Work-life balance for parents and carers

2017/0085(COD) - 26/04/2017 - Legislative proposal

PURPOSE: establish a renewed framework to strengthen equality between men and women with regard to labour market opportunities and treatment at work across the Union and to repeal Directive 2010/18/EC.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

Following the withdrawal of the Commission's 2008 proposal to revise 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 Maternity Leave Directive), the Commission announced its intention to prepare a new initiative that would undertake a broader approach.

This proposal for a Directive is part of a package of measures to deliver on the Commission's commitment. It aims at addressing women's under-representation in employment and support their career progression through improved conditions to reconcile their working and private duties.

In 2015, the employment rate of women (age 20-64) reached 64.3%, compared to 75.9% of men. **The gender employment gap in the labour market is most acute for parents** and people with other caring responsibilities.

This contributes substantially to the gender pay gap, which over the working life accumulates into gender pension gap (on average 40% in the EU).

One of the main causes for this problem is an **inadequate work-life balance policy**.

The current legal framework at the Union and Member States' level provides limited provisions for men to assume an equal share of caring responsibilities with women. Reducing the gap is crucial to achieving greater gender equality.

IMPACT ASSESSMENT: a preferred combination of options was identified which includes the following:

- **maternity leave**: non-legislative measures to enhance the enforcement of current legislation on dismissal protection;
- **paternity leave**: introduction of an individual entitlement of 10 working days, paid at least at sick-pay level;
- **parental leave**: revision of currently existing entitlement in order to provide for (i) the right for flexible uptake (i.e., part-time, piecemeal), (ii) 4 months leave non-transferable between parents, and (iii) payment of 4 months at, at least, sick-pay level;
- carers' leave: introduction of an individual entitlement of 5 days per year, paid at, at least, sick pay level;
- **flexible working arrangements**: right for parents of children up to 12 and carers to request flexibility in working hours, schedule or place of work for a set period of time, with no obligation for the employer to grant the requested change.

CONTENT: the **general objective** of this proposed Directive is to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work.

Through adapting and modernising the EU legal framework, the Directive will allow parents and people with caring responsibilities to reconcile better their work and caring duties. The Directive builds on the existing rights and strengthens them in places or introduces new rights. It does maintain the level of protection already offered by the EU acquis.

The **specific objectives** of the Directive are defined as follows:

- to **improve access to work-life balance arrangements** – such as leaves and flexible working arrangements;
- to increase take-up of family-related leaves and flexible working arrangements by men.

Minimum requirements: the proposal lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work through facilitating the reconciliation of work and family life for working parents and carers.

To that end, it provides for individual rights related to: (i) paternity leave, parental leave and carers' leave; (ii) flexible working arrangements for working parents and carers.

Scope: the proposal applies to all workers, men and women, who have an employment contract or employment relationship.

- Paternity leave: the text introduces the **right for fathers to take paternity leave in the form of a short period of leave, not less than 10 working days**, on the occasion of the birth of their child. This leave is intended to be taken around the time of the birth and it has to be clearly linked to this event.

In order to avoid any discrimination between married and unmarried couples and between heterosexual and homosexual couples, the right to paternity leave should be without prejudice to marital or family status as defined in national law.

- Parental leave: it is stated that a the majority of fathers do not avail themselves of their right to parental leave or transfer a considerable proportion of their leave entitlement to mothers. It is considered that the current Parental leave Directive has been insufficient in enabling both parents to make equal use of their entitlements.

This provision aims at tackling the shortcomings identified by (i) establishing a **minimum period of parental leave of at least four months of parental leave which cannot be transferred between parents** , (ii) introducing more flexibility as regards the forms in which the parental leave can be taken (full-time or part-time basis, or in other flexible forms), given that flexibility makes it more likely that parents, in particular fathers, will take up their entitlement to such leave.

Another provision in this Directive address the issue of **remuneration during leave** as this has a major impact on the take up of leave by fathers. The provision leaves it for Member States to decide on (i) the length of the notice period to be given by the worker, (ii) on whether or not the right to parental leave may be subject to a period of work qualification and/or a length of service qualification, and (iii) defining the circumstances in which the employer may be allowed to postpone the granting of parental leave by a reasonable period.

Lastly, this provision aims at ensuring that Member States should assess the need for adjusting the conditions of access and detailed arrangements of parental leave to the specific needs of parents in particularly disadvantaged situations related to disability or long-term illness and adoptive parents.

- Carers' leave: this provision introduces the new annual right for workers to take a period of leave from work in the event of serious illness or dependency of a relative. In order to protect the employer from abuse of this right, proof of the illness or the dependency situation may be required prior to granting of the leave.

Time off from work on grounds of force majeure: it is also provided to maintain the existing workers' right to take time off work in case of force majeure. This right, already foreseen by the Parental Leave Directive, can be used by all workers (not only parents or care-givers within the meaning of this Directive) for urgent family reasons.

Adequate income: the proposal establishes the right for workers making use of the different types of leave to **receive an adequate allowance during the minimum period of leave**. The level of the allowance should be at least **equivalent to the level of sick pay**.

Flexible working arrangements: the Parental Leave Directive already provides for the possibility to ask for two types of flexible working arrangements (working patterns and working hours) for parents returning from parental leave. The current proposal extends these two existing forms to a third form of flexible working arrangement (**remote working possibilities**) and further extends the personal scope of those rights to all carers and workers with children up to a given age, which shall be at least **twelve**.

In order to take account of the needs of employers and workers, this provision gives Member States the possibility to **limit the duration of flexible working arrangements**.

Employment rights: the Parental Leave Directive includes the right to return to the same job or, if that is not possible, to an equivalent or similar job, the right to maintain rights acquired or in the process of being acquired by the worker on the date on which parental leave starts. The proposal builds on the existing rights and equally foresees the minimum protection of the employment rights of parents and carers through allowing them to return to their (equivalent) job, to **benefit from any improvement of working conditions during their absence**, to maintain their acquired rights and to maintain their employment relationship while being on leave.

Protection from dismissal and burden of proof: the Parental Leave Directive already provides protection against dismissal on the grounds of an application for, or the taking of, parental leave. If, in spite of this protection, a worker considers that he or she has been dismissed on the grounds of applying for or enjoying the rights referred to in the proposed Directive, or 6, or of exercising the right to request flexible working arrangements, this provision places on the employer the burden to prove that the dismissal was due to **other objective reasons**.

Penalties: the provision requires Member States to provide for effective, proportionate and dissuasive penalties, be it fines and/or compensations, for breaches of the obligations under this Directive, and to make sure that they are applied.

This provision requires Member States to provide workers complaining about breaches of national provision adopted pursuant to this Directive with adequate judicial protection against any adverse treatment or consequences by the employer, without which the effective implementation of the principle of equal treatment would not be possible.

Transposition and implementation: at the time of its entry into force, **Directive 2010/18/EU on parental leave shall be repealed**. Member States shall have two years to transpose the proposal for a Directive into national law. Member States may entrust the Social Partners with the implementation of the Directive.