

Reconciliation of work and family life:

Protective measures for pregnant worker
Maternity leave
Parental leave

Prof. dr. Tomas Davulis
Vilnius university, Lithuania



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

“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 recognised by Community law.”

ECJ C-243/95 (Hill and Stapleton)

EU Charter of Fundamental Rights

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Article 23

Equality between women and men

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

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 on Functioning of European Union (TFEU)

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.
3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

Secondary legislation

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)

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

(Text with EEA relevance)

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)

Legal provisions on:

1. **Special rights and protection** to accommodate of pregnancy, maternity and parenthood:
 1. Health and safety
 2. Right to leave from work
2. Protection against (direct and indirect) **discrimination**

NB: when no specific rights apply, the rights can be derived from the prohibition of sex discrimination

Pregnancy directive 92/85

- Personal scope
 - Pregnant worker / worker and job seeker
 - Worker who has recently given birth
 - Worker who is breastfeeding
- Director of publicly owned company - 'Worker' (C-232/09 Danosa)
- Not covered - Women in vitro fertility treatment (C-506/06 Mayr)
- Not covered - Commissioning mother (C-167/12 C. D. v S.T. and C-363/12 Z. v A Government Department)

Special rights (health and safety)

- Assessment of any risks to the safety and health (Art. 4)
- Information about assessment (Art. 4 (2))
- Temporary adjustment or transfer (Art. 5)
- Prohibition of performance in case of exposure (Art. 6)
- Prohibition of night work (Art. 7)
- Protection of pay (Art. 11 (1))

Right to leave from work I

- **Time of for ante-natal** examinations with pay (Art 9)
- **Maternity leave** (Art. 8):
 - 14 weeks
 - min 2 weeks of compulsory leave
- Pay protection (Art 11 (3)) - pay or allowance
 - Equal to sick leave
 - qualification period not longer than 12 months

Right to leave from work II

- Directive 2010/18
 - Parental leave up to 8 years
 - 4 months non-transfarable
 - Protection of pay (Art. 3 1 b)

Prohibition of discrimination

- Pregnant workers directive 92/100

Article 10

Prohibition of dismissal

1. Member States shall take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8 (1), 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;
2. if a worker, within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing;
3. Member States shall take the necessary measures to protect workers, within the meaning of Article 2, from consequences of dismissal which is unlawful by virtue of point 1.

Article 11

Employment rights

In order to guarantee workers within the meaning of Article 2 the exercise of their health and safety protection rights as recognized in this Article, it shall be provided that:

1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;
2. in the case referred to in Article 8, the following must be ensured:
 - (a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;
 - (b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;

Prohibition of discrimination I

- Parental leave directive 2010/18

Clause 5: Employment rights and non-discrimination

1. 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.
2. 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.
4. 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.

Prohibition of discrimination II

2. For the purposes of this Directive, discrimination includes:
- (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC. :C)

Article 14

Prohibition of discrimination

1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:
- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
 - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 - (c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;
 - (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Prohibition of discrimination III

- Recast directive 2006/54

Article 15

Return from maternity leave

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

Article 16

Paternity and adoption leave

This Directive is without prejudice to the right of Member States to recognise distinct rights to paternity and/or adoption leave. Those Member States which recognise such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the