



# PROMOTING THE RIGHT TO WORK LIFE BALANCE IN THE LIBERAL PROFESSIONS

## THE ACTION OF THE FRENCH EQUALITY BODY

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# FAVORABLE PROTECTIONS OF MATERNITY AND PARENTAL LEAVES IN FRANCE

## Maternity Leave – mandatory

No employment period or status required

At least 6 weeks before delivery and 10 weeks after

Paid as sick leave and more according to collective agreements

## Paternity leave – not mandatory –

150 hours of work in the last 3 months

11 consecutive days within 4 months of birth

## Parental Leave – full time or part time

1 year seniority

1 to 3 years-

Either parent



# ISSUES AT STAKE

- Protection of liberal professionals from unilateral interruption of contract by employer
- Right to maternity leave
- Right to leave of the spouse
- Effective access to leave of men and women
- Work life balance in the liberal professions



## STATISTICS

### Liberal professions in France in 2011

751 323 Persons

Women in average earn 44% less than men

No legal right or protection of pregnancy, maternity leave, paternity leave or discrimination



## LEGAL STATUS OF THE LIBERAL COLLABORATOR IN 2011

Article 18 of the Law n° 2005-882 of 2 August 2005 for Small and Medium Size Businesses

Status for non salaried workers members of a regulated liberal profession- provides for mandatory provisions

The contract can be interrupted without cause

In 2011, the Law made no reference to a prohibition of interruption on the ground of discrimination, pregnancy, maternity leave or paternity leave



## SITUATION OF LAWYERS IN 2012

Men lawyers earned in average 117% more then women lawyers

Women were 52,7% of lawyers registered at the Bar

67 % of Bar school students were women

53% of men did not take paternity leave

70 % of employers refused paternity leave

70 % of lawyers considered that women were at risk of interruption of their collaboration in case of pregnancy

Women abandon two times more liberal practice in the first 10 years then men



# THE TRIGERRING CASE

- Ms A. was dismissed upon her return from maternity leave for her 2<sup>nd</sup> child in July 2010
- The notice of interruption expressly makes reference to the two pregnancies
- Recourse before President of the Bar of Paris:
  - Case dismissed in 2010
  - Right to interrupt without cause
- Appeal before the Court of Appeal of Paris – 11 October 2011
  - Interruption of the contract is not a dismissal
  - No cause required (ref. Cass. 3 March 1993 n° 89-40365)
  - Arguments of dismissal do not apply
- Recourse to quash before the Court of cassation



# INTERVENTION OF THE FRENCH EQUALITY BODY

- Powers of the French Equality body:
  - Investigate claims relating to discrimination prohibited by French law and international conventions ratified by France
  - Observations before the Courts
  - Thematic working groups for the promotion of equality
  - Individual and general recommendations to all persons, public and private
  - Reform proposals to Government
- Many claims of women lawyers dismissed at the time of pregnancy or return from maternity leave
- Identified the decision of the Court of Appeal of Paris
- Contact with Plaintiff's lawyer





# DECISION OF THE DEFENDER OF RIGHTS

## DECISION N° 2012-148

The protection of liberal collaborators against discrimination and pregnancy argued for the first time before the Court of cassation:

Defender of Rights presented legal arguments before the Court of cassation:

- Applicability to the case of **Directive 2006/54 of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)**, prohibiting discrimination on the ground of pregnancy, to the liberal professions and liberal collaborators

- Transposition of Directive 2006/54 in Article 2-3 of the Law n° 2008-496 of 27 May 2008 relating to the fight against discrimination for the protection against discrimination on the ground of pregnancy of :

**independent and non salaried workers**

which intends to protect the liberal collaborator

- The right not to provide cause does not authorize discrimination;



# COURT OF CASSATION , 1ST CIV. CHAMBER

## 20 DECEMBER 2012 N° 11 - 28323

Case is dismissed without hearing

Refused to take in consideration arguments of discrimination and applicability of EU legal protection against discrimination

Established non transposition of EU Law to liberal professions in National legislation



# TRANSVERSAL WORKING GROUP WITH THE LIBERAL PROFESSIONS

Creation of a Working Group with 35 of the main Regulated Professions

Nursing, Medical doctors, Dentists, Midwives, Veterinaries, Chartered accountants, land Surveyors, Architects, Ingeneers, Accounts certicators, etc...

Investigation request to report on in-house regulations of each profession

Identification applicable rules and practices

Identification of women's difficulties in each professions

Report adressed to liberal professions reviewing insufficiencies

Invite professional corporations to regulate on access to leave and legal protection of pregnancy



# WORKING GROUP RESULTS

The main important liberal professions created specific committees relating to the protection of pregnancy and work life balance

Paris Bar and other professions adopted regulations forbidding interruption of collaboration contracts of pregnant women

Some professions modified their regulated mandatory collaborator contracts to provide protection of pregnancy, maternity leave and paternity leave



# REFORM PROPOSAL TO GOVERNMENT

Defender of Rights addressed its report to Government outlining:

- The Decision of the Court of cassation
- Legal arguments relating to the resulting incomplete transposition of the directives 2006/54 and 2010/41 on Equal Treatment of Independent and Non Salaried Workers
- Results of its working group and a synthesis of the situation declared by various liberal professions
- Data on the impact of the absence of protection on the situation of women in the liberal professions
- Data on the impact of the situation of liberal professions on the work life balance in the liberal professions
- Request for legislative reforms affording legal protection of pregnancy , maternity leave and paternity leave



# LAW N° 2014-873 OF 4 AUGUST 2014 FOR REAL EQUALITY BETWEEN WOMEN AND MEN

- Meetings with the Minister for the Rights of Women to request that this issue be addressed in the projected legislation
- Hearing of the Defender of Rights before Parliament
- Opinion to Parliament: AVIS 2014-07 of 2 June 2014
- Amendments proposals at every step of the Parliamentary process

## Result:

Amendment of article 18 of the Law regulating liberal collaborators n° 2005-882 of 2 August 2005: expressly referring to :

- protection of pregnancy
- Right to same maternity and paternity leave then salaried workers

Amendment of the Law n° 2008-496 of 27 May 2008 relating to the fight against discrimination to protect against discrimination all aspect of the contract of liberal collaboration including its interruption



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