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Reconciliation
of private and professional
responsibilities:
maternity leave, parental leave, etc.”.

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What is the EU “reconciliation agenda”?  

Political agenda - „Reconciliation policies“: policies that directly support the combination of professional, family and private life:

- Childcare services
- Leave facilities
- Flexible working arrangements
- Financial allowances/ supplements

➢ to promote gender equality
EU political “reconciliation agenda”

Increased employment: Lisbon Strategy 2000-2010 and Europe 2020 Strategy


Council Conclusions: Reconciliation of work and family life in the context of demographic change, June 2011

Gender equality/ reconciliation measures in a legal framework:

Protection against discrimination in the workplace based on
- pregnancy
- parental leave
- care of small children /elderly dependants

Key issues:
- Protection against dismissal
- Securing rights as workers through leave facilities & flexible working arrangements
Outline legal framework

Community legislation
- Gender Equality
- Pregnancy, childbirth, breastfeeding and maternity leave
- Parental leave and time off on grounds of force majeure
- The self-employed

The legal framework

TFEU article 19 and 157

Directive 2006/54/EC – equality (Recast)

EU Charter of fundamental rights article 33
Directive 2010/18/EU – parental leave directive
- repeals directive 96/34/EC by 08.12.2012

Directive 2010/41/EU – parental leave self employed
(Repeals directive 86/613 EEC on 5 August 2012, see COM(2008) 636 final 3.10.2009)

Directive 92/85/EEC – pregnant workers directive
(see COM (2008) 637 final 3.10.2008)
EU Charter of fundamental rights article 33

“(1) The family shall enjoy legal, economic and social protection; (2) To reconcile family and professional life everyone shall have the right to protection form 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”.

- codification of existing entitlements (no new rights)
- leaves role of interpretation to the ECJ

Parental leave – D. 2010/18/EU

- minimum requirements for parental leave
- an individual right (art 2 no 1)
- leave: at least four months (birth or adoption) (art 2 no 2)
- part of the leave - at least one of the four months - shall be non-transferable (clause 2 no 2) as set down at national level through legislation/ collective agreements. This month is lost if only one parent takes parental leave.
- Worker” (clause 1 no 2), C-232/09 Dita Danosa
- All types of contract: part-time, temporary etc
Parental leave – D. 2010/18/EU cont’

Conditions of access and applicability as defined by the member states (clause 3 no 1) but:
- Qualification period may not exceed 1 year (b),
- Define circumstances in which an employer is allowed to postpone the granting of parental leave: “justifiable reasons related to the operation of the organisation” (c)

Establish notice periods specifying the beginning and end of parental leave (clause 3 no 2)
  - C-116/06 Kiiski - changing the leave period

-If maternity leave overlaps with parental leave: right to delay parental leave, see C-519/03 Luxembourg.

- Twins: Parental leave not granted per child or to the child, but members states must introduce measures that take this situation into account, see C 149/10 Chatzi
Enabling reconciliation:

Right to reduced working time and time off - D. 2010/18, clause 6 and 7

- Reduced work = reduced pension C-537/07
  Gómez-Limon
- Part-time worker compensation as full-time upon dismissal C-116/2008 Meerts

Matters regarding social security and income are for consideration and determination by member states/social partners (D. 2010/18/EU clause 5 no 5)

Protection against dismissal

Prohibition against dismissal because of sex (D. 2006/54 art 14 no 1c)) from the beginning of pregnancy until the end of maternity leave (D. 92/85 art 10 nr 1) or parental leave (D. 2010/18 clause 4 no 4)

However a worker may be dismissed during this period, in exceptional cases not connected with the pregnancy/leave, as allowed under national laws or practices.

If dismissed during pregnancy/maternity, the employer must in writing cite duly substantiated grounds for dismissal (D. 92/85 art 10 nr 2)
Protection against dismissal cont’
- A temporary worker cannot be dismissed because she has not informed the employer about her pregnancy
  - C-109/00 Tele-Danmark
- Temp for temp - C-32/93 Webb
- Preparation for dismissal cannot be done during the protected period,
  - C-460/06 Paquay
- Ongoing in-vitro-fertilization-periods covered by D. 76/207 (now D-2006/54), - C-306/05 Sabine Mayr
- Pregnancy-related illness covered,
  - C-394/98 Brown
- Definition of worker: covers member of board of directors,
  - C-232/09 Dita Danosa

Employment rights – right to return
Parental leave and force majeure

Workers have the right after a leave period to return to the same job or “equivalent or similar job”, D. 2010/18 clause 5 no 1, D. 2006/54 art 15

*Force majeure*: absence due to urgent family reasons in the event of illness or accident.
Employment rights – acquired rights

Acquired rights shall be maintained until the end of the parental leave; D. 2010/18 clause 5 no 2.

A worker on leave has a right to benefit from improved working conditions to which he would have been entitled during his absence, including pay; D. 2006/54 art 16 and TFEU art 157
- C- 284/02 Ursula Sass
- C-136/95 Thibault

A worker on leave has right to continue social security,
- C- 356/03 Elisabeth Mayer

The self-employed (2010/41):

Maternity leave: allowance enabling a break of at least 14 weeks

Pay at least equal to sick pay but with possible ceiling

Possibly with temporary replacement

Concepts, implementation etc
Sanctions & remedies

Sanctions against violations must be efficient, proportional and dissuasive
- C-460/06 Paquay question 2 part 2

Requirements:
- access to judicial procedures, D 2006/54 art 17,
- real and effective compensation, art 18,
- Procedural rules - “principle of equivalence” C-63/08
Pontin

Burden of proof, art 19, see no 4(a)

Jurisprudence of the EU court

Equality: women and men:
- “Protection of women and men both in the family life and in the workplace” – C-1/95 Gerster
  - “Adapting working conditions to family responsibilities,” C-243/95
Stapleton & Hill

- What happens when men are discriminated because of leave/child-care?
  - Distinction between maternity leave and parental leave C-519/03
Luxembourg
  - Equal sharing of rights between the mum and dad
C-184/83 Hofmann, C-476/99 Lommers, C-366/99 Griesmar
  - Allowance to female workers only, C-218/98 Abdoulaye
  - A right of the father to take “breastfeeding leave”, C-104/09 Roca Álvarez
Conclusion

- How to combine the protection of both mothers and fathers within the legal framework on protection of gender equality/women? Different legal foundations in the Treaty make an integrated approach difficult.

- A more equitable gender distribution of domestic chores and family responsibilities is still a long way off.

- Legal framework for protection and non-discrimination exists, but needs to be strengthened through practice. Important role of the ECJ establishing protection against direct discrimination.

- National implementation in reality still behind.