The EU and Work-Life Balance: A 'New Start' to support Work-Life Balance for parents and caregivers

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29-30 January 2018, ERA

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Overview

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  - why we need provision in this area?
- The existing EU Framework
  - primary and secondary legislation
  - case law
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- The New Start Initiative
  - legislative and non legislative measures
- Conclusions
The Definition

Work life balance (also reconciliation or family friendly) measures enable individuals to combine their family responsibilities with their occupational ambitions.
It affects everybody.

Why is work-life balance important?

- **Gender Equality**
  reconciliation family/private life
  “a natural corollary to gender equality and a condition for it substantive achievement (Case C-243/95 Hill)

- **Economic concerns**
  
- **Demographic issues**
  low fertility rates and high life expectancy means that the population is becoming smaller and older

- **Genuine choice for individuals**

- **Fight against poverty**
  amongst women and children
The EU Framework: Gender equality in the Treaties

- **Article 2 TEU**: equality between women and men is a fundamental value of the EU common to all EU MS.
- **Article 3 TEU**: the EU shall promote equality between women and men

*Legal basis for legislation:*
- **Article 153 (1) (i)**: equality between men and women with regard to labour market opportunities and treatment at work
- **Article 157 TFEU**:
  - s.1 Principle of equal pay for men and women for equal work or work of equal value.
  - s.2 Definition of "pay": the ordinary basic 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.
  - s.3 Legal basis for the adoption of legislation (ordinary legislative procedure)
- **Article 19 TFEU** (used for Dir. 2004/113 on access to goods and services)

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.

**Article 33**: Family and professional life
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.
The secondary legislation

- **Pregnant Workers Directive 92/85**
- **Parental Leave Directives 2010/18**

- **Part-Time Workers Directive 97/81**
- **Fixed-Term Work Directive 99/70**


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- to improve the **safety and health** at work of pregnant workers and workers who have recently given birth or who are breastfeeding AND to lay down minimum standards for **maternity leave and pay**
- provide for **protection from dismissal** or less favourable treatment from the beginning of pregnancy until the end of maternity leave (Art. 10)
- maternity leave of at least 14 weeks (Art. 8)
- **ante-natal** examinations (Art. 9)
- right to take leave from work **without loss of pay**.

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NB: In July 2015, given the lack of progress by the co-legislators and despite the Commission’s continuous and intensive efforts to facilitate an agreement, the proposal for an amended PWD was **formally withdrew**. The Commission was committed to replacing it with a ‘New Start’ initiative, seeking to address work-life balance in a comprehensive way and to address women’s underrepresentation in the labour market.
Fathers as carers: the EU legislation

There is no legislation but
Directive 2006/54/ (Recast Directive) Article 16

The 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 end of such leave, they 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 during their absence.’

Fathers as Carers: case law

“The equal treatment directive is not designed to settle questions concerned with the organization of the family or to alter the division of responsibility between parents” (Case 184/83 Hofmann) C-218/98, Abdoulaye

“the positions of a male and female worker, father and mother of a young child, are comparable with regard to their possible need (...) to look after the child” (Case C-104/09, Roca Alvarez)
Case C 5/12 Betriu Montull
C-173/13 Leone
C- 222/14 Maïstrellis
Directive 2010/18/EU - Parental leave

- It applies to all workers, men and women, irrespective of their type of employment contract (open-ended, fixed-term, part-time or temporary).
- Workers are entitled to parental leave on the birth or adoption of a child. Such leave may be taken until the child has reached an age determined by national law and/or collective agreements, up to the age of eight.
- Parental leave shall be granted for at least a period of four months. In principle, workers should be able to take all of their leave. It should therefore not be transferable from one parent to the other. However, such transfers may be authorised on condition that each parent keeps at least one of the four months of leave.
- After taking parental leave, workers shall have the right to return to the same job. If that is not possible, the employer must offer them an equivalent or similar job consistent with their employment contract or employment relationship.
- Workers shall be protected against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave.
- Temporary changes to work schedules – employees returning from parental leave have the right to request changes to their working hours for a limited period.

Directive 2010/18/EU and carers

At the moment there are no EU provisions on carers’ leave; there is a right to take time off for urgent family reasons ("force majeure leave (Clause 7 Directive 2010/18 EU)."
Why another Initiative?

Employment rate (20-64 years old) by sex (% of total employment), 2015
Reasons for women’s low participation

- Looking after children or incapacitated adults
- Of own illness or disability
- Of other reasons
- Of other personal or family responsibilities
- Of belief that no work is available
- Awaiting recall to work (persons on lay-off)
Lack of accessible, affordable and quality formal care services

Take-up of parental leave by men and women
• women still spend 26 hours a week in unpaid work, against nine hours for men (European Working Conditions Survey 2010). In couples with young children, both employed women and men increase the time they spend on unpaid work, but while men increase it to about 17 hours per week, women do so to nearly 40 hours per week (Eurofound 2013).

• mothers are the main users of leave entitlement - eg. in Austria, Czech Republic, Finland and Poland the proportions of fathers who take parental leave is less than 3%.

• mothers are 8 times more likely to work part time than fathers (Eurostat 2013).

• availability of flexible working arrangements is uneven across the EU - more than 50% of workers in Romania and in Malta do not have any kind of possibility to vary start and/or stop of their working day for family reason (Eurostat 2010).

• While a majority of Member States made progress towards the Barcelona targets on childcare provision since 2005, only nine Member States met the objective of 33% coverage rate for children under three years of age in 2013 and eleven met the objective of 90% coverage rate as regards children between three years old and the mandatory school age. (EU-SILC 2013).

• Women are more likely than men to assume care responsibilities for elderly family members with long-term care needs (17% against 10%) and are thus far more likely to reduce their working hours (European Quality of Life Survey 2011).

• Tax benefit systems in some countries continue to discourage women to take up work or work more, in particular by providing disincentives for second earners to work full-time.


• 80% care needs are provided by informal carers

• 3.3 million Europeans aged between 15 and 34 have had to give up works because they lack care facilities for dependant children or older relatives

The New Start Initiative

• Presented in the Commission Work Programme 2017 under the Social Pillar as a related initiative addressing the challenges of work-life balance faced by working families

• A mix of legislative/non-legislative measures

- to address the **low participation of women in the labour market** which is linked to the **unequal distribution of caring responsibilities** between women and men
- to **promote equality** between men and women with regard to labour market opportunities and equal use of occupational rights
- to **modernise** and adapt the current EU legal and policy framework to today's labour market by improving measures to facilitate work-life balance and **incentivising** their equal use by women and men.

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<th>Paternity Leave</th>
<th>Current EU Law</th>
<th>Impact of the Proposal</th>
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<tr>
<td>No minimum standards for paternity leave at EU-level.</td>
<td>All working fathers will be able to take at least 10 working days of paternity leave around the time of birth of the child. Paternity leave will be compensated at least at the level of sick pay.</td>
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<td>At least 4 months per parent, out of which one month is non-transferable between parents. Parents can take leave until their child is 8 years old. No minimum rules on allowance/payment.</td>
<td>At least 4 months per parent that cannot be transferred between parents. Parents can take leave in flexible forms (full-time, part-time, in a piecemeal way). Parents can take leave until their child is 12 years old.</td>
<td>Parental leave will be compensated at least at the level of sick pay.</td>
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Paternity leave

- Paternity leave could contribute to a more equal use of leave arrangements between women and men. It has been shown to have a knock-on effect on fathers' longer-term involvement in childcare, which would have a clear positive impact on women's labour market participation.
- Enhancing fathers’ possibilities to take leave after having a child could also help to reduce the risk of labour market discrimination against women.
- The provision of an adequate allowance is a key determinant of fathers' take-up of leave and could therefore enhance the effectiveness of this measure.

Parental leave

- Improving the possibilities and incentives for fathers to take parental leave could support a more equal use of leave arrangements between women and men (in turn this would have a positive impact on women's labour market participation)
- Enhancing fathers’ possibilities to take parental leave could also help to reduce the risk of labour market discrimination against women.
- adequate allowance is a key determinant of fathers' take-up of parental leave and could therefore enhance the effectiveness of this measure
- Increasing non-transferability could encourage fathers to take more of their leave entitlement, thereby limiting the length of career interruptions for women
- Flexibility could improve the attractiveness of parental leave for men and thereby their take-up
The Legislative Initiatives

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<th>Carers' Leave</th>
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<td></td>
<td>No minimum standards for carers at EU level (except &quot;force majeure&quot; allowing to take short time off for imperative and unexpected family reasons.)</td>
<td>All workers will have the right to 5 days of carers’ leave per year to take care of seriously ill or dependent relatives.</td>
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<td></td>
<td>No minimum standards at EU level on the length of the leave nor compensation</td>
<td>Carers’ leave will be compensated at least at the level of sick pay</td>
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<td>Flexible Working Arrangements</td>
<td>Right to request reduced and flexible working hours upon return from parental leave</td>
<td>All working parents of children up to 12 and carers with dependent relatives will have the right to request the following flexible working arrangements: 1. Reduced working hours 2. Flexible working hours 3. Flexibility on the place of work</td>
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<td></td>
<td>Right to request part-time work for all workers</td>
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Carers' leave

- would provide workers with the possibility to take time off to care for a dependent relative, or ensure arrangements for formal care, while remaining in employment
- could strengthen carers' attachment to the labour force (particularly women who are more likely to be carers), by having a temporary period of absence and then return to work, rather than dropping out of the labour market
- flexibility in take-up could lead to maintain a connection to the workplace
Flexible working arrangements

• Improving the availability of Flexible Working Agreements for parents and carers could help workers balance work and care responsibilities, by allowing them to adapt their working patterns and/or schedules to their personal needs and preferences.

• Could help employers retain workers returning from a care-related leave, or who are faced with new caring responsibilities during their career, to remain in their jobs rather than having to change their jobs or even drop out of the labour market.

Where is Maternity Leave?

• Improving dismissal protection
  • Overcoming problems of existing discrimination and dismissals in connection with maternity leave could help to keep women in the labour market.

• Provision for breastfeeding breaks and/or facilities
  • Breastfeeding breaks and/or facilities could facilitate women’s return to work after their leave, in cases where women want to continue breastfeeding while working.
Non legislative measures

• complement the legislative measures
• aim to support Member States in achieving our common goals

- ensure protection against discrimination and dismissal for parents (including pregnant women and workers coming back from a leave) and carers
- encourage a gender-balanced use of family-related leaves and flexible working arrangements
- make better use of European funds to improve long-term and childcare services
- remove economic disincentives for second earners which prevent women from accessing the labour market or working full-time

INDIVIDUALS:
Parents and carers: will profit from more work-life balance.
Women: increase in women employment, their higher earnings and career progression will positively impact their and their families’ economic prosperity, social inclusion and health.
Men: will reduce work-life balance conflicts.
Children: will reduce the risk of poverty, health problems, personal and cognitive development.

BUSINESS: will benefit from a wider talent pool and a more motivated and productive labour force, as well as less absenteeism. Less skills shortage; Improve retention of workers; more women in management positions.

WIDER SOCIETY: rise in female employment will contribute in addressing the challenge of demographic ageing and ensuring Member States’ financial stability.

Benefits?

"The success of this initiative will require a shared commitment. The Commission invites the European Parliament and the Council, the European Economic and Social Committee and the Committee of the Regions to endorse this Communication and to actively support its implementation, in close cooperation with social partners and all other relevant stakeholders at European, national and local level."

"The Commission invites Members States, Social Partners, and each relevant actor to step up their efforts in providing better work-life balance policies and allow for improved well-being of our European society."

- Brexit and Social Europe

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Will it work?

Discrimination ok grounds of pregnancy/maternity

"It is harder to crack a prejudice than an atom" (A. Einstein)

Discrimination on grounds of family responsibilities and caring roles
Further reading


• Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood  

• Reconciliation between work and private life  