



WORK-LIFE BALANCE IN EU LAW

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What is work-life balance?

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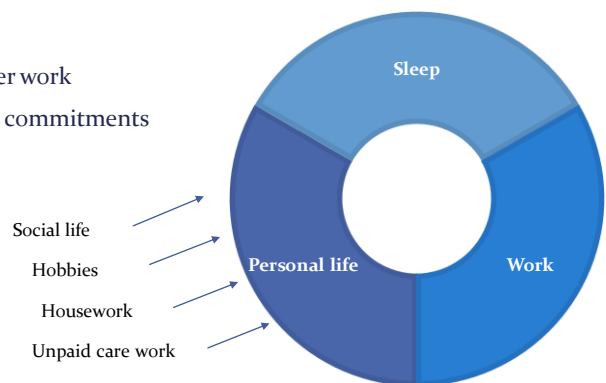


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WHAT IS WORK-LIFE BALANCE?

- The equilibrium between personal life and career work
- The ability to successfully combine work, family commitments and personal life

- A daily challenge for workers
- A necessity



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OBSTACLES TO SUCCESSFUL WORK-LIFE BALANCE

- Long-hours work culture, overwork, culture of presentism
- Inflexible working time
- Unpaid or low paid parental leave
- Lack of care facilities
- Short school hours

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WHY IS WORK-LIFE BALANCE IMPORTANT?

➤ **Benefits for workers**

Reduces risk of health-related complications and of stress or life-style related disorders. Increases well-being and sense of fulfillment.

➤ **Benefits for the employer**

Greater work-life balance improves employee productivity, performance and motivation at work, retention of employees, and attractiveness of the organization.

Poor work-life balance leads to stress-related absenteeism, poor retention levels, low creativity, has a direct influence on the attitude of employees and an indirect influence on the success of the company.

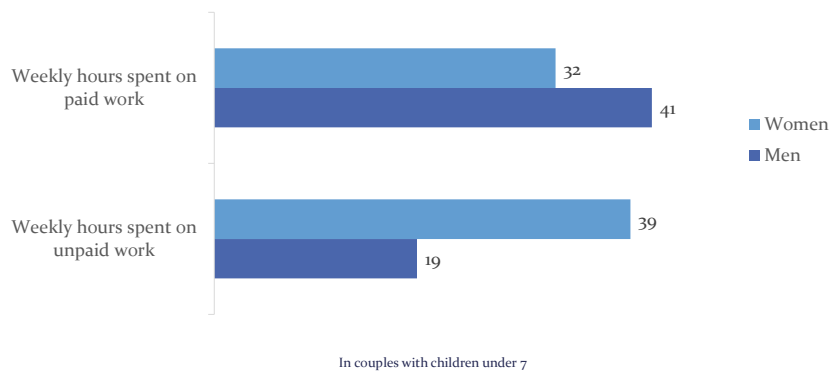
➤ **Gender equality**

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WHY IS WORK-LIFE BALANCE A QUESTION OF GENDER (IN)EQUALITY?

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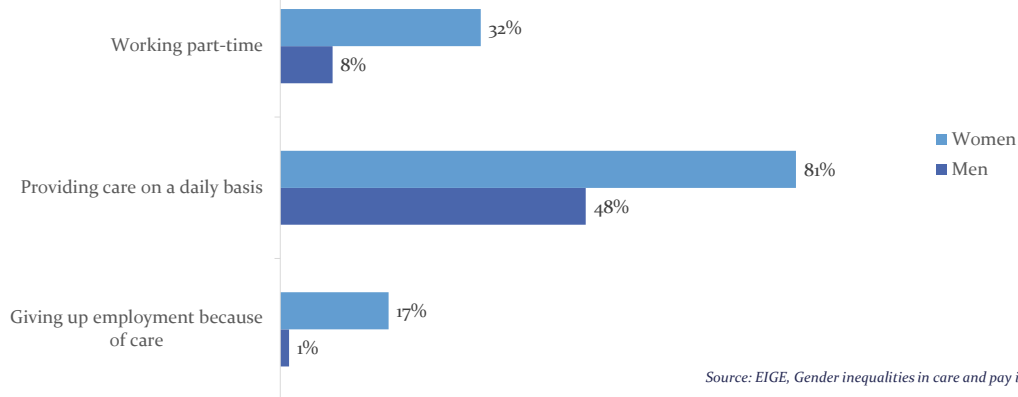
WORK-LIFE BALANCE AND GENDER INEQUALITY



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

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WORK-LIFE BALANCE AND GENDER INEQUALITY



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WORK-LIFE BALANCE AND GENDER INEQUALITY

Women perform most unpaid work within the family – face more problems to reconcile paid employment and care.

Poor work-life balance for women:

- **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

➤ **A reorganization of work is necessary to achieve gender equality**

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THE IMPACT OF COVID-19 ON WORK-LIFE BALANCE

- **Gender differences in unpaid care work have been exacerbated by the COVID-19 pandemic**, due to closure of workplaces and school and teleworking, increasing women's share of unpaid care work, limited access to care services
- Particularly difficult for lone parents, most of which are women
- Gender employment gap has widened by 5% during pandemic

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WORK-LIFE BALANCE AND THE LAW

What can the law do?

- Provide **rights to workers** in order to foster better work-life balance:
 - rights to flexible working arrangements
 - rights for time off to care: parental leave, maternity leave, carers' leave
 - protection against dismissal on the grounds of care obligations (Family Responsibilities Discrimination – FreD)

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WORK-LIFE BALANCE AND EU LAW

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WORK-LIFE BALANCE AND EU-LAW

- **EU Charter of Fundamental Rights, Article 33.2 Family and professional life:**

“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”

- **European Pillar of Social Rights, Principle 9, Work-life balance:**

“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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WORK-LIFE BALANCE AND EU LAW

- I) Soft law
- II) EU case-law
- III) EU legislation

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I) EU “SOFT” LAW

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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I) EU “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

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II) EU CASE-LAW

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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II) EU CASE-LAW

The ECJ considers that: “the situation of male and female workers is **comparable** as regards the bringing-up of children”

- Men and women should not be discriminated in relation to access to parental leave (*Roca Alvarez* 2010, *Maïstrellis* 2015)

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II) EU CASE-LAW

***Lommers*: positive actions for enhancing work-life balance?**

- In *Lommers* (2002) a workplace provided for subsidized nursery schemes only to female officials, which were under-represented, and available to men only in cases of emergency.
- The ECJ considered that this could lawfully constitute positive actions under EU law
- = the Court allowed for positive actions meant to **facilitate women’s career progression** in the form of **workplace advantages for enhancing work-life balance**

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III) EU LAW

- **Rights for working mothers:** Pregnant Workers Directive 1992 + Recast Directive 2006
- **Rights for working parents:** Work-life balance Directive 2019

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RIGHTS FOR WORKING MOTHERS UNDER EU LAW

Specific protection for working mothers under EU law

14 weeks of maternity leave paid at the level of sick leave (Pregnant Workers Directive 1992)

Protection against dismissal and preparations for dismissal during maternity leave (Pregnant Workers Directive, *Dekker, Hertz 1990*)

Right to return to same job or equivalent post on no less favourable conditions after maternity leave, benefiting from any improvement (Art. 15 Recast Directive 2006)

Guaranteed access to promotion and access to vocational training upon return (*Thibault 1998, Napoli 2014*)

Maternity leave counts for the purpose of seniority allowing to compete for higher professional grade (*Ursula Sass, 2004*)

No full pay (*Gillespie 1996, Alabaster 2004, Parvainen, Gassmayr, 2010*)

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III) EU LAW: DIRECTIVE 2019/1158 ON WORK-LIFE BALANCE FOR PARENTS AND CARERS

1. Parental leave
2. Right for fathers
3. Carers' leave
4. Flexible working arrangements
5. Protection against dismissal and discrimination for carers

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1. PARENTAL LEAVE UNDER THE WORK-LIFE BALANCE DIRECTIVE

- 4 months entitlement to parental leave (Article 5)
- 2 months non-transferable leave between parents
- Flexibility
- Scope: might be subject to period of work qualification or length of service (max 1 year)
- Payment: 2 months compensated at an adequate level
- Workers have the right to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave

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2. RIGHT FOR FATHERS

- 10 days paternity leave (Article 4)
- Cannot be made subject to a period of work qualification or length of service
- Paid at the level of sick pay (possible to make pay subject to periods of previous employment – max 6 months)

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3. CARER'S LEAVE (ARTICLE 6)

- 5 days carers' leave per year for workers in order to care for a relative or person living in the same household

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4. FLEXIBLE WORKING ARRANGEMENTS

- Right to request flexible working arrangements for caring purpose (Article 9)
 - For parents or carers of children up to 8 years old minimum
 - Employer has the obligation to consider and respond within a reasonable period of time, and provide reasons for any refusal or postponement
 - Duration might be subject to reasonable limitation
 - Right to return to original working pattern at the end
 - Possible period of qualification (not longer than 6 months)

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5. PROTECTION AGAINST DISMISSAL AND DISCRIMINATION FOR CARERS (ARTICLE 10)

- Protection against less favourable treatment or dismissal and preparations for dismissal on the grounds of applying for or making use of family-related leave and flexible working arrangements (Art. 10)
- Employment rights: Rights that have been acquired or that are in the process of being acquired by workers before paternity, parental or carers' leave shall be maintained until the end of such. At the end of such leave those rights, including any changes arising from national law, collective agreements or practice, shall apply.
- Workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave.

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PASSERELLE AND BONUS CLAUSES

Passerelle clause (Article 20.6):

In order to comply with the Directive, Member States may take into account any family-related leave and payment that is available at national level if the minimal requirements and level of protections are met under EU law.

Bonus clause (Article 20.7):

Member States may decide not to pay paternity leave if they “ensure a payment or an allowance of at least 65 % of the worker's net wage, which may be subject to a ceiling, for at least six months of parental leave for each parent”

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THE TRANSPOSITION OF THE WORK-LIFE BALANCE DIRECTIVE

General transposition deadline: **2 August 2022**

Additional deadline for transposition of payment of the last 2 weeks of parental leave: **2 August 2024**

As a result of the transposition of the Directive:

- Paternity leave will have to be increased in 10 Member States
- Only 13 Member States provide for well paid paternity leave (at least 66% of previous earnings)
- In Italy, Croatia, Slovakia: fathers about to receive paid paternity leave around the birth of a child for the first time
- In Czech Republic, the Netherlands, Portugal and Romania implementation of the Directive will at least double the length of paid paternity leave

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THE TRANSPOSITION OF THE WORK-LIFE BALANCE DIRECTIVE

Important delays in transposition (September 2022):

- Only 9 Member States have **fully transposed** the Directive (*Bulgaria, Denmark, Estonia, Finland, Greece, Italy, Malta, the Netherlands, Sweden*)
- In 13 Member States, transposition is only **partial** or the **legislative process is still ongoing** (*Austria, Belgium, Croatia, Czech Republic, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovakia*)
- 5 Member States **have yet to submit a draft law** transposing the Directive (*Cyprus, Hungary, Portugal, Slovenia, Spain*)

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THE TRANSPOSITION OF THE WORK-LIFE BALANCE DIRECTIVE THE CASE OF FRANCE

- In 2021, 25 days of paternity leave for fathers or second parents (4 mandatory days after immediately after birth + 21 optional calendar days)
- Still to be implemented in order to comply with Directive 2019/1158:
 - Right to request flexible working arrangements
 - Adequate pay of parental leave (actually 1/3 of minimum wage)
 - Maximum period of work qualification or length of service for right to parental leave: 1 year (actually 2 years)

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WAY FORWARD: WORK-LIFE BALANCE AND EU LAW

- National implementation of the work-life balance directive seriously delayed
- Main barriers to adequate work-life balance:
 - Lack of or inadequate payment
 - Flexible working arrangements in practice
 - Eligibility criteria for parental leave
 - Cultural norms and perceptions about gender roles in child rearing
- European Care Strategy launched in September 2022

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REFERENCES AND FURTHER READING

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Thank you!
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