

THE RECONCILIATION OF  
**Work and Family Life**  
PREGNANCY • MATERNITY • PARENTAL LEAVE

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THE RECONCILIATION OF  
**Work and Family Life**

**Part I.**

Overview of the legal provisions

**Part II.**

Pregnancy and Maternity Discrimination – a Guided Tour

## PART II

# Overview of the legal provisions

## PART I, OVERVIEW OF THE LEGAL PROVISIONS

# Primary Legislation

<b>TFEU</b>	<b>Art 157</b>	Legal basis for measures on gender equality
<b>EU CHARTER</b>	<b>Art 33(2)</b>	Dismissal due to maternity, Maternity leave, and Parental leave
	<b>Art 20</b>	Equality
	<b>Art 23</b>	Gender equality

PART I, OVERVIEW OF THE LEGAL PROVISIONS

## **Secondary Legislation**

**Two categories of provisions:**

- A. Accommodation of pregnancy, maternity and parenthood in working life**
- B. Protection against discrimination and less favourable treatment**

SECONDARY LEGISLATION

## **A. Accommodation**

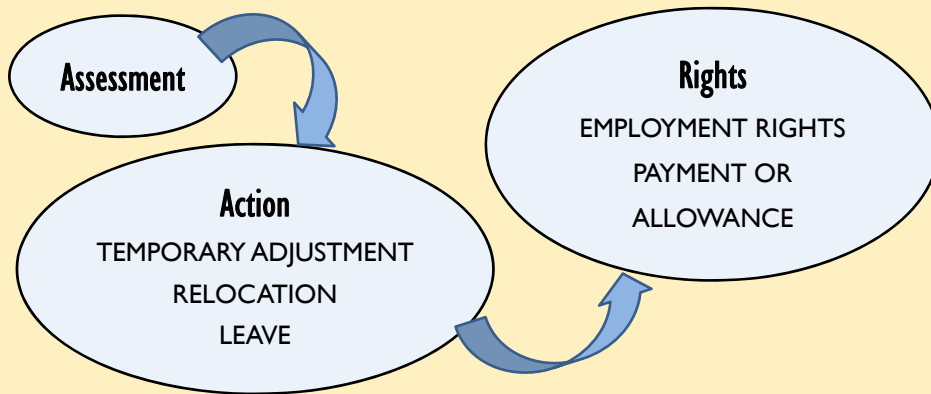
**Two main areas:**

- 1. Health and safety provisions**
- 2. Right to leave from work**

A. ACCOMODATION

# AI. Health and safety

## Pregnant Workers Directive 92/85



A. ACCOMODATION

# AI. Health and safety

## Pregnant Workers Directive 92/85

<b>PROTECTED PAY</b>	<b><u>NOT</u> PROTECTED PAY</b>
Basic monthly pay and Supplementary pay based on <i>occupational status</i>	Supplementary pay for <i>disadvantages</i> related to performance of tasks
<i>C-194/08 Gassmayr</i>	<i>C-471/08 Parviainen</i>

A. ACCOMODATION

## A2. Leave from work

**Maternity leave**      **Pregnant workers directive 92/85**  
(+leave for ante-natal examinations)

**Parental leave**      **Parental leave directive 2010/18**

A. ACCOMODATION

## Maternity leave

**14 weeks**

**2 compulsory**

**Payment or allowance**

dir 92/85 art 8 and 11

A. ACCOMODATION

**Parental leave**

**4 months**

C-149/10  
Chatzi

**Non-transferable**

**Payment in national laws**

dir 2010/18

SECONDARY LEGISLATION

**B. Less favourable treatment  
and discrimination**

**Three main sources:**

**Pregnant workers directive 92/85**

**Parental leave directive 2010/18**

**Equal treatment directive 2006/54**

B. PROTECTION AGAINST LESS FAVOURABLE TREATMENT

## BI. Pregnant workers directive

a) ENSURES THE RIGHT TO

**KEEP** the rights related to the employment contract  
– except pay

Article 11

B. PROTECTION AGAINST LESS FAVOURABLE TREATMENT

## BI. Pregnant workers directive

b) PROHIBITS DISMISSAL

**DURING** pregnancy and maternity leave

**SAVE** in exceptional cases

Article 10

• • •

**DIRECT EFFECT** C-438/99 Melgar

**PREPARATORY ACTIONS** C-460/06 Paqay

B. PROTECTION AGAINST LESS FAVOURABLE TREATMENT

## B2. Parental leave directive

a) **ENSURES THE RIGHT TO**

**RETURN** to same or equivalent job

**KEEP** acquired employment rights

Clause 5, sections 1 and 2

...

**VACATION** C-486/08 Gómez

**DELAY PARENTAL LEAVE** C-519/03 Commission v Luxembourg

**COMPENSATION FOR DISMISSAL** C-116/08 Meerts, C-588/12 Lyreco

**ASSESSMENT** C-7/12 Riežniece

B. PROTECTION AGAINST LESS FAVOURABLE TREATMENT

## B2. Parental leave directive

b) **PROHIBITS** unfavourable treatment & dismissal

on the grounds of an application for, or the taking of, parental leave

Clause 5, section 4



B. PROTECTION AGAINST LESS FAVOURABLE TREATMENT

## B3. Equal Treatment Directive

### a) ENSURES THE RIGHT TO

**RETURN** to same or equivalent job

**BENEFIT** from improvements in working conditions  
after maternity, paternity and adoption

Articles 15 & 16

B. PROTECTION AGAINST LESS FAVOURABLE TREATMENT

## B3. Equal Treatment Directive

### b) PROHIBITS DISCRIMINATION

related to **PREGNANCY** or

**MATERNITY LEAVE** under the provisions on  
sex discrimination

Article 2.2 c

• • •

**DIRECT DISCRIMINATION** case C-177/88 Dekker

**PART II**

**Pregnancy & Maternity  
Discrimination  
– a Guided Tour**

**PART II, DISCRIMINATION – A GUIDED TOUR**

**Case law of the ECJ**

**Two main questions:**

- A. Who is protected?**
- B. Which rights are protected?**

PART II, DISCRIMINATION – A GUIDED TOUR

## **A. The Protected Person**

1. worker or job-seeker
2. pregnant or
3. maternity leave
4. woman

PART II, A. THE PROTECTED PERSON

## **A I. Worker or job-seeker**

**SHORT TERM** case C-109/00 Tele-Danmark

**BOARD MEMBER** case C-232/09 Danosa

PART II, A. THE PROTECTED PERSON

## A2. Pregnancy

<b>EMPLOYER'S KNOWLEDGE</b>	cases C-116/06 Kiiski C-232/09 Danosa
<b>IN VITRO</b>	case C-506/06 Mayr
<b>SURROGATE ARRANGEMENT</b>	cases C-167/12 CD C-363/12 Z

PART II, A. THE PROTECTED PERSON

## A3. Maternity Leave

<b>MANDATORY OR OPTIONAL</b>	case C-284/02 Sass
<b>SUPPLEMENTARY</b>	case C-411/96 Boyle
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<b>PARENTAL LEAVE</b>	case C-411/96 Boyle C-220/02 ÖGB

PART II, A. THE PROTECTED PERSON

## Other reasons for absence

### PREGNANCY RELATED ILLNESS

during pregnancy case C-394/96 Brown  
during maternity leave case C-179/88 Hertz

no protection after maternity leave

### STATUTORY WORK PROHIBITION

cases C-421/92 Habermann-Beltermann  
C-207/98 Mahlburg

PART II, A. THE PROTECTED PERSON

## A4. Women only

### MATERNITY RIGHTS as direct sex discrimination of men

cases C-163/82 Commission vs Italy  
C-184/83 Hofmann  
C-104/09 Roca Álvarez  
C-5/12 Betriu Montull

**PART II, PREGNANCY & MATERNITY DISCRIMINATION**

**B. The Protected Rights**

1. obtain and maintain employment
2. withhold information
3. employment conditions – except pay
4. pay

**PART II, B. THE PROTECTED RIGHTS**

**BI. Obtain and maintain employment**

**FIXED-TERM – RENEWAL** case C-498/99 Melgar

**SHORT TERM** case C-109/00 Tele-Danmark

PART II, B. THE PROTECTED RIGHTS

## **B2. Withhold information**

### **NO OBLIGATION TO INFORM ABOUT PREGNANCY**

recruitment – case C-109/00 Tele Danmark

return to work – case C-320/01 Busch

PART II, B. THE PROTECTED RIGHTS

## **B3. Employment conditions**

**ASSESSMENT** Thibault C-136/95  
Sarkatzis Herrero C-294/04  
Riežniece C-7/12

**VACATION** Goméz C-342/01

**VOCATIONAL  
TRAINING** Napoli C-595/12

PART II, B. THE PROTECTED RIGHTS

## **B4. Pay during maternity leave**

**Pregnant Workers Directive:**

**PAY OR ALLOWANCE EQUIVALENT TO  
SICKNESS BENEFIT**

dir 92/85 art 8 and 11

PART II, B. THE PROTECTED RIGHTS

## **B4. Pay during maternity leave**

**Equal Treatment Directive:**

**MATERNITY LEAVE – UNCOMPARABLE**

- **with time in work** Gillespie C-342/93  
Boyle C-411/86  
Alabaster C-147/02  
McKenna C-191/03  
Parviainen C- 471/08  
TSN & YTN C-512/11 & C-513/11
- **with other leave** ÖGB C-342/93



## **CONCLUSIONS & TRENDS**

## **CONCLUSIONS & TRENDS**

### **STRONG PROTECTION...**

for women during pregnancy and maternity leave

### **...EXCEPT REGARDING ECONOMIC RIGHTS**

during maternity leave

### **SLOWLY INCREASING, BUT STILL WEAK**

protection for men and for women after maternity leave