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Maternity at work: A review of national legislation

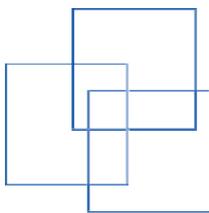
Second edition

Findings from the ILO's Conditions of Work and Employment Database

Executive summary

This report reviews national legislative provisions for maternity protection in 167 member States with a particular focus on how well countries' provisions conform to the ILO Maternity Protection Convention, 2000 (No. 183), and its accompanying Recommendation (No. 191). The study found legislation on maternity protection in all of the 167 member States studied, and no member State has yet been identified without any legislation.

One part of the study covers three key aspects of maternity leave provisions: the duration, the benefit paid and the source of the funding. It compares the legal provisions in 167 ILO member States with the most recent ILO standards, both separately and combined by region. This assessment shows, within the limitations of the data available, that globally 30 per cent of the member States fully meet the requirements of Convention No. 183 on all three aspects: they provide for at least 14 weeks of leave at a rate of at least two-thirds of previous earnings, paid by social security, public funds or in a manner determined by national law and practice where the employer is not solely responsible for payment. The regions with the highest proportion of countries in conformity with these aspects of the Convention are Central Asia and Europe, while conformity is particularly low in Asia and the Pacific and the Middle East.



Conditions of Work and Employment Programme

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Looking separately at the key provisions of Convention No. 183 on leave duration, level of pay and source of payment, the proportion of countries meeting the standards varies by the specific provision. Half of the countries studied in 2009 provide at least 14 weeks of leave. With respect to the payment of cash benefits during leave, 42 per cent of the countries reach the standard of at least two-thirds of earnings paid for at least 14 weeks. A small minority of countries do not provide cash benefits during maternity leave.

Preventing discrimination is not only a question of legislation against discrimination, but also of reducing the direct cost of maternity to the employer. By 2009, half of the countries examined (53 per cent) financed benefits through social security, while 17 per cent relied on a mix of payments by employers and social security. Roughly one-fourth (26 per cent) of countries continued to stipulate that payment during leave be covered entirely by the employer with no public or social security provision.

Over time, there has been a gradual improvement in maternity protection across the world. In 1994, 38 per cent of countries for which information was available provided at least 14 weeks of maternity leave. Among this same set of countries, 48 per cent provided at least 14 weeks of maternity leave in 2009. During this period, there has also been a shift away from employer liability systems of financing maternity benefits. The percentage of countries that finance cash benefits through employer liability systems decreased from 31 per cent to 26 per cent, with a shift towards systems in which employers and social security systems share responsibility for paying benefits.

The proportion of employed women covered by maternity protection legislation is a major concern of the Maternity Protection Convention, 2000 (No. 183), which stipulates that it should apply to all employed women, no matter what occupation or type of undertaking, including women employed in atypical forms of dependent work. Nevertheless, different groups of workers are excluded from protection in the legislation of several countries. This is often the case for, among others, domestic workers and casual or temporary workers, although a small but growing number of countries are extending protection to these workers.

The second part of the report covers other kinds of leave provisions, safeguards on employment, health and safety, and breastfeeding. Apart from maternity leave, access to other kinds of leave provisions, such as paternity leave, parental leave and adoption leave, can also help workers to reconcile work and family life. No ILO standard exists regarding these types of leave, but at least 49 countries provide some form of leave that fathers can use around the birth of a child. A similar number of countries provide some type of parental leave in addition to maternity leave, and many countries make leave available to adoptive parents.

Measures safeguarding the employment of pregnant workers and combating discrimination based on maternity are an integral part of maternity protection. The current maternity standards require legislation against discrimination in employment, including access to employment, dismissal and the maintenance of employment benefits during leave. In almost all countries for which information is available, some kind of legislative provision protects employment during maternity. At a minimum, these provisions usually prohibit dismissal as a result of pregnancy or during periods of leave; however, the content of these prohibitions varies by country. A number of countries also consider the period of leave to be a period of service with regard to the determination of employment rights.

The right to continue breastfeeding upon return to work and access to appropriate and hygienic facilities for nursing are also important for the health of the mother and her child. Legislation in roughly half of countries provides for breastfeeding breaks in addition to regular breaks.

This report is limited to a study of legislation and shows that virtually all countries have established legislative provisions for maternity protection, even if those provisions do not always meet the ILO standards. A remaining question, of course, is whether the legislation is effectively implemented so that eligible women are actually able to benefit from the rights provided.