



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

NEWS REPORT

Country:	Austria
Title:	New legislation introducing paternity leave and connected benefit and systematic changes to the Small Children's Benefit
Date:	8 September 2016
Expert:	Martina Thomasberger
<u>Context</u>	
Issue at stake:	Parental leave and maternity leave, work life balance
Ground of discrimination:	Sex
Sources:	Legislation
Field:	pregnancy and maternity; parental leave
Applicable law:	Act on Additional Family Time (<i>Familienzeitbonusgesetz</i>), alterations to the Small Children's Benefit Act (<i>Kinderbetreuungsgeldgesetz, KBGG</i>)

Content

Law development: In the fall of 2015, the Federal Ministry for Family and Youth (*Bundesministerium für Familie und Jugend, BMFJ*) presented a policy initiative aimed at systematic changes to the Small Children's Benefit and covering regulations for paternity leave at the time of a child's birth as well as a connected benefit, which became a legislative initiative in February 2016.

The Small Children's Benefit (*Kinderbetreuungsgeld*) is granted to parents in order to compensate them for stopping or limiting work in order to care for babies and small children up to a maximum age of three and a half years. It is paid additionally to the General Family Benefit (*Familienbeihilfe*). The Small Children's Benefit is currently organised in lump sum entitlements of varying amounts corresponding to the benefit periods that parents apply for (from EUR 33 per day for twelve months for one parent plus two months exclusively reserved for the other parent to EUR 14,53 per day for 30 plus six months). Additionally, there is an income-related benefit of between EUR 33 and EUR 66 that is paid for twelve plus two months, which is going to remain unchanged. In all variations, parents can earn incomes capped at a mandatory annual amount.

The legislative initiative passed a committee hearing and both chambers of the parliamentary plenum. It was published in the official legislative bulletin on 8 July 2016. The new legislation will enter into effect on 1 March 2017 and be applicable to births from this date onward without a transition period.

The legislation contains two significant new policies. First, it introduces a paternity leave period of up to 31 days for fathers of new-born babies in combination with a benefit of EUR 22,60 per day. Second, the system of lump sum entitlements for the Small Children's Benefit is being changed to an "account system". From March 2017 onwards, parents of new-born babies will be entitled to 365 days of Small Children's Benefit at a

rate of EUR 33,88 per day from the date of the birth, reduced by the days for which maternity or paternity benefits are collected. The new legislation gives parents the possibility to extend the duration of the benefit for up to 851 days, which leads to a proportionately lower benefit rate per day. In cases where parents have decided to approximately equal benefit periods of collectively 365 day maximum, they can claim an additional "partnership bonus" of EUR 500. However, this is deducted from the overall benefit sum.

Key points of analysis: It had been pointed out in political discussions for several years that the introduction of a paternity leave period for male employees (and one of the partners in same-sex registered partnerships) was necessary not only from the viewpoint of gender equality but also in accordance with EU policies. Thus, the current legislation is implementing a progressive policy as regards the present legislative situation in Austria. However, it is uncertain if the upcoming version of paternity leave meets the requirements of current EU legislation. Under the proposed legislation the paternity leave period or "father's month" (*Papamonat*) has to be based on an explicit agreement between fathers and their employers. This differs radically from the legislation concerning maternity leave and parental leave, where employees are entitled to their leave periods simply by notifying their employers.

The second big difference concerns protection against dismissal. By law, employees on parental leave have effectively the same level of protection against dismissal as pregnant workers (no legal dismissal without prior consent by the competent labour courts). However, fathers consuming paternity leave are only granted the right to appeal any dismissal that can be demonstrated to be in direct connection to the use of the agreed upon paternity leave (employees would have to attest a connection of the dismissal to the paternity leave and employers could demonstrate that the dismissal was based on other valid grounds). This differentiation seems to be in conflict with Article 16 of Directive 2006/54, which requires Member States that decide to introduce paternity leave periods to grant the same level of protection as applies to maternity and parental leave.

Additionally, the proposed "Family Time Bonus" (*Familienzeitbonus*) for fathers on paternity leave, which includes annexed free statutory health insurance, is deducted from the overall sum of the Small Children's Benefit, which will accordingly be reduced by the proportionate amount of daily payments. These measures make it much more risky and economically difficult for men to exert their claim to a paternity leave period than taking maternity leave is for women. The goal of the "account model" is to give parents greater autonomy and flexibility during the period of childcare for babies and toddlers before entering kindergarten. Parents have to decide on the duration of their benefit period (and consequently on the benefit amount) at the time of the first benefit application.

The current benefit model, consisting of four lump sum benefit varieties of differing amounts and durations, is highly differentiated and poses specific administrative problems that have resulted in a great deal of case law. However, the upcoming "account model" relies on benefit amounts that have to be calculated according to the duration choices made by parents and deductions from the overall benefit for paternity leave and partnership bonus. It will be even more complicated to administer and will pose many practical difficulties for parents as well as for administrations and courts. This has been pointed out by nearly all stakeholders that have submitted statements commenting on the legislation during the mandatory reporting period.

Internet link sources:

https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00181/index.shtml, accessed 5 September 2016

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_53/BGBLA_2016_I_53.pdf, accessed 5 September 2016.