# Health and safety at work: workers who are pregnant, have recently given birth or are breastfeeding

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The Committee on Women's Rights and Gender Equality adopted the report drawn up by Edite ESTRELA (PES, PT) amending, under the first reading of codecision procedure, the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

The main amendments are as follows:

**Scope:** the text now states that this Directive also aims to improve the conditions for pregnant workers and workers who have recently given birth to remain in, or return to, the labour market and to ensure better reconciliation of professional, private and family life. Members note that given the addition of Article 141 of the EC Treaty to the legal basis of this proposal, the additional point aims at widening the scope of the directive and allows for including issues such as flexible working arrangements and paternity leave.

**Definitions:** the report inserts definitions for "pregnant worker", "worker who has recently given birth" and "worker who is breastfeeding".

**Guidelines:** the Commission is required to draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the reproductive health of male and female workers and for the safety or health of workers. These guidelines shall be reviewed and shall, from 2012, be updated at least every five years.

**Assessment, information and consultation**: the report adds that in the risk assessment carried out under Directive 89/391/EEC the employer shall include an assessment of the reproductive risks for male and female workers. Members note that it is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Information and consultation provisions are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

**Action further to the results of the assessment**: the report restricts employers' ability to argue that they cannot adapt the workplace or offer an alternative job. It deletes the phrase which currently allows employers to argue that they cannot offer alternative work i.e." cannot reasonably be required on duly substantiated grounds."

**Night work:** the provisions on night work are amended. Workers must not be obliged to perform night work: (a) during the 10 weeks prior to childbirth; (b) during the remainder of the pregnancy should it be necessary for the health of the mother or the unborn child; (c) during the entire period of breastfeeding.

These periods had previously been left to Member States to decide. They may be extended under certain circumstances. Member States shall take the necessary measures to ensure that fathers of children younger than 12 months are not obliged to perform night work.

**Overtime**: a new article stipulates that pregnant workers and working women with a child aged less than 12 months shall not be obliged to work overtime. A worker who is breastfeeding her child shall not be obliged to work overtime while she is breastfeeding, where necessary in the interests of her health and that of her child.

**Maternity leave**: Members consider that this must be **20 weeks**, rather than 18 weeks. It shall include **compulsory fully paid maternity leave** of at least 6 weeks after childbirth. Member States may extend the compulsory period of maternity leave to a maximum of 6 weeks before confinement. The 6 week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement. This period may, if the couple agrees and so requests, be shared with the father, in accordance with the legislation of the Member State concerned. To protect the health of both mother and child, Member States must ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory period of maternity leave before the childbirth. For multiple births the compulsory period of maternity leave must be increased by one month for each additional child.

The committee also stipulates that **fully paid additional maternity leave** must granted in specific situations, such as in the case of premature childbirth, stillbirth, caesarean section, children hospitalised at birth, children with disabilities, mothers with disabilities, teenage mothers, multiple births or births occurring within 18 months of the previous birth.

Member States shall guarantee mothers' and fathers' rights by ensuring **special working conditions** so as to help children with disabilities.

The committee went on to state that the Directive also applies to **self-employed workers,** and Member States shall make the necessary adjustments to their respective laws in order to guarantee equal employment rights, as regards maternity leave.

In addition:

- Member States shall adopt suitable measures for the recognition of **postnatal depression** as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on this illness and correcting the prejudices and possible stigmatisation which it can still attract;

- a new clause giving entitlement to **2 weeks paternity/co-maternity leave** is added;

- a new clause on **adoption leave** is added.

**Prohibition of dismissal**: Members add a prohibition on employers interrupting maternity or paternity leave. There will be a presumption of discrimination in cases of dismissal within 12 months of maternity leave, save in an exceptional case not connected with the worker's condition, and duly specified in writing, which is permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

Member States shall be encouraged to adopt measures that ensure that a worker may choose to work part-time for a period of no longer than 1 year, with full protection from the possibility of dismissal and full rights to recover their full time position and pay at the end of this period.

**Employment rights**: entitlements should be based on full pay, to prevent women losing out financially because they are mothers.

The report adds that if there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get the higher salary and after that resume the leave.

Members add to the provisions on offering workers **equivalent posts**, and career development. They stipulate also that maternity leave must not affect **pension rights**.

When making the calculation on maternity leave, any salary increases resulting from legislation or contractual provisions must be included. The allowance must be **100%** of the last monthly salary or the average monthly salary during the compulsory period of leave and not be lower than 85% of the last monthly salary or the average monthly salary during the remaining period of leave of the worker concerned.

The committee also **removed the eligibility criterion** in this article, stating that this is essential if all women are to have the same right to paid maternity leave, in such a way as to comply with worker mobility and the EU's common principles of "flexicurity".

The report goes on to add a clause on **time off for breastfeeding**, stipulating that a mother who is breastfeeding her child shall be entitled to a period of leave for that purpose, that shall be taken in two separate periods, each of which shall be of 1 hour, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment. This is adjusted in cases of multiple births and part-time work. Additional clauses are inserted on **prevention of discrimination** and **gender mainstreaming**.

The committee deletes the provisions on **burden of proof**, stating that discrimination on grounds of pregnancy already fulfils the criteria for sex discrimination. The existing reversal of the burden of proof enshrined in Directive 2006/54/EEC can also be brought to bear.

**Preventive measures**: Member States may adopt preventive measures for the protection and safety at work of pregnant workers and mothers of newly-born children.

**Social partners**: the social partners at European level are requested to discuss the framework agreement on parental leave in order to involve both parents in improving the balance between private and working life when they have a child.

**Commission’s report**: the report shall also include an impact study analysing the social and economic effects, in the EU as a whole, of a further increase in the duration of maternity leave.