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# MATERNITY AND BALANCING WORK AND FAMILY LIFE IN THE EUROPEAN UNION

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María Amparo Ballester Pastor.  
University of Valencia

## PREAMBLE

- What 'pregnancy and maternity protection' means
  - ▣ Defined and undefined time frame (Handels-og and McKenna case)
  - ▣ Purpose of the protection (health and legal)
  - ▣ Link to gender discrimination
- What 'protection of balancing responsibilities' means
  - ▣ Neutrality (Österreichischer Gewerkschaftsbund case)
  - ▣ Balance and co-responsibility
  - ▣ The right to absence (leave) and the right to presence (adaptation)

## THE REGULATORY MAP

- MATERNITY
  - ▣ Directive 92/85, on maternity protection
  - ▣ Gender anti-discriminatory Directive 2006/54 (before 76/207)
  
- BALANCE OF RESPONSIBILITIES
  - ▣ Directive 2010/18 on parental leave (before 96/34)
  - ▣ Charter of Fundamental Rights and soft law

## Strategic engagement for gender equality (European Commission) 2016-2019

**GENERAL OBJETIV: Increasing female labour-market participation and the equal economic independence of women and men**

**Key actions:** *modernising the current EU legal framework: ensure better enforcement and where appropriate adapt legislation in the areas of leave and flexible working arrangements, in consultation with the social partners<sup>33</sup>, to provide better work-life balance for parents and people with caring responsibilities (2016-2019) / setting out a broad policy framework supporting parents' participation in the labour market and a more equal use of leave and flexible work arrangements, including considering possible benchmarking, targeted use of EU financial tools to support Member States and awareness-raising (2016); ...*

- **Concrete Objectives (Annex I):** ...- more equal sharing between women and men of time spent on care and household responsibilities and improved possibilities for balancing caring and professional responsibilities...

## Maternity protection

### Maternity protection in Directive 92/85

- Maternity protection in context
- Physical protection
- Legal protection
  - ▣ The requirement to inform the business owner
  - ▣ Maternity leave
  - ▣ Protection in the event of dismissal
  - ▣ Remuneration and conditions (non-detriment)

## MATERNITY JURISPRUDENCE (I)

NOT HIRING		
High cost for the business owner (+)	Dekker case, 1990	Anti-discriminatory directive (+)
Pregnant worker substitution (+)	Webb case, 1994	Anti-discriminatory directive (+)
Pregnant worker substitution (+)	Tele Danmark case, 2001	Anti-discriminatory directive (+) Maternity directive (+)
DISMISSAL		
Subjective Scope (+)	Danosa case, 2010	Anti-discriminatory directive (+) Maternity directive (+)
Time scope (before) (+)	Mayr case, 2008	Anti-discriminatory directive (+) Maternity directive (-)
Time scope (after) (+)	Paquay case, 2007	Anti-discriminatory directive (+) Maternity directive (+)

## MATERNITY JURISPRUDENCE (II)

NON-DETRIMENT		
Holiday leave (+)	Merino Gómez case, 2004	Anti-discriminatory directive (+) Maternity directive (+) Directive 93/104 (time) (+)
Length of service (+)	Sarkatzis Herrero, 2006 Rosselle, 2015-----}	Anti-discriminatory directive (+) Maternity directive (+)
Promotion course (+)	Napoli case. 2014	Anti-discriminatory directive (+)
REMUNERATION		
Risk transfer (-)	Parviainen case, 2010	Maternity directive (-)
Risk suspension and maternity (-)	Gassmayr case, 2010 Asunto Ornano, 2016-----}	Maternity directive (-) Maternity directive (-)
RIGHT TO BENEFITS		
Intentional mother (-)	Z case, 2014	Anti-discriminatory directive (-) Directive 2000/78 (multi-causal) (-)
Intentional mother (-)	C.D. case, 2014	Anti-discriminatory directive (-) Maternity directive (-)

## MATERNITY conclusions

- Close link to gender non-discrimination
- Does not admit objective and reasonable justification (direct gender discrimination)- DEKKER-
- Subjective extension –DANOSA-
- Not admissible harmful in non-remunerative matters -MERINO GOMEZ-, Admissible but harmful in remunerative matters –PARVIAINEN and GASSMAYR-
- No extension to intentional mothers – Z and C.D.-

## BALANCE OF RESPONSIBILITIES

## Reconciliation/ co-responsibility Directive 2010/18

- Context of the Directive
- Content
  - ▣ Clause 2: Four-month leave (child under 8 years). One month non-transferrable.
  - ▣ Clause 3: Member State freedom
  - ▣ Clause 4: Adoption
  - ▣ Clause 5: Non-detriment
  - ▣ Clause 6: Adaptation (qualified)
  - ▣ Clause 7: Family force majeure

## Clause 6 Directive 2010/18

- *In order to promote better reconciliation, Member States and/or social partners shall take the necessary measures to ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs.*

## RECONCILIATION JURISPRUDENCE (I)

FEMALE OWNERSHIP		
Supplementary maternity leave (-)	Hofmann case, 1984	Anti-discriminatory directive
Parental leave (+)	Roca Alvarez case, 2010 Maïstrellis case, 2015	Anti-discriminatory directive Parental directive
Maternity leave (-)	Betriu Montull case, 2013	Anti-discriminatory directive Maternity directive
Early retirement (+)	Leone case, 2014	141 TEC (current 157 TFEU)
NON-DETRIMENT		
Holiday leave (+)	Zentralbetriebsrat case, 2010	Parental directive (+)
Salary compensation (+)	Meerts case, 2009	Parental directive (+)
Social security salary benefits (-)	Gómez Limón case, 2009	Parental directive (-) Directive 79/7 (social security anti-discriminatory) (-)

## RECONCILIATION JURISPRUDENCE (II)

PARENTAL LEAVE		
Right to adapt (?)	Rodriguez Sanchez case, 2016	Parental Directive
EFFECTIVITY		
Punitive damages (?)	Arjona Camacho case, 2015	Anti-discriminatory directive

## BALANCE conclusions

- Attention to Directive 2010/18: NON-TRANSFERABILITY and a certain right to ADAPTATION
- Preferential entitlements to leave or benefits related to childcare are not valid for women (-ROCA ALVAREZ and LEONE-)
- Non-detriment for the enjoyment of parental rights (-ZENTRAL and MEERTS-)