



**Pregnancy and Maternity
Rights:
Gaps and Good Practices
in the EU Member States**

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Law v. Practice

cultural stereotypes



Public sector v. Private sector
Small v. Larger enterprises
Health and Safety v. Equality



Access to employment - recruitment process and monitoring



Legal difficulties

- Implementing the law
- The problem of proof

Practical difficulties

Good practice:

- Monitoring
- Enhanced damages and redresses



Dismissal /pressure to resign

Practices contrary to the law

- “Mobbing”
- Forced resignation
- White resignation
- First choice for dismissal
- Termination during trial period
- Change of employment contract to precarious contract
- The impact of the economic crisis

Good practice:

- Systematic monitoring
- Pre-authorisation for the dismissal or the resignation of pregnant and new mothers/parents



Non-renewal of the fix-term contract of employment

- Very common in practice contrary to EU law
- Lack of clarity of national law
- Impact of the economic crisis

Good practices:

- Disseminating CoJ case law
- Pressure from national Courts
- Monitoring



The right to return

- Article 15 of Directive 2006/54

In practice, lack of effectiveness of this provision
Impact of long periods of leave

Good practice:

- Involvement of national courts
- Requiring employers provides adequate training



Rights accrue during Maternity Leave

Holiday and maternity leave

Case C-342/01 *Gomez*: a worker must be able to take her annual leave during a period that does not overlap with her maternity leave

Problem of school teachers

Promotions





Health & Safety considerations

Directive 92/85 create two types of obligations:

- (1) Health and Safety
- (2) Sex equality

- Cases C-66/96 *Høj Pedersen* and C-207/98 *Mahlburg*: obligations regarding health and safety cannot be taken into consideration in such a way as to be detrimental to pregnant workers
- **In practice:** Health and Safety has been used as way of excluding women from the workplace.



Right to paid maternity leave

- Principle of equal pay (Article 157 TFEU) v. the right to an allowance (Article 11(3) of Directive 92/85)
- Should bonuses be taken into consideration when calculating maternity pay?
- Case C- 194/08 *Gassmayr* and C-471/08 *Parviainen*
- Common practise: no payment of specific bonuses attached to the salary for performance reasons: eg presence bonus, productivity bonus, meal or transportation bonus,
- Common exclusion of the Christmas Bonus

Good Practice:

- Harmonisation and simplification of the policy regarding bonuses



The role of fathers

Paternity leave

Recast Directive 2006/54 Article 16

Member States: overall very minimalistic

Gap in EU law

Parental leave

Framework Directive 2010/18

Variable implementations

Gap of EU law: the leave is unpaid

Good practices:

Involving fathers or other carers





Goods and Services

- ☐ Insurance
- ☐ Financial services
- ☐ Airline requirements
- ☐ Home birth



General lack of interest / debate

Good Practice:

the involvement of the equality bodies in some Member States

UC *Is there space for self-regulation?*

Commercial companies

Professional bodies

