

Reconciliation of work and family life in European Law

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Outline

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Treaty on European Union

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3 (ex Article 2 TEU)

[...] [The Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. Its aim is to promote peace, its values and the well-being of its peoples.

EU Charter of Fundamental Rights

Article 23 Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 33 Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile 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.

Treaty of the functioning of the EU

Article 157 (ex Article 141 TEC)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.



Equal treatment of men and women

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 (**recast**)

Repeals:

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex



Equal treatment of men and women

Recast Directive (2006/54/EC)

The Member States, in collaboration with the social partners, should continue to address the problem of the continuing gender-based wage differentials and marked gender segregation on the labour market by means such as flexible working time arrangements which enable both men and women to combine family and work commitments more successfully. This could also include appropriate parental leave arrangements which could be taken up by either parent as well as the provision of accessible and affordable child-care facilities and care for dependent persons – recital 11.

- prohibition of discrimination in relation to conditions for access to employment and promotion, to vocational training, as well as in relation to employment and working conditions, including dismissals and pay; and in relation to membership in professional organisations – Article 14

- discrimination includes: less favourable treatment of a woman related to pregnancy or maternity leave – Article 2 (2)

- this Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity – Article 28 (1)

- a woman on maternity leave (as well as a man on paternity leave where recognised) shall be entitled, after the end of the period of leave, to return to her/his job or to an equivalent post on terms and conditions which are no less favourable to her/him and to benefit from any improvement in working conditions to which s/he would have been entitled during her/his absence – Articles 15 and 16

Equal treatment = reconciliation

Gerster C-1/95

“The protection of women—and men—both in family life and in the workplace is a principle broadly accepted in the legal systems of the Member States as a natural corollary of the fact that men and women are equal, and is upheld by Community law.”

Hill & Stapleton C-243/95

“Community policy in this area is to encourage and, if possible, adapt working conditions to family responsibilities. Protection of women within family life and in the course of their professional activities is, in the same way as for men, a principle which is widely regarded in the legal systems of the Member States as being the natural corollary of the equality between men and women, and which is recognized by Community law.”

Protection in case of pregnancy, birth and breastfeeding

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

Whereas the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women - recital 9

Purpose: to implement measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding - Article 1 (1)



Protection in case of pregnancy, birth and breastfeeding

Pregnant Workers Directive 92/85/EEC

- in case of health and safety risk - temporarily adjusting the working conditions and/or the working hours of the worker concerned – Article 5
- no obligation to perform night work - Article 7
- a leave if adjustment of working conditions/moving to another job is not possible - Article 5 (4)
- time off work without loss of pay to attend ante-natal examinations - Article 9
- minimum of 14 continuous weeks of maternity leave before and/or after birth (compulsory at 2 least) – Article 8
- adequate allowance during maternity leave (not lower than the level of sickness benefits) - Article 11
- prohibition of dismissal during the period from the beginning of the pregnancy to the end of the period of maternity leave – Articles 10 and 12



Definition of a pregnant worker

„pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice“ - Article 2 a), Directive 92/85

Mayr C-506/06 - the principle of equal treatment precludes the dismissal of a female worker dismissed in connection with her in vitro fertilisation treatment where, on the date she is given notice of her dismissal, her ova have already been fertilised but they have not yet been transferred into her uterus (outside the scope of 92/85)

Danosa C-232/09 - A member of a capital company's Board of Directors who provides services to that company and is an integral part of it must be regarded as having the status of worker for the purposes of Directive 92/85/EEC, if that activity is carried out, for some time, under the direction or supervision of another body of that company and if, in return for those activities, the Board Member receives remuneration

- Directive 92/85 precludes national legislation which permits such a member of a capital company's Board of Directors to be removed from that post without restriction, where the decision to remove her was taken essentially on account of her pregnancy.
- such removal, on account of pregnancy, constitutes direct discrimination on grounds of sex

Equal treatment while pregnant

Dekker C-177/88 - as only women could be refused employment on grounds of pregnancy, such a refusal therefore constitutes direct discrimination on grounds of sex; such discrimination could not be justified on grounds relating to the financial loss (which a employer would suffer for the duration of the maternity leave)

Tele Danmark C-109/00 - dismissal on account of pregnancy constitutes discrimination regardless of the fact that the worker is recruited for a fixed period (6 months), that she failed to inform the employer for her pregnancy and that because of her pregnancy she would be unable to work during a substantial part of the term of that contract

see also **Webb C-32/93**

Busch C-320/01 - there is no obligation on an employee to disclose her pregnancy to the employer even when due to certain legislative prohibitions she will be unable to carry out some of her duties

Paquay C-460/06 - Article 10 of Directive 92/85 prohibits not only the notification of a decision to dismiss on the grounds of pregnancy and/or of the birth during the period of protection set down in Article 10 but also the taking of preparatory steps for such a decision before the end of that period (finding a replacing person). Decision to dismiss on the grounds of pregnancy and/or child birth is contrary to the principle of equal treatment for men and women irrespective of the moment when that decision to dismiss is notified and even if it is notified after the end of the period of protection set down in Article 10 of Directive 92/85.

Pregnant while in child-care leave

Kiiski C-116/06 - Community law precludes a decision of an employer by virtue of which the latter does not permit a pregnant worker (being on a child-care leave) to obtain, at her request, an alteration of the period of her child-care leave and use maternity leave in stead (for at least 14 weeks) due to her new pregnancy

“the fundamental changes to the living conditions of the persons concerned during the period of at least 14 weeks preceding and after childbirth constituted a legitimate ground on which they could suspend their employment, without the public authorities or employers being allowed in whatever way to call the legitimacy of that ground into question”

“[the] right to maternity leave of the kind provided for in Directive 92/85 [...] is intended, first, to protect a woman's biological condition during and after pregnancy and, second, to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment“

„a period of leave guaranteed by Community law cannot affect the right to take another period of leave guaranteed by that law,,



Equal pay & opportunities

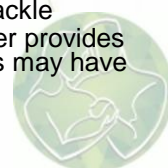
Alabaster C-147/02 - in so far as the pay received by the worker during her maternity leave is determined at least in part on the basis of the pay she earned before her maternity leave began, any pay rise awarded between the beginning of the period covered by the reference pay and the end of the maternity leave must be included in the elements of pay taken into account in calculating the amount of such pay.

see also **Gillespie C-342/93**

Gassmayr C-194/08 - a pregnant worker temporarily granted leave from work on account of her pregnancy is entitled to pay equivalent to the average earnings she received during a reference period prior to the beginning of her pregnancy with the exception of the on-call duty allowance

see also **Parviainen C-471/08**

Lommers C-476/99 - a positive measure: in the case to tackle extensive under-representation of women within the Ministry, the latter provides nursery places reserved for female officials alone whilst male officials may have access to them only in cases of emergency



Fatherhood and equal treatment?

Commission v Italian Republic 163/82 - it does not constitute discrimination if the adoptive father (unlike the adoptive mother) has only a *derivative* right to take a leave for the first three months following the actual entry of the child into the adoptive family, instead of the adoptive mother (the Court assimilates the conditions of entry of the child into the adoptive family to those of the arrival of a newborn child in the family during the very delicate initial period)

Hofmann 184/83 - after the protective period following the child-birth has elapsed the Member State may grant additional paid maternity leave (in the case up to 6 months of the birth) and the principle of equal treatment does not impose on Member States a requirement that they shall, as an alternative, allow such leave to be granted to fathers, even where the parents so decide (the Court understood the maternity leave as a protective measure against the fact that the mother may be subject to undesirable pressures to return to work prematurely)

see also **Abdoulaye C-218/98**



Fatherhood and equal treatment?

Employed father would like to take a leave – to which both parents are entitled - but he had only a right deriving from that of the employed mother. His leave request was refused because the mother was not employed but self-employed.

Roca Alvarez C-104/09 - leave for the first 9 months since the birth of the child

“ [...] the positions of a male and a female worker, father and mother of a young child, are comparable with regard to their possible need to reduce their daily working time in order to look after their child”

“However, to hold [...] [the employed] father [...] can only enjoy this right but not be the holder of it, is liable to perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties”

Betriu Montull C-5/12 - leave for the period following the compulsory 6 weeks mothers' leave up to 16 weeks since the birth of the child

“A measure such as that at issue in the main proceedings is, in any event, intended to protect a woman's biological condition during and after pregnancy.”



Protection of parenthood

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**

This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parent



Protection of parenthood

Revised Framework Agreement on Parental Leave (Directive 2010/18/EU)

- individual right to parental leave for men and women workers on the grounds of the birth or adoption of a child up to 8th year of the child for at least 4 months and in principle on a non-transferable basis (at least 1 of the 4 months - non-transferable) – 2
- protection against dismissal in connection with the parental leave - 4
- right to return to the same job or to an equivalent/similar job – 5.1
- rights acquired/in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until its end – 5.2.
- when returning from parental leave workers may request changes to their working hours and/or patterns for a set period of time – 6.1
- workers and employers are encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures – 6.2
- time off from work on grounds of force majeure for urgent family reasons - 7



Protection of parenthood

Chatzi C-149/10 - Framework agreement on parental leave cannot be interpreted as conferring an individual right to parental leave on the child in case of birth of twins. However, it obliges the national legislature to establish a parental leave regime which ensures that the parents of twins receive treatment that takes due account of their particular needs

Terveys C-512/11 and C-513/11 - where a pregnant worker interrupts a period of unpaid parental leave to take, with immediate effect, a maternity leave – she benefits from the maintenance of the remuneration to which she would have been entitled had that period of maternity leave been preceded by a minimum period of resumption of work



The price of active parenting

Gomez-Limon C-537/07 – Framework agreement on parental leave does not preclude the taking into account, in the calculation of an employee's permanent invalidity pension, of the fact that s/he has taken a period of part-time parental leave during which s/he made contributions and acquired pension entitlements in proportion to salary received

Meerts C-116/08 - where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker has to be determined on the basis of the full salary and not the reduced salary being received when the dismissal takes place

Riezniece C-7/12 - EU law precludes:

- in the context of abolishment of officials' posts, a worker who has taken parental leave to be assessed in his or her absence on the basis of assessment criteria which place him or her in a less favourable position as compared to workers who did not take parental leave
- a situation where a female worker who has been transferred to another post at the end of her parental leave following that assessment is dismissed due to the abolishment of that new post, where it was not impossible for the employer to allow her to return to her former post or where the work assigned to her was not equivalent or similar and consistent with her employment contract or employment relationship, inter alia because, at the time of the transfer, the employer was informed that the new post was due to be abolished

**Thank you for your
attention!**

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