of 30 June 2016 would preclude the basic principle of freedom to conclude contracts referred to in provision under Article 2 of the Civil Obligations Act ("Official Gazette", Nos. 35/05, 41/08, 125/11, 78/15 and 29/18, hereinafter: the COA), with regard to the provision under Article 8 (4) of the Labour Act ("Official Gazette", Nos. 93/14 and 127/17, hereinafter: the LA). More specifically, voluntariness is also one of the significant characteristics of the employment contract expressed through freedom to conclude contracts and employment contracts (also consistent with the Constitutional Court of the Republic of Croatia, Decision No.: U-I-3763/2004 of 18 October 2006).
- In the concerned fixed-term employment contract of 30 June 2016, its expiration date was fixed in advance that is for 31 December 2016, which is in compliance with the provision under Article 12 (1) of the LA.

CC ZG GŽ R-627/2019, 7 May 2019 II

- Therefore, in this specific case, the concerned fixed-term employment contract expired by the operation of law due to the expiration of the time it had been concluded for that is 31 December 2016, for which reason the respondent was under no obligation as an employer to deliver to the claimant the letter of 27 December 2016, whereby he notified the claimant of the expiration of his fixed-term contract and employment relationship.
- Hence, in the opinion of this second-instance court, the claimant's claim that the abovementioned notification of the employer may not be established as void has duly substantiated grounds.

CC ZG GŽ R-627/2019, 7 May 2019 III

- Under item I of the dispositive part, the first-instance court wrongly established that the respondent infringed the right of the claimant to equal treatment by the adoption of the employment contract expiration notification of 27 December 2016, and a failure to conclude a successive employment contract. The written notification of the respondent of 27 December 2016 whereby the claimant was informed of the employment contract expiration that is employment relationship expiration as of 31 December 2016 is of no constitutional significance, but is by its legal nature merely a declaratory notification of the legal status arising from the operation of law. This notification has no significance of a labour law act and does not constitute a method of employment contract expiration.

CC ZG GŽ R-627/2019, 7 May 2019 IV

- Therefore, there are no duly substantiated grounds, as requested by the claimant, and accepted by the court of first instance in its judgement, for the court to establish that the respondent infringed the claimant's right to equal treatment by this notification. Finally, the claimant has no duly substantiated grounds to claim that his right to equal treatment was infringed by a failure to conclude a successive employment contract, as the adoption of this part of the claim would preclude the abovementioned legal acts that pertain to the freedom to conclude contracts and the principle of freedom to conclude contracts proclaimed also by the Constitutional Court of the Republic of Croatia.
- As the parties have no employment contract between them, since the contract of 30 June 2016 expired due to the expiration of the period the contract was concluded for, and there was no new contract concluded between the parties, the claimant has no duly substantiated grounds to request the court to establish that the employment of the claimant with the respondent did not expire, or to request the court to order the respondent to reinstate him in his post."

