



# Pregnancy and maternity discrimination

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## 2 different approaches

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- Issues of pregnancy and maternity can be approached from 2 angles:
  - Discrimination angle
  - Health and safety angle
- The relationship between these 2 angles is not always 'pure'



# Relevant EU legislation

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- Pregnancy and maternity in the workplace
  - Equal treatment/ non-discrimination:
    - ✓ Dir. 2006/54/EC (recast directive)
  - Health and safety:
    - ✓ Dir. 92/85/EEC (pregnancy directive)
- Pregnancy and maternity in the access to and supply of goods and services
  - Equal treatment/ non-discrimination:
    - ✓ Dir. 2004/113/EC



# Equal treatment

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- Dir. 2006/54/EC
- Prohibition of discrimination on grounds of sex in relation to employment-related matters
- A number of provisions explicitly relate to pregnancy and maternity
- Some of these provisions are based on ECJ case law



## Dir. 2006/54/EC

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➤ Art. 2:

Any less favourable treatment of a woman related to pregnancy or maternity leave (Dir. 92/85/EEC) = direct discrimination

➤ Art. 15:

Right to return to job upon return from maternity leave

➤ Art. 28:

No prejudice to (national/ EU) provisions concerning the protection of women, particularly as regards pregnancy and maternity



# Equal treatment

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- Dir. 2004/113/EC
- Prohibition of discrimination on grounds of sex in relation to the provision of goods and services which are available to the public
- A number of provisions explicitly relate to pregnancy and maternity



➤ Art. 4:

- Pregnancy/ maternity discrimination = direct discrimination
- No prejudice to more favourable provisions concerning protection of women as regards pregnancy and maternity

➤ Art. 5:

- costs related to pregnancy/ maternity shall not result in differences in individuals' premiums and benefits



# Health and safety

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- Many MS had protective legislation for women workers long before E(E)C came into existence
- 1987: European Commission examined this legislation for compatibility with predecessor of recast Directive (76/207)
- Commission distinguished between '*anomalous provisions*', '*humanitarian provisions*' and '*health and safety provisions*'





# Health and safety

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- Status of what Commission called '*health and safety measures*' remained rather unclear
- EU contributed to this situation by the adoption of Dir. 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)*'



## Dir. 92/85/EEC

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- Approach = health and safety
- No link with equal treatment directives: i.e. problematic
- Pregnancy/ maternity = relevant trait for categorisation, as opposed to a specific derogation from equal treatment directives
- Risk of discrimination of women workers



## Dir. 92/85/EEC

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- 2 types of protective measures:
- Restrictive/ negative protective measures:  
pregnant workers are excluded from certain jobs/ working conditions/...
  - Enhancing/ positive protective measures:  
require employers to give pregnant workers special treatment (e.g. maternity leave)



## Dir. 92/85/EEC

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- 2008: Commission proposal for directive amending dir. 92/85/EEC:
  - Art. 157 TFEU (ex art. 141 TEC) added to legal basis
  - Maternity leave:
    - 18 weeks (EP: 20 weeks)
    - 6 of which to be taken after childbirth (compulsory) (EP: fully paid)
    - 12 other weeks (non-compulsory): before or after childbirth (EP: no prejudice to existing laws providing compulsory leave before childbirth)



# Parental and paternity leave?

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- Dir. 2010/18/EU (revised parental leave directive)
  - Paternity leave:
    - Commission proposal for directive amending dir. 92/85/EEC
- EP suggested: right to two weeks of fully paid paternity leave