



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

FLASH REPORT

Country:	Montenegro
Title:	Protection of pregnant women, maternity and parental leave
Date:	10 March 2020
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<u>Context</u>	
Issue at stake:	Pregnant women, maternity and parental leave
Grounds of discrimination:	Gender
Field of application:	Pregnancy and maternity, Family leave
Source:	National legislation
Applicable law:	Council Directive 92/85/EEC of 19 October 1992 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; Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

Content

Key points of analysis: On 28 November 2019, the Government of Montenegro adopted the Proposal of the Labour Law. An important novelty of the Proposal relates to the protection of pregnant women, as well as the exercise of the right to maternity leave and parental leave.

The main novelties of the proposal are:

- Article 122 provides that during pregnancy a woman is entitled to one day of leave from work during each month of her pregnancy in order to undertake prenatal examinations, unless regulated otherwise by a special regulation. When taking up such leave, an employed woman shall inform the employer in writing about the use of this leave three days prior to the scheduled prenatal examination and, at the request thereof, provide evidence of the undertaken examination. During the prenatal examination, the woman is entitled to wage compensation as if she had been working.
- Article 123(5) provides that in case of an employee whose fixed term labour contract ends during either maternity leave or parental leave, the period of validity of the fixed term labour contract shall be extended until the end of such leave.
- With respect to the right to maternity leave, an employed woman shall be entitled to a mandatory maternity leave of 98 days, out of which 28 days prior to the expected delivery date, and 70 days after childbirth. If a child is born earlier (prior to the expected delivery date), mandatory maternity leave shall be extended for the number of days between the expected and the actual delivery date. The maternity leave shall be extended if a child is born prior to completing 37 weeks of pregnancy, according to the findings of the competent specialised doctor.

- Article 123(3) provides that the father of a child shall be entitled to a leave from the date of childbirth if the mother died during child delivery, if she is seriously ill, if she abandoned the child, if her parental rights are terminated or if she is serving a prison sentence.
- With regard to the right to parental leave, Article 127 provides that parental leave is an entitlement of each parent to the purpose of providing care and nursing to a child. Parental leave may be used after maternity leave, up to 365 days after the birth of the child. The right to parental leave shall belong to both parents in equal portions, with one exception. Parental leave that one parent started using may be transferred to the other parent if the former has used 30 days. In that case, the parent who transferred the right to the other parent shall no longer be entitled to the parental leave.
- If one of the parents dies or is prevented for other justified reasons from using the right to parental leave, the right to their share in parental leave shall be transferred to the other parent. Justified reasons shall involve the following:
 - 1) If one of the parents is: deprived of the parental right, deprived of legal capacity; proclaimed missing, unknown, of unknown temporary or permanent residence; or has seriously neglected care for the child;
 - 2) When, in order to protect the child, based on the court decision, one of the parents is prohibited or has restricted contacts with the child;
 - 3) When one of the parents of the child is seriously ill or depends on the assistance of another person, due to which they are prevented or significantly limited in the performance of parental care for a longer period of time, according to the findings of the relevant specialised doctor;
 - 4) If one of the parents is engaged as an army officer in the military mission outside of Montenegro, on the condition that they gave up the right to use of parental leave to the benefit of the other parent in a written statement;
 - 5) When one of the parents is serving a prison sentence.