Overview

- Protective measures for pregnant workers
- Parental leave
- Care-giver leave
- Summary
Aims/reasons for regulating the work-life balance

- Equality between men and women
  C-243/95 (Hill) lit. 41 et seq.: EU policy as a support to reconcile work and family responsibilities
- Actual freedom of choice (?)
- Demography
- Economic considerations
- Poverty alleviation (esp. single parents)

Family – Working life

Demography

Legal bases I

- Art. 2 TEU
  "The ... society (in the EU and the Member States) in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevails."

- Art 3 (3) TEU: EU objectives in the context of the establishment of the single market (among others): It
  - shall combat social exclusion and discrimination,
  - shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
  - shall promote economic, social and territorial cohesion, and solidarity among Member States.
Legal bases II

- Bases for secondary legislation
  - Art 153 (1) TFEU: With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:
    - lit i: equality between men and women with regard to labour market opportunities and equal treatment at work (→ Directive 2010/18/EU)

- Art. 157 TFEU

- Art. 19 TFEU

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Legal bases III

- Charter of Fundamental Rights

- Art 23: Equality between men and women must be ensured in all areas, including employment, work and pay.

- Art 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.
Legal bases IV

- European Pillar of Social Rights
- Chapter II: Fair working conditions
  - 9. Work-life balance
    - “Parents and people with caring responsibilities have the right to suitable leave and 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.”
- Chapter III: Social protection and inclusion
  - 11. Childcare and support to children
    - Children have the right to affordable early childhood education and care of good quality.
    - Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.

Important secondary legislation

  - EU Definition of workers
  - Paid leave
- Framework Agreement on Parental Leave (Directive 2010/18/EU)
  - National definition of workers
  - Unpaid leave
- Equal Treatment Directive (Directive 2006/54/EC)
- Agreement on part-time work (Directive 97/81/EC)
- Framework agreement on fixed-term work (Directive 1999/70/EC)

- 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 (Art 1 (1))

- No obligation to perform night work (Art 7 (1))
  - Alternative daytime work, or
  - Leave from work or extension of maternity leave

- Maternity leave (Art 8)
  - Para. 1: at least 14 weeks – mother’s entitlement
  - Para. 2: at least 2 weeks – absolute prohibition to work
  - In conjunction with Art 11: Entitlement to (continued) payment of "some" remuneration and/or "an" adequate allowance
    - C-194/08, Gassmayr (no entitlement to variable on-call allowance)
    - C-471/08, Parviainen (entitlement to performance allowance)


- Time off for ante-natal examinations (Art 9)

- Prohibition of dismissal (Art 10)
  - Dismissal as a risk to physical and mental condition
  - Start of pregnancy until end of maternity leave
    - C-232/09, Danosa (members of board of directors)
      - NOTE, special situation in Latvia!
    - C-438/99, Jiménez Melgar, and C-109/00, Tele Danmark
      - Prohibition of dismissal also applies to fixed-term employment contracts
      - De facto extension to the non-extension of fixed-term contracts "simply because of" pregnancy
        - Otherwise: direct discrimination on the basis of sex
Framework Agreement on Parental Leave (Directive 2010/18/EU)

- **Aim**
  - Promoting equal opportunities for men and women
  - More easily available parental leave as one valid means
    - More equal distribution of unpaid domestic work, especially childcare
    - Thereby: Promoting the professional advancement of women

- **Overview:**
  - Minimum entitlement to (unpaid) parental leave: four months (Clause 2)
  - Protection against discrimination on grounds of application for/use of parental leave (Clause 5)
  - Facilitation of return to work after parental leave (Clause 6)

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

- **Entitlement to parental leave (Clause 2)**
  - Purpose limitation: actual care of the child (cf. C-519/03, Commission/Luxembourg)
  - Parents’ basic individual entitlement
  - At least four months
  - Up to the maximum age of the child of eight years

- **Modalities (Clause 3)**
  - Full-time leave, or
  - Part-time leave (reduction of working time)
  - In parts
  - As a time credit
  - Postponement for legitimate operational reasons
  - Notice period
Framework Agreement on Parental Leave (Directive 2010/18/EU)

- Return to previous job (Clause 5)
  - Alternative: equivalent or similar job
    - C-7/12, (Riežniece) lit. 52 et seq.:

- Receipt of rights (Clause 5)
  - C-116/08, (Meerts) lit. 51 et seqq.:

- Protection against discrimination (Clause 5)
  - No restrictive interpretation; C-588/12, Lyreco, lit. 37 et seqq.
  - Economisation dismissals as an case of application?

- Resumption of employment (Clause 6)
  - Compulsory procedure in which employee applications are dealt with

Care of severely ill/dependent relatives?

- Framework Agreement on Parental Leave (Directive 2010/18/EU)
  - Clause 7: Time off from work on grounds of force majeure

- Disputed:
  - "only" in the case of illness/accident of child
  - OR
  - also in the case of illness/accident of relatives?

- No obligation for the Member States to make provisions for paid leave
Reconciliation and pillar of social rights

- Initiative "A new start" to promote the reconciliation between professional and private life for working parents and working carers (http://ec.europa.eu/social/main.jsp?catId=1311&langId=de, 13/10/2017)
  - Paternity leave for at least ten working days around the birth
    - Remuneration/social benefits: at least in the amount of continued payment in case of illness
  - Parental leave: no transferability for at least four months
    - Up to the maximum age of 12 years
    - Remuneration/social benefits: at least in the amount of continued payment in case of illness
  - Care-giving leave: Entitlement to five days/year for the care of severely ill/dependent relatives
    - Remuneration/social benefits: at least in the amount of continued payment in case of illness
  - Further entitlement to flexible working time arrangements
    - For parents of children up to the age of 12
    - For carers with dependent relatives

Summary and overview

- Total employment rate of women: 11.6% lower than that of men
- Part time: 31.5% of working women
  - 8.2% of working men
- Caring duties as a reason for non-employment
  - For nearly 20% of non-working women
  - For less than 2% of non-working men
- The aim of the Commission is: real balance between work and family life
  - Instead of choosing between family OR work
Thank you very much for your attention!