THE RECONCILIATION OF
Work and Family Life

PREGNANCY • MATERNITY • PARENTAL LEAVE

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Part 1.
Overview of the legal provisions

Part II.
Pregnancy and Maternity Discrimination – a Guided Tour
PART II

Overview of the legal provisions

Primary Legislation

<table>
<thead>
<tr>
<th>TFEU</th>
<th>Art 157</th>
<th>Legal basis for measures on gender equality</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU CHARTER</td>
<td>Art 33(2)</td>
<td>Dismissal due to maternity, Maternity leave, and Parental leave</td>
</tr>
<tr>
<td>Art 20</td>
<td>Equality</td>
<td></td>
</tr>
<tr>
<td>Art 23</td>
<td>Gender equality</td>
<td></td>
</tr>
</tbody>
</table>
Two categories of provisions:

A. Accommodation of pregnancy, maternity and parenthood in working life

B. Protection against discrimination and less favourable treatment

Two main areas:

1. Health and safety provisions
2. Right to leave from work
A. ACCOMODATION
A1. Health and safety

Pregnant Workers Directive 92/85

Assessment

Action
TEMPORARY ADJUSTMENT
RELOCATION
LEAVE

Rights
EMPLOYMENT RIGHTS
PAYMENT OR
ALLOWANCE

PROTECTED PAY
Basic monthly pay and
Supplementary pay based on occupational status

C-194/08 Gassmayr

NOT PROTECTED PAY
Supplementary pay for disadvantages related to performance of tasks

C-471/08 Parviainen
### A. ACCOMODATION

#### A2. Leave from work

<table>
<thead>
<tr>
<th>Leave Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maternity leave</td>
<td>Pregnant workers directive 92/85</td>
</tr>
<tr>
<td></td>
<td>(+leave for ante-natal examinations)</td>
</tr>
<tr>
<td>Parental leave</td>
<td>Parental leave directive 2010/18</td>
</tr>
</tbody>
</table>

### A. ACCOMODATION

#### Maternity leave

- **14 weeks**
- **2 compulsory**
- **Payment or allowance**

*dir 92/85 art 8 and 11*
A. ACCOMODATION

Parental leave

4 months
Non-transferable
Payment in national laws

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

B1. Pregnant workers directive

a) **ENSURES THE RIGHT TO**

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

Article 11

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 Goméz
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) **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) 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

A1. 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

<table>
<thead>
<tr>
<th>EMPLOYER’S KNOWLEDGE</th>
<th>cases</th>
<th>C-116/06 Kiiski</th>
<th>C-232/09 Danosa</th>
</tr>
</thead>
<tbody>
<tr>
<td>IN VITRO</td>
<td>case</td>
<td>C-506/06 Mayr</td>
<td></td>
</tr>
<tr>
<td>SURROGATE ARRANGEMENT</td>
<td>cases</td>
<td>C-167/12 CD</td>
<td>C-363/12 Z</td>
</tr>
</tbody>
</table>

### PART II, A. THE PROTECTED PERSON

#### A3. Maternity Leave

<table>
<thead>
<tr>
<th>MANDATORY OR OPTIONAL</th>
<th>case</th>
<th>C-284/02 Sass</th>
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</thead>
<tbody>
<tr>
<td>SUPPLEMENTARY</td>
<td>case</td>
<td>C-411/96 Boyle</td>
</tr>
<tr>
<td></td>
<td></td>
<td>...</td>
</tr>
<tr>
<td>PARENTAL LEAVE</td>
<td>case</td>
<td>C-411/96 Boyle</td>
</tr>
</tbody>
</table>
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

B1. 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

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