

Unpaid care work in EU law

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Overview

- Introduction
- Protection of carers on maternity and parental leave
- Childcare and work-life reconciliation
- Unpaid care work and social security

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Introduction

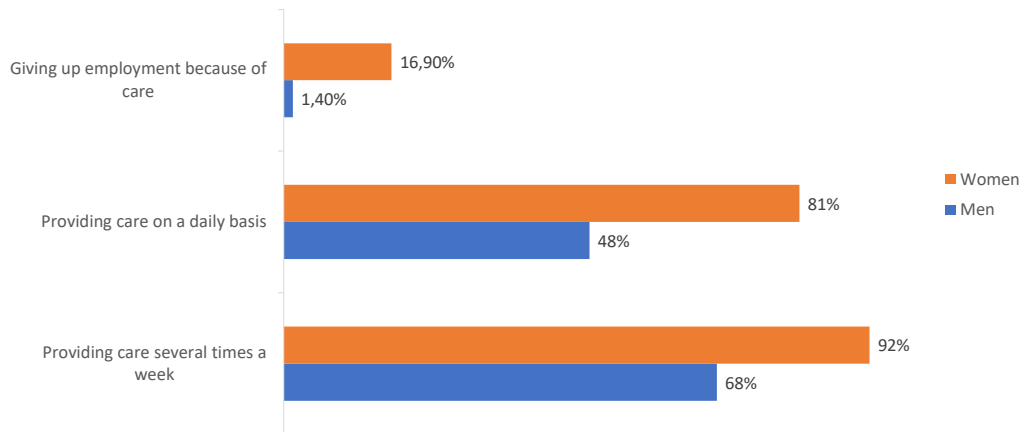
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Unpaid care work and the gendered division of work

- **Unpaid care work:** typically performed within the family, caring for dependents (children, elderly, disabled or any other person in need of care), unpaid
- The **male breadwinner norm** and the gender division of work: the *male breadwinner vs. the female caregiver*
- **Women** perform the bulk of unpaid care work

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Unpaid care work and the gendered division of work



Source: EIGE, Gender inequalities in care and pay in the EU, 2020

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Unpaid care work and the gendered division of work

- Before COVID-19, women in the EU spent an average of 13 hours more than men on unpaid care and housework every week
- Lack of services for elderly care and long-term care also prevent women from entering the labour market

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Unpaid care work and the gendered division of work

- **Gender differences in unpaid care work have been exacerbated by the COVID-19 pandemic**, due to closure of workplaces and school increasing women's share of unpaid care work, limited access to care services
- A new form of unpaid care work: helping children in virtual classrooms
- Particularly difficult for lone parents, most of which are women

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Unpaid care work and gender inequality

- **Limits options for decent work:** fosters women's financial dependence
- **Labour market segregation:** women in part-time work, low-skilled and low-paid occupations because of care obligations
- **Restricted participation in public and social life**
- Women face **discrimination** in recruitment, promotion and working conditions on the basis of their reproductive role (the "motherhood penalty")
- **Pay and pensions** inequalities

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Unpaid care work - unregulated

- Work experience is modelled on an ideal-typical “unencumbered worker” with no family obligations (James, 2009)
- Although care is a universal experience, a necessary contribution to the economy and human development, it is perceived as a private matter
- Unpaid care work has remained for a long time invisible in public policy and EU law

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Unpaid care work and EU law

1. Protection of carers on maternity and parental leave
2. Childcare and work-life reconciliation
3. Unpaid care work and social security

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1. The protection of carers on maternity and parental leave

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1. Protection of carers on maternity and parental leave in EU law

Pregnancy - Directives

- **Pregnant Workers Directives 1992:**

- 14 weeks maternity leave paid at the level of sick pay
- Protection from dismissal on the basis of pregnancy

- **Gender Equality Recast Directive 2006:**

- Prohibition of discrimination on the basis of pregnancy or maternity

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1. Protection of carers on maternity and parental leave in EU law

European Court of Justice

- Based on the Treaty principle of equal pay, should women on maternity leave be awarded full pay?

NO: women taking maternity leave are “*in a special position*” requiring them to be afforded special protection but find themselves in a situation not comparable to a man or a woman actually at work”

Gillespie 1996, Alabaster 2004, McKenna 2005

- However pregnant workers are entitled to any pay rise (*Alabaster*)

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1. Protection of carers on maternity and parental leave in EU law

Parental leave

Work-life balance Directive 2019 (repealing Parental Leave Directive 2010):

- 4 months of parental leave, 2 months which are non-transferable between the parents
- 10 days of paternity leave paid at the level of sick pay
- Right to return to the same job, protection against dismissal and discrimination

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1. Protection of carers on maternity and parental leave in EU law

European Court of Justice:

- the right to parental leave is an “*important European Union social right*” which may not be interpreted restrictively (*Lyreco Belgium* 2014)
- workers returning from parental leave are protected against discrimination, dismissal and have the right to return to the same job (*Meerts v Proost* 2009, *Gomez-Limon* 2009, *Riežniece* 2013)

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1. Protection of carers on maternity and parental leave in EU law

EU charter of fundamental rights 2000, Article 33.2

“everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.”

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1. Protection of carers on maternity and parental leave in EU law

Parental leave under EU law

- Unpaid

- **Less protected than maternity:** Parental leave as a “choice” which “cannot be treated as a period of actual work” (*Dicu* 2018)

Consequences

Entrenches the traditional division of work between men and women

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2. Childcare and work-life reconciliation

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2. Childcare and work-life reconciliation

Development of a “care discourse” in EU law (Caracciolo di Torella & Masselot, 2020)

Council Recommendation on Childcare 1992

- Importance of providing childcare facilities and leaves to parents
- More family-friendly working environment
- Sharing of childcare responsibilities between parents

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2. Childcare and work-life reconciliation

Soft law

- **European Employment Strategy (EES):** from the end of 1990s, recognizing women’s difficulty in reconciling their professional and family life, focuses on work-life reconciliation policies
- **Resolution on the Balanced participation of women and men in family and working life (2000):** argued for the equal sharing of caring responsibilities between working fathers and mothers
- **Open Method of Coordination and European Semester:** policy support and information sharing concerning long-term care
- **European Pillar of Social Rights, 2017, Principle 9:**

“Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.”

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2. Childcare and work-life reconciliation

EU law

Work-life balance Directive 2019:

- 5 days carers' leave per year for workers in order to care for a relative or person living in the same household
- Right to request flexible working arrangements for caring purpose
- Protection against dismissal and discrimination for those applying for or making use of family-related leave and flexible working arrangements

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2. Childcare and work-life reconciliation

European Court of Justice:

- The aim of Community policy is to *“encourage and, if possible, adapt working conditions to family responsibilities”* (Hill 1998)
- Work-life reconciliation is a *“legitimate social policy objective”* (Hill 1998, Sass 2004, Küçük 2012)

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3. Unpaid care work and social security

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3. Unpaid care work and social security

EU law adopts a restrictive conception of the notion of work: for the purpose of social security, unpaid care work is not “work”

- **EU provisions on equality in social security (social security directives 1978, Recast Directive 2006)** do not apply to persons which have never or insufficiently been engaged in paid work, or persons whose occupation had been interrupted for reasons such as family responsibilities

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3. Unpaid care work and social security

European Court of Justice:

Achterberg-te Riele 1989: the equality directives do not apply to a woman who had given up or been prevented from engaging in paid work because of care responsibilities

EU equality provisions concern the principle of equality between the sexes not generally but “*only in their capacity as workers*”.

Johnson 1991: a person which had stopped working in order to raise a child and was prevented from returning to employment because of illness was not covered by the EU social security Directive

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3. Unpaid care work and social security

Züchner 1996:

EU social security directive does not cover the case of a woman who looked after her severely disabled husband and been impeded from entering the labor market because of the specialized care she provided to her husband.

The Directive covers only workers which have undertaken an economic activity

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3. Unpaid care work and social security

The Court fails to acknowledge and to remedy for the impact of women's family responsibilities in relation to social security, perpetuating a male norm to which women struggle to conform to.

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3. Unpaid care work and social security

Only case when carers are protected in relation to social security:
maternity leave

- *Mayer* 2005: EU law protects women against loss of entitlement after taking non-impossible maternity leave
- *Gomez-Limon* 2009: allows that a pension scheme reduces pension entitlements as a result of parental leave

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3. Unpaid care work and social security

Pensions:

Griesmar, Mouflin (2001): pension credits for mothers who have cared for children are contrary to the principle of equal treatment

Leone (2014): ungendered pensions care credits for parents constitute indirect discrimination against men

= unpaid care work cannot be taken into account in pensions

Consequences: this hinders the accommodation of childcare responsibilities in social security

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Conclusion

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Future policy directions?

EU law still fails to recognize, reduce and redistribute women's share of unpaid care work

- Parental leave is unpaid
- Work-life balance and care still defined in a narrow manner
- Carers are not protected in EU law in relation to social security and pensions

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Future policy directions?

EU Gender Equality Strategy 2020-2025:

Improving work-life balance and narrowing the gender care gap = working towards a better gender balance in unpaid care work

Council of the European Union, Impact of long-term care on work-life balance – Presidency Conclusions, 2020:

Called for improvements in the provision of quality long-term care services and in working conditions in the care sector.

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Thank you!