

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

2008/0193(COD) - 20/10/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 390 votes to 192, with 59 abstentions a legislative resolution on 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 Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise reached between the European Parliament and the Council. Parliament amends the Commission's proposal as follows:

Purpose: Parliament extends the scope of the Directive. It states that the 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**.

Definitions: the term 'pregnant worker' shall mean a pregnant worker employed under any type of contract, including in domestic work. The term 'worker who has recently given birth' shall also mean a worker who recently adopted a child.

Guidelines: Members consider it important to update guidelines in accordance with circumstances and knowledge. There are health and safety risks that are considered hazardous for the reproductive health of male and female workers. These guidelines shall be reviewed and shall, from 2012, be updated at least every five years. These guidelines to the attention of the social partners.

Assessment, information and consultation: Members stipulate 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**. To promote a preventive approach, the assessment should cover workers likely to be in one of the situations covered by the directive. Provisions regarding consultation and participation of workers and/or their representatives for questions falling within its scope were introduced.

Working conditions: Parliament considers that the current text of this article gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. Accordingly, it has deleted the words "or cannot reasonably be required on duly substantiated grounds" in order to ensure that protection of the employment opportunities for women is increased.

Tasks involving serious physical effort or presenting a risk to health: an amendment specifies that pregnant women shall not be required to perform tasks such as carrying and lifting heavy weights or tasks that are dangerous or exhausting or which pose health risks.

Night work and overtime: according to the amended text, workers within the scope of the text must not be obliged to perform night work and are not obliged to work overtime: a) during the 10 weeks prior to the due date of childbirth; (b) during the remainder of the pregnancy should it be necessary for the health of the mother or the unborn child; and c) during the entire period of breastfeeding. There must be the alternative of transfer to daytime work which is compatible.

Workers wishing to be exempted from night work shall inform their employer and, in the case of workers who have recently given birth submit a medical certificate to the employer.

For single parents and parents of children with severe disabilities, these periods may be extended in accordance with the procedures laid down by the Member States.

Maternity leave: Members propose that workers be entitled to a **continuous period of maternity leave of at least 20 weeks** allocated before and/or after confinement (the Commission proposed 18 weeks and current legislation provides for 14).

- With respect to the last four weeks of the period in question, a scheme of family-related leave available at national level may be considered to be maternity leave for the purposes of this Directive, on condition that it provides an overall protection to workers that is equivalent to the level laid down in this Directive.

- The remuneration for the last four weeks of maternity leave shall be no lower than a certain threshold or, alternatively, it may be the average of the remuneration for the 20 weeks of maternity leave, which shall be at least 75 % of the last monthly salary or of the average monthly salary as stipulated according to national law, subject to any ceiling laid down under national legislation.

- Where a Member State has made provision for a period of maternity leave of at least 18 weeks, that Member State may decide that the last two weeks are met through paternity leave available at national level, with the same level of pay.

- The maternity leave shall include compulsory **fully paid maternity leave of at least six weeks after childbirth**, without prejudice to existing national laws which provide for a period of compulsory maternity leave before childbirth. The six-week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement.

- New provisions state that **this period may be shared with the father**, in accordance with the legislation of the Member State concerned if the couple agrees and so requests.

- To protect the health of both mother and child, Member States shall take the necessary measures to ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory period of maternity leave before childbirth. For multiple births the compulsory period of maternity leave shall be increased for each additional child in accordance with national legislation.

- Member States shall protect mothers' and fathers' rights by ensuring that there are special working conditions so as to **help the parents of children with disabilities**. The total period of maternity leave shall be extended by at least eight weeks after the birth in the case of the birth of a disabled child and Member States shall also ensure an additional period of leave of six weeks in the case of a stillbirth.

Lastly, 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 the illness and correcting the prejudices and possible stigmatisation which it can still attract.

Paternity leave: Members call for measures to ensure that workers whose life partner has recently given birth are entitled to a continuous period of non-transferable paid paternity leave of at least two weeks, granted on an equivalent basis – except with regard to its duration – to maternity leave, to be taken after the confinement of the worker's spouse or partner within the period of the maternity leave. Member States that have not already introduced it are strongly encouraged to implement it in order to promote equal participation of both parents in balancing family rights and responsibilities.

Members also wish to ensure that workers whose life partner has recently given birth are granted a period of special leave including the unused portion of maternity leave in the case of death or physical incapacity of the mother.

Adoption leave: the necessary measures should also be taken to ensure that the provisions of this Directive concerning maternity and paternity leave also apply in the event of adoption of a child of less than 12 months old.

Prohibition of dismissal: this is extended to **at least six months following the end of the maternity leave**. Dismissal during that period shall be duly justified in writing.

Member States shall take the necessary measures to prohibit discrimination against pregnant women in the labour market by creating **equal opportunities for them with regard to recruitment**, should they meet all the requirements for the applicable position. They should also be encouraged to adopt measures that ensure that a worker may choose to **work part time for a period of no longer than one 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.

Health and safety: Members consider that the protection of pregnant women's health and safety is the main objective of this Directive. Member States shall take appropriate measures to ensure the health and safety of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increasing protection against specific infectious agents and ionising radiation.

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

They consider that it is the right of workers on maternity leave to receive automatically any increase of salary, where applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase.

In addition, a period of maternity leave must not be prejudicial to the worker's pension rights and must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave

Time off for breastfeeding: an amendment states 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 one hour**, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment. There are additional provisions for cases of multiple births and part-time work.

Prevention of discrimination and gender mainstreaming: Member States shall encourage employers through collective agreements or practice, to take effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

Burden of proof: Parliament deleted the Commission's proposals 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.

Prevention of discrimination: Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners at appropriate levels with a view to putting in place effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

The provisions laid down in this Directive shall be incorporated into the text of collective work contracts in the Member States.

Communication of information and report: Member States and national equality bodies shall communicate to the Commission, within three years of the adoption of this Directive and every three years thereafter, all the information necessary for the Commission to draw up a report. The report must 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 and of the implementation of paternity leave.