Chapter 9

THE PROTECTION OF PREGNANCY AND MATERNITY AND PARENTAL LEAVE

Background

Except in a few regions, women comprise at least one-third of the world’s workforce. In more than 90 countries, over 50 per cent of women are economically active. More women than before are in the workforce throughout their child bearing years, as many families are dependent on income from both parents. Yet, many women in the world are still subject to unequal treatment in employment due to their reproductive functions. They are subject to many forms of discrimination, ranging from pregnancy tests at the recruitment stage, to terminations during pregnancy or maternity leave, and loss of or insufficient wages during pregnancy and/or maternity leave. Even in countries having legislation providing for paid maternity leave, there is often a gap between law and practice. A 1998 ILO study found that just over 100 countries provide for maternity leave of 12 weeks or more, although in many cases, such leave is not remunerated. Only around 60 countries provide for maternity leave of 14 weeks or more, as set forth in ILO Convention No. 183.

The purpose of pregnancy and maternity protection is two-fold: first, to protect the health of the woman before and after birth, her child’s health, and to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, and second, to provide a measure of job security – access to jobs for pregnant women, maintenance of salary and benefits during maternity leave, prevention of dismissal during maternity leave – generally to prevent discrimination of pregnant women and women on maternity leave.

From ILO Standards to EU Law: The Case of Equality between Men and Women at Work

ILO Standards

The ILO has adopted Conventions and Recommendations specifically concerning Maternity Protection, while other Conventions and/or Recommendations on other specific labour issues have included Articles giving pregnancy and maternity protection to women at work.

Article 5(1) of the Discrimination (Employment and Occupation) Convention No. 111 of 1958 established that:

“Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.”

Special measures applicable to women only in view of their biological condition – pregnancy, giving birth, breastfeeding – therefore cannot be construed as breaching the principle of equal treatment of men and women.

At the global level, the ILO was a pioneer in this area with its Maternity Protection Convention No. 3 which was adopted by the first General Conference of the Organization on 28 November 1919. It sets the basic principles of protection which were later adapted or developed by the ILO and by the EU. The main principles were:

- A woman has the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks;
- A woman is not permitted to work during the six weeks following her confinement;
- During her absence from work, she will be paid “benefits sufficient for the full and healthy maintenance of herself and her child, provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent national authority”;
- As an additional benefit, she is entitled to free attendance by a doctor or certified midwife;
- If she is nursing her child, she is allowed half an hour twice a day during her working hours for this purpose;
- During her absence from work on maternity leave, or during illness arising out of pregnancy or confinement, it will be illegal for her employer to give her notice of dismissal, nor to give her notice of dismissal at such a time that the notice would expire during such absence, until her absence has exceeded a maximum period fixed by the national authority.