

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

2008/0193(COD) - 23/02/2010 - \${summary.subTitle}

The Committee on Women's Rights and Gender Equality adopted the report drawn up by Edite ESTRELA (S&D, PT) 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. It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Purpose: the committee extended this article by adding a new clause. The latter 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. This extension is also reflected in the new title of the directive.

Definitions: 'pregnant worker' now covers a pregnant worker employed under any type of contract, including in domestic work, who informs her employer of her condition, in accordance with national legislation and/or national practice. Similarly, 'worker who has recently given birth' now means a worker employed under any type of contract, including in domestic work who has recently given birth and it also covers a worker who recently adopted a child. A 'worker who is breastfeeding' also covers a worker employed under any type of contract, including in domestic work.

Guidelines: these must cover processes considered hazardous for the reproductive health of male and female workers as well as for the safety or health of workers. The guidelines must be reviewed and from 2012, and must be updated at least every five years. The committee states that it is important to keep the guidelines up to date with recent developments and knowledge. Furthermore, health and safety risks exist for both men and women, and should be taken into account more generally, as they are important even before the moment of conception.

Assessment, information and consultation: Members add a clause stating 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.

Furthermore, the clause now covers those workers likely to be pregnant, recently given birth or breastfeeding, as well as those who actually are. The committee added clauses on information to and consultation of workers and their representatives.

Action further to the results of the assessment: the committee 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, since less scope remains for the employer to argue that offering such alternatives is not technically or objectively feasible.

Cases in which exposure is prohibited: the report 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: 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 extended the period of maternity leave to 20 weeks from 18 in the Commission's proposal and 14 weeks under current legislation. They added that it is important that Member States which already have provision for longer periods of parental leave for both parents can keep their generous conditions, without this affecting other Member States or diminishing the effect of this proposal for a directive prolonging maternity leave across the EU.

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 clauses state that this period may be shared with the father, in accordance with the legislation of the Member State concerned if the couple agrees. To protect the health of both mother and child, Member States must ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory period of maternity leave before childbirth.

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 text also now states that the Directive also applies to self-employed workers, and Member States shall make the necessary adjustments to their respective laws in order to guarantee equal employment rights, as regards maternity leave.

Members stipulate in the text that postnatal depression must be recognised as a serious illness, and Member States should support awareness campaigns aimed at disseminating accurate information on the illness and correcting the prejudices and possible stigmatisation which it can still attract.

A new clause on paternity leave states that workers whose life partner has recently given birth are entitled to a continuous period of non-transferable fully paid paternity leave of at least two weeks, 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 non-transferable fully paid paternity leave to be taken within the period of the maternity leave on a compulsory basis for a continuous period of at least two weeks after the confinement of the worker's

spouse or partner, are strongly encouraged to implement it in order to promote equal participation of both parents in balancing family rights and responsibilities.

Lastly, workers whose life-partner has recently given birth must be 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 provisions of the Directive concerning maternity and paternity leave must 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.

Member States shall 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.

Employment rights: Members stipulate that entitlements should be based on full pay, to prevent women losing out financially because they are mothers. In addition, the health and safety of pregnant worker should be ensured, 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.

The committee adds that if there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get the higher salary and after that resume the leave. Administrative work for the employer in that respect will also be reduced and simplified.

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.

The committee removes the eligibility criterion of Article 11(4) of Directive 92/85/EEC.

Time off for breastfeeding: a new article 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: the committee 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.

Member States must promote dialogue between the social partners 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 the Directive shall be incorporated into the text of collective and individual work contracts in the Member States.

Report: this must be presented 3 years after adoption and every 3 years thereafter. 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.