



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

FLASH REPORT

Country:	Greece
Title:	Female salaried lawyers not entitled to adequate maternity allowance
Date:	08 May 2020
Expert:	Panagiota Petroglou
Context	
Issue at stake:	Female salaried lawyers not entitled to adequate maternity allowance in breach of Article 11(2)(b) Directive 92/85/EEC due to the non-adoption of the Single Benefits Regulation by the general social security scheme 'EFKA' since 01.01.2017
Grounds of discrimination:	Gender
Field of application:	Pregnancy and maternity
Source:	National legislation
Applicable law:	Article 46(1) Act 4194/2013 ('Code for Lawyers'), OJ A 208/27.09.2013 in conjunction with Article 11(3), (4) Presidential Decree 176/1997, OJ A 150/15.07.1997, as amended by Article 4(2) Presidential Decree 41/2003, OJ A 44/21.02.2003, implementing Article 11(2), (3) Directive 92/85/EEC; Article 32 Act 4387/2016, OJ A 85/12.05.2016.

Content

Applicable law: In September 2019, the Union of Salaried Lawyers addressed a written complaint¹ to the competent Minister of Employment and Social Affairs and to the Administrators of the social security schemes EFKA and ETEAEP, deploring that, unlike the employees of the private sector, female salaried lawyers are deprived of the maternity allowance.² This is due to the fact that since 1 January 2017, when all the main existing social security schemes were merged into one single scheme (EFKA),³ no Single Benefits Regulation of the 'EFKA' has been adopted. The Union of Salaried Lawyers asked for the immediate adoption of this Regulation.

The issue was raised again in late 2019 by emeritus Professor of Labour Law of the Athens University Law School Georges Leventis in a paper published in a labour law review.⁴ He confirms that due to the non-adoption of the Single Benefits Regulation of the 'EFKA' no maternity allowance is provided by said social security scheme to female salaried lawyers

¹ Available at: <https://www.lawspot.gr/nomika-nea/emmisthoi-dikiqoroi-epistoli-stoys-armodioys-ypoyrgoys-gia-ta-asfalistika-zitimata>.

² 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1-7.

³ By virtue of Articles 51, 53 and 100(1) & (2b) Act 4387/2016, OJ A 85/12.05.2016.

⁴ Leventis, G. (2019), 'Άδειες δικηγόρων επί παγία αντιμισθία: Άδεια μητρότητας και άδεια φροντίδος παιδιών', *Δελτίον Εργατικής Νομοθεσίας (ΔΕΝ) (Bulletin of Labour Law)*, p. 1106.

who have recently given birth. According to the Code of Lawyers,⁵ the provisions for sickness, pregnancy and maternity protection in the private sector apply also to female salaried lawyers. This practically means that a female salaried lawyer is entitled to 17 weeks' paid maternity leave (8 weeks before and 9 weeks after delivery),⁶ whereas her 'employer' has to pay only the full pay for 1 month (or for 15 days, if she has not completed a year of service). However in the private sector the employer's payment is supplemented by the maternity allowance paid by the general social security scheme ('e-EFKA') and a maternity allowance paid by the 'Greek Manpower Employment Organisation' (OAED), with the result that female workers of the private sector who are affiliated to both schemes receive their full pay throughout their maternity leave, provided that their monthly wages do not exceed the maximum amount taken into account by the scheme for calculating pensions. In contrast, female salaried lawyers who have recently given birth are not entitled to these maternity allowances supplementing the employer's pay, because they are not covered by the scheme of OAED. Hence, the non-adoption of the Single Benefits Regulation of the 'EFKA' means that they are not entitled to a maternity allowance.

Key points of analysis: In Greece, maternity allowance is provided by Article 11(3),(4) Presidential Decree 176/1997, OJ A 150/15.07.1997, as amended by Article 4(2) Presidential Decree 41/2003, OJ A 44/21.02.2003, which implemented Article 11(2),(3) of the Directive 92/85/EEC.⁷

Historically, in the context of the fragmented social security system which used to be applied in Greece, all lawyers (including salaried lawyers) who were members of the Athens Bar used to be insured against the risk of health by the competent statutory social security scheme ('Ταμείο Προνοίας Δικηγόρων Αθηνών'). A maternity allowance⁸ was provided only for female lawyers (and female trainee lawyers) practising as liberal professionals, but not for female salaried lawyers. In 2008, the above scheme was merged (together with other social security schemes for the self-employed) to a new single social security scheme for the self-employed named 'ETAA'.⁹ Again, a maternity allowance¹⁰ was provided only for female independent workers, including female lawyers practising as liberal professionals, but not for female salaried lawyers. Since 1 January 2017, the ETAA was merged¹¹ into one single scheme, the 'EFKA'.¹² In the transitional period until the entry into force of the Single Benefits Regulation of EFKA, the particular provisions of the merged schemes governing entitlement to benefits continue to be applied.¹³ However, almost three and a half years later, the Single Benefits Regulation of EFKA has still not been adopted. As a result, for all these years, female salaried lawyers have not been (and still are not) entitled to an 'adequate' (in the sense of the Directive) maternity allowance during the 17 weeks of maternity leave, although their 'employers' and they themselves pay social security contributions to the said scheme on a monthly basis.

⁵ Article 46(1) Act 4194/2013 ('Code of Lawyers'), OJ A 208/27.09.2013.

⁶ Clause 7 of the national general collective agreement (NGCA) 2000, sanctioned by Article 11 Act 2874/2000, OJ A 286/29.10.2000, in conjunction with Clause 7 of NGCA 1993.

⁷ 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1–7.

⁸ Article 11 of Presidential Decree 162/1998, OJ A 122/05.06.1998 provided a maternity allowance of a total lump sum of EUR 940, which was paid within four months after the delivery following a petition of the entitled person and an affidavit that she was not a salaried lawyer.

⁹ By virtue of Article 25 Act 3655/2008, OJ A 58/03.04.2008.

¹⁰ The joint ministerial decision 158/60617-10-2014, OJ B 2665/8-10-2014 provided a maternity allowance of a total lump sum of (4 months *EUR 200=) EUR 800.

¹¹ Together with all the main existing social security schemes and the State pensions.

¹² As of 1 March 2020, the general social security scheme 'EFKA' was renamed 'e-EFKA' by virtue of Article 1 Act 4670/2020, OJ A 43-28.02.2020.

¹³ By virtue of the transitional provision of Article 32 Act 4387/2016.

To the author's knowledge, to date the issue has not yet been dealt with by the Ombudsman.¹⁴

Internet link source: <https://www.lawspot.gr/nomika-nea/emmisthoi-dikigoroi-epistolistoys-armodioys-ypourgoys-gia-ta-asfalistika-zitimata>.

Reference: Leventis, G. (2019), 'Άδειες δικηγόρων επί παγία αντιμισθία: Άδεια μητρότητας και άδεια φροντίδος παιδιών', *Δελτίον Εργατικής Νομοθεσίας (ΔΕΝ) (Bulletin of Labour Law)*, p. 1106.

¹⁴ Nonetheless, in the recently published Special Equality Report of the year 2019, it appears that another category of female workers, employed in the mass media and entertainment industry of the private sector, have also been deprived of maternity allowance due to their obligatory transfer from the coverage of the general social security scheme of IKA to the social security scheme 'EDOΕΑΡ'. The Ombudsman has contacted the competent Ministry, which answered that the amendment of the current legislative framework is envisaged.