

Maternity protection

Protecting the maternity of women workers has been a core issue for the member States of the ILO since its establishment in 1919. Indeed, the first Convention on maternity protection was adopted in that year. The concern has been to enable women to successfully combine their reproductive and productive roles, and prevent unequal treatment in employment due to their reproductive role. This Information Sheet traces the evolution of maternity protection and presents the provisions of the current standard.

The evolution of maternity protection

The Maternity Protection Convention, 1919 (No. 3), was limited to women employed in public or private industrial or commercial undertakings. It provided basic protection by entitling women to 12 weeks' maternity leave with cash benefits to ensure continuity of income, daily breaks for nursing, and protection against dismissal during leave.

The Convention on Maternity Protection (Revised) (No. 103), adopted in 1952, extended the scope of protection to a larger number of categories of women workers to include women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage-earners working at home. It provided further protection by extending leave entitlement to cover illness resulting from pregnancy or confinement, and expanding upon the types of medical benefits provided.

The Maternity Protection Convention, 2000 (No. 183), is the most recent standard accompanied by the Maternity Protection Recommendation, 2000 (No. 191). It constitutes a new step forward with regard to both persons covered and protection provided. Convention No. 183 broadens the scope of coverage to all employed

women, no matter what occupation or type of undertaking, including those women employed in atypical forms of dependent work who often received no protection, as well as extending entitlement to 14 weeks of leave. Expanding the scope of maternity protection as foreseen in Convention No. 183 is of critical importance in ensuring the health and well-being of greater numbers of women workers and their children worldwide.



Elements of maternity protection

Maternity leave

The mother's right to a period of rest in relation to childbirth is a crucial means of protecting the health of the mother and her child. Convention No. 183 extends the period of leave from 12 weeks as foreseen in the earlier Conventions to a minimum of 14 weeks, six of which must be taken following the confinement. Recommendation No. 191 suggests that this period be at least 18 weeks. The Convention also establishes a right to additional leave in case of illness, complications or risks of complication arising out of pregnancy. An essential part of maternity leave is the right to return to the same work, or one with the same pay, upon return from the leave (Articles 4 and 5).

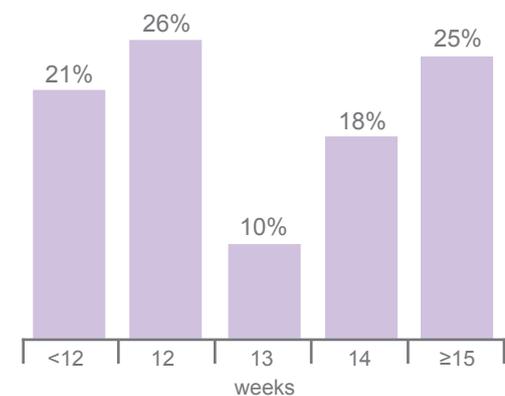
Convention No. 183, like its predecessors, provides for a compulsory leave of six weeks after the birth of the child, during which the mother must not be allowed to work. This is intended to protect the woman from being pressured to return to work when it could be detrimental to her health and that of her child.

Cash and medical benefits

The right to cash benefits during absence for maternity is an essential part of maternity protection. Convention No. 183 provides that the cash benefit shall be at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. The amount of such benefit shall be not less than two-thirds of the woman's previous or insured earnings, and be provided through social insurance or public funds or in a manner determined by national law and practice. The basic principle of payment through social insurance or public funds is very important to protect women from discrimination in the labour market, which could be more

The global consensus on the importance of maternity leave is reflected in the fact that some provision exists in the legislation of virtually all countries. The graph below indicates the number of weeks provided in the legislation of 156 ILO member States for which information has been collected. It can be noted that 43 per cent of countries provide for a duration of at least 14 weeks, the minimum specified in Convention No. 183.

Length of maternity leave in 156 ILO member States



Source: Conditions of Work and Employment Database (2004).

likely if the employers of women must bear directly the costs of maternity.

As an improvement in protection, Convention No. 183 requires member States to ensure that the qualifying conditions for cash benefits, can be met by a large majority of employed women. Where women do not meet the qualifying conditions for cash benefits, they must be entitled to adequate benefits out of social assistance funds.

The Convention provides for medical benefits, including pre-natal, childbirth and post-natal care as well as hospitalization when necessary (Article 6).

Health protection

During pregnancy, childbirth and breastfeeding, there are risks at the workplace that may affect the health of the woman and her child.¹ Convention No. 183 recognizes for the first time at the Convention level the right to health protection by providing for member States to adopt measures to ensure that the pregnant or nursing woman is not obliged to perform work prejudicial to her health or that of her child, or where an assessment has established a significant risk to the health of the mother or her child (Article 3). Recommendation No 191 provides for adaptations in the pregnant or breastfeeding woman's working conditions in order to reduce particular workplace risks related to the safety

and health of the pregnant or nursing woman and her child. Measures that should be taken when work involves risks include:

- elimination of risk; or
- adaptation of working conditions; or
- transfer to another more safe position, without loss in pay, when such adaptation is not feasible; or
- paid leave if such a transfer is not feasible.

The woman should retain the right to return to her job or an equivalent one paid at the same rate when it is safe for her to do so (Article 6).

Breastfeeding

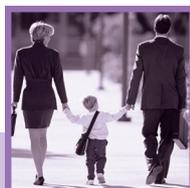
The right to breastfeed a child after returning to work is an important part of maternity protection, having major benefits for the health of the mother and of her child. The World Health Organization recommends exclusive breastfeeding of babies until the age of 6 months, and continued breastfeeding with appropriate complementary foods for up to two

years.² Convention No. 183 entitles women to one or more daily breaks or a reduction of hours of work for breastfeeding. Breaks or reduction of working hours shall be counted as working time and remunerated accordingly. The length and numbers of breaks are to be determined by national law or practice (Article 10).

Nursing breaks legislation

Over 90 ILO member States provide nursing breaks of at least one hour under national legislation. In the majority of countries, the duration is one hour in total, although a number of countries, particularly in Europe, provide for a longer break. The most frequent provision for entitlement to breastfeeding breaks is until the child reaches the age of one year.

Source: Conditions of Work and Employment Database (2004).



Employment protection and non-discrimination

A guarantee for pregnant and nursing mothers that they will not lose their job because of pregnancy is an essential component of maternity protection. Convention No. 183 provides for employment security prohibiting dismissal during pregnancy, maternity leave and a period of time after return to work. The right to reinstatement to the same job or an equivalent one with the same pay constitutes an important part of maternity protection. In the event of dismissal, the burden of proof should be on the employer to prove that the reasons for dismissal are

unrelated to pregnancy or childbirth and its consequences or nursing. This “reversal of the burden of proof” strengthens women’s employment security.

The Convention requires member States to take measures to ensure that maternity is not a source of discrimination in employment, including access to employment. It prohibits pregnancy tests at recruitment except in very specific circumstances (Articles 8 and 9).

Concerted efforts still needed

Since the first Maternity Protection Convention was adopted in 1919, ILO member States have made considerable progress in providing maternity benefits to employed women. However, there is considerable scope for improving the application of international labour standards on maternity protection at national level. As noted by the Committee of Experts, which supervises the enforcement of ratified standards, various problems of application remain in national law and practice in many of the countries where these instruments are applied.³

Consideration of a wider group of countries, including those countries that have or have not ratified the maternity Conventions, indicates that the objective of protecting all employed women is far from achieved. Few countries ensure universal coverage, so that many groups of women may be left wholly or partly unprotected, such as domestic workers, those working in small enterprises, those with less than one year with the employer, and

the many women who are agricultural, casual, temporary, part-time, sub-contract and home-based workers. Concerted efforts are needed to extend the coverage of maternity protection to all employed women, as stipulated in Convention No. 183.

Although the evidence is far from systematic, it would suggest that, in many countries, there is a gap between law and practice. Maternity continues to be a source of discrimination in employment and in access to employment. Pregnant women continue to lose their jobs, even those covered by protective legislation. Discrimination against women because of their reproductive role remains a major barrier to equality of opportunity and treatment between men and women in employment. Finding effective ways of combating this discrimination and of ensuring that practices comply to legislation represents a major challenge to governments and the social partners.

¹ See also J. Paul: *Healthy beginnings: Guidance on safe maternity at work* (Geneva, ILO, 2004).

² WHO Recommendation on Breastfeeding, WHA54.2, 2001.

³ *ILO Application of International Labour Standards 2004 (I): Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, Geneva, 2004.