



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

### **NEWS REPORT**

<b>Country:</b>	Germany
<b>Title:</b>	Substantial amendments to the Statute on Maternity Protection
<b>Date:</b>	8 September 2016
<b>Expert:</b>	Ulrike Lembke
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Draft on maternity protection highlighting the personal autonomy of pregnant and breastfeeding persons irrespective of their legal gender status
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Pregnancy and maternity
<b>Applicable law:</b>	Draft on the new regulation of maternity protection

### **Content**

**Legislative development:** On 28 June 2016, the Federal Ministry for Family, Seniors, Women and Youth presented a draft law on the new regulation of maternity protection.

A first draft from March 2016 had covered special working protection rules, dispensation and several employment prohibitions. With regard to Directives 92/85/EEC and 2006/54/EC, the German Women Lawyers Association had heavily criticised this first draft for confirming discriminatory structures of maternity protection as alien to the world of employment and employment prohibitions as the method of choice instead of fostering the autonomy and inclusion of pregnant persons and re-structuring systems of health and safety at work.

The draft of 28 June 2016 abolishes any employment prohibition against the will of the pregnant or breastfeeding person. In a paradigmatic change, it requires the substantial reshaping of the work environment to meet the needs of pregnant or breastfeeding persons and the requirements of health protection for them. The possibilities for voluntary Sunday work are to be extended. Furthermore, the new regulations shall also be applied to civil servants, judges and soldiers.

The postnatal protection period is extended from eight to twelve weeks after the birth of a child with disabilities. The draft also covers protection against dismissal for women who suffer a miscarriage after the twelfth week of pregnancy.

The personal scope of maternity protection is extended and now covers any person who is employed or working as an intern/trainee (including pupils and students) or public volunteer or in a sheltered workshop for persons with disabilities or in a special ecclesiastical service or who is home-working or a quasi-subordinate worker.

Although the draft employs the term pregnant or breastfeeding woman, its personal scope is much broader by stating in Section 2(1): "Woman in the sense of this statute is any person who is pregnant or has recently given birth or is breastfeeding, irrespective of the legal gender status in his\*her<sup>1</sup> birth registration." This extension is the consequence of other legal changes. As transgender persons can claim legal recognition of their new gender status without surgery since 2011, 'pregnant men' may occur (although there are heavy discussions after giving birth about the question whether they can be recognized as mothers or fathers in the birth certificate). Moreover, since intersex\*-children are no longer to be appointed one of two genders after birth (since 2013), persons without a female or male gender status may become pregnant in the future.

**Key points of analysis:** A draft on the new regulation of maternity protection focuses on the personal autonomy of pregnant and breastfeeding employees by reshaping the work environment rather than employment prohibitions. The personal scope of the draft covers employees, pupils and students as well as any pregnant or breastfeeding person irrespective of his\*her legal gender status.

**Internet link source:**

Draft on the new regulation of maternity protection of 28 June 2016:

<http://dip21.bundestag.de/dip21/btd/18/089/1808963.pdf>, accessed 1 August 2016.

The German Women Lawyers Association's critique of the first draft:

<https://www.djb.de/Kom/K1/st16-05/>, accessed 1 August 2016.

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<sup>1</sup> Person is a female term in German thus avoiding the question how to address these persons by way of using a gendered possessive pronoun. As an exact translation is not possible, I use the asterisk to include transgender as well as intersex\* persons.