



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Italy
<b>Title:</b>	The protection of motherhood and fatherhood
<b>Date:</b>	1 May 2015
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Protection of motherhood and fatherhood, promotion of reconciliation measures, protection against gender based violence
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Draft legislation
<b>Field:</b>	Pregnancy and maternity; parental leave; self-employment; working conditions;
<b>Applicable law:</b>	Decree No. 151 of 26 March 2001 on the Protection of Motherhood and Fatherhood, published in OJ No. 96 of 26 April 2001

### Content

**Law development:** On 20 February 2014, the Council of Ministers approved a draft Decree to start the implementation of the Delegation Act No. 183/2014, which provides for a wide reform of the labour market. All measures will be enforceable only in 2015 (as a trial), after which a number of further decrees are expected to be issued to allocate appropriate funding.

The Decree contains two particularly innovative provisions on the promotion of telework aimed at the reconciliation of work and family life, and the introduction of some measures aimed at supporting the victims of gender violence (Arts. 22 and 23 respectively).

A period of leave of three months will be awarded to women victims of gender-based violence who are under a protection programme certified by local authorities. The leave is remunerated, and counted as actual work with regard to seniority, annual vacation, and severance pay; and can be used on a daily or hourly base, within the space of three years, following criteria stipulated by collective agreements or by law. Victims of gender-based violence are also entitled to temporarily convert their working relationship from full-time to part-time. A suspension of the working relationship for a maximum period of three months is also provided for the so called *lavoro a progetto* (a form of self-employment).

Some other provisions also amend the Code of Protection of Motherhood and Fatherhood. Art. 2 of the Decree allows for the possibility of the mother to request, for one time only, to postpone her compulsory maternity leave when the child is still in hospital and if the doctor certifies she can return to work. This provision will also be applicable to adoptive and foster mothers.

Under Art. 7 the time permitted to take parental leave (or its extension for seriously disabled children) will be raised from 8 to 12 years of age of the child, which is even a better condition compared with Clause 2(1) of the Parental Leave Directive 2010/18. In addition, parents will now always be entitled to choose between using parental leave on a daily or hourly base – previously only collective agreements provided for this. The period of notice to be given (except in exceptional circumstances) will be ruled by collective agreement, but the minimum period provided by the law will be reduced to 5 days (2 in case of hourly leave). Under Art. 9 of the Decree, parents will be entitled to an allowance of 30 % of his or her usual remuneration until the child is 6 years old, or in the case of fostering or adopting, until the sixth year the child has entered the family.

Art. 11 will extend the right to refrain from performing night-work to the adoptive or foster mother, or in place of the mother to the co-habiting father. This is provided for three years after the child enters the family, on the condition the child is not older than twelve.

Under Art. 13 the allowance for the maternity leave will be awarded to para-subordinated workers also in cases when the employer does not pay the contribution (at present this rule only applies to employees). In addition, adoptive para-subordinated mothers will be entitled to the maternity allowance.

For both professionals (i.e. categories of workers such as lawyers and doctors) and self-employed workers, the draft Decree (Arts. 15 and 18) entitles the father to assume the mother's right to maternity allowance if she dies, falls seriously ill, or if the father is given the official and exclusive custody of the child. The Decree also entitles adoptive or foster mothers to receive the maternity allowance provided for their respective category (i.e. professional, craftsperson, etc.) for the same periods and at the same conditions stated for adoptive or foster mothers working under an employment contract.

Finally, to promote the reconciliation of work with family life, a percentage of a fund from the Ministry of Labour will be used to encourage collective agreements to also promote reconciliation in the period from 2016 to 2018. Guidelines and good practices aimed at promoting collective agreements providing for such measures will also be issued by a pool of representatives appointed by the Prime Minister, by different Ministries, and chaired by a representative of the Ministry of Labour. This is the only intervention which will also be enforceable after 2015.

**Key points of analysis:** The majority of the changes provided by the draft Decree concern the protection of motherhood and fatherhood. Some of them reflect previous judgments of the Constitutional Court; and others will strengthen the effectiveness of rulings, in particular those on self-employment. The measures will also contribute to ensuring a more flexible and wider protection of parenthood. The provision on gender violence shows a new responsiveness towards women's rights as it could be used to help victims of gender-based violence keep their jobs.

**Internet link source:**

<http://www.governo.it/backoffice/allegati/77929-10026.pdf>, accessed 30 April 2015;  
<http://ec.europa.eu/social/main.jsp?catId=113>, Report Employment and social developments in Europe 2014, accessed 30 April 2015.