



EQUALITY MATTERS

ISSUE NO. 11



Maternity, paternity and parental rights

MESSAGE FROM THE EDITOR

Despite the EU equality and employment-related directives expectant women and new mothers continue to face discriminatory practices in employment. They are fired, harassed, discriminated and not hired due to their pregnancy.

This newsletter gives an overview of maternity rights as per Maltese legislation, features information on paternity and parental leave, as well as on NCPE's role in this regard as per Chapter 456 of the Laws of Malta. Reference is also being made to the International Labour Organization's (ILO) convention on maternity, the ILO

recommendations on how companies can manage maternity well, and the EU Work-life Balance Directive.

Awareness-raising is one of the pivots of the National Commission for the Promotion of Equality (NCPE) and hence by disseminating this newsletter we are providing relevant information to stakeholders and the general public on maternity rights, equality on the grounds of family responsibilities and how to combat pregnancy discrimination.

We augur that you will find this newsletter informative and useful.



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Pregnancy and maternity related discrimination still occurs across Europe in many areas of employment

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EU 2012, Fighting discrimination on the grounds of pregnancy, maternity and parenthood

Employees' rights during pregnancy

- The **Protection of Maternity (Employment) Regulations** [1] seek to safeguard the employment rights and facilitate the health and safety of pregnant employees, employees who have recently given birth and breastfeeding employees.
- Employers are requested to take **measures to protect the health and safety** of these employees when applicable.
- Pregnant employees are entitled to time off without loss of pay or any other benefit, in order to **attend ante-natal examinations**, if such examinations take place during hours of work.
- Pregnant women are entitled to maternity leave for an **uninterrupted period of eighteen (18) weeks**. The first fourteen (14) weeks are paid by the employer and for the remaining four (4) weeks pregnant women are entitled to the Maternity Leave Benefit.
- Six (6) weeks of the **maternity leave entitlement** are to be taken compulsorily immediately after the date of confinement; four (4) weeks immediately before the expected date of confinement, unless agreed otherwise with the employer; and the remaining balance either before or after, as the employee may request.

[1] <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11225>

- If an employee is pregnant or has recently given birth and could be exposed to a risk at work that could jeopardise her health and safety, she is entitled to **special maternity leave**.
- When an employee is on maternity leave or special maternity leave, the employee is **entitled to all rights and benefits** which may accrue to other employees of the same position at work, including the right to apply for promotion opportunities and to return to the same job or similar work that is consistent with her original contract of employment.
- It is **unlawful to dismiss pregnant employees or employees who have recently given birth** or are breastfeeding.
- If an employer dismisses a pregnant employee during the **probationary period**, the employer is bound to give reasons for the employee's dismissal in writing to justify that the discharge is unrelated to the employee's condition.



Paternity and parental leave



- While maternity leave seeks to facilitate the health and safety of pregnant employees, employees who have recently given birth and breastfeeding employees, **paternity leave** is given to fathers and **parental leave** is available to both parents.
- In Malta, paid birth leave [2] is granted to a father on the occasion of the birth of his child. The entitlement varies depending on the applicable Wage Regulation Order. Employees in activities of work which are not regulated by any W.R.O., are allowed one (1) working day of birth leave as stipulated in the *Minimum Special Leave Entitlement Regulations*.
- In the public sector, the **paternity leave** duration is five (5) working days paid leave on the birth of each child. [3]
- In Malta [4], both male and female workers have the individual right to **unpaid parental leave** in case of birth, adoption, fostering or legal custody of a child to enable them to take care of that child for a period of four months until the child has attained the age of eight years. This entitlement is regulated by *L.N. 225 of 2003 - Parental Leave Entitlement Regulations*.
- A maximum of twelve (12) months **unpaid parental leave** may be availed of in respect of each child for public sector employees. [3]

[2] <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11235>

[3] https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual_on_Work-Life_Balance_Measures.pdf

[4] <https://dier.gov.mt/en/Employment-Conditions/Leave/Pages/Parental-Leave.aspx>

Equality rights for Women and Men with Family Responsibilities



- As per the Equality for Men and Women Act, ***it is unlawful to treat a woman less favourably due to actual or potential pregnancy or childbirth.***
- ***Special protection*** to women during pregnancy or childbirth ***does not constitute discrimination.***
- ***Discriminating*** women and men due to family responsibilities or parenthood ***is unlawful.***
- During recruitment ***it is unlawful to request from job seekers information concerning their private life or family plans.***

NCPE's role to safeguard equality on the ground of family responsibilities



NCPE is empowered by Chapter 456 of the Laws of Malta to investigate alleged cases of discrimination in employment on the grounds of gender and family responsibilities. Employees who deem that they have been discriminated can contact NCPE to seek advice and/or to lodge a formal complaint. The NCPE also provides an information service to stakeholders and the general public on such issues.

The protection of pregnancy, motherhood and parenthood is crucial for an equal and just workplace. NCPE is committed to continue working to raise awareness on such rights and to investigate complaints in view that discriminatory practices breach pregnancy and maternity rights. Employees are encouraged to report cases of discrimination; reluctance to do so may hinder access to justice and redress.

A complaint alleging unfair treatment and dismissal due to pregnancy

100 years of maternity protection



In 2017, NCPE's Commissioner investigated a complaint alleging unfair treatment and dismissal due to pregnancy.

The complainant stated that following a series of incidents, her employer asked her to resign, despite the fact that she did not want to leave, and that she never had any written or verbal warnings, nor was she called to a disciplinary hearing.

Following the investigation, it was evident that the decision to terminate the complainant's employment was taken right after she revealed her pregnancy.

- The year 2019 marked the first centenary since the ILO adopted the first-ever convention on maternity protection.
- Marking the centenary of the first international labour standards on maternity protection offers an opportunity to reflect on the progress and challenges of realising this crucial right.
- In 2000, the ILO adopted the Maternity Protection Convention to further promote equality for women at work and the health and safety of the mother and child.
- Maternity protection, for every person everywhere, is the key to health, wealth, stability and equality in the home, the workplace and the world.
- Universal Maternity Protection is an essential step in achieving sustainable development goals of good health, gender equality, decent work and economic growth by 2030.



EU Work-life Balance Directive

This Directive [5] entered into force on 1st August 2019, with the aim of **modernising the existing EU legal framework** in the area of family-related leaves and flexible working arrangements. Member States have three years to adopt laws and provisions to comply with the Directive.

The Directive on work-life balance for parents and carers includes the:

- Introduction of **paternity leave**. Fathers/equivalent second parents will be able to take at least **10 working days** of paternity leave around the time of birth of the child for the purposes of providing care, **compensated** at least at the level of sick pay.
- Strengthening the existing right to 4 months of **parental leave, 2 months out of which are non-transferable** from a parent to another. Parental leave will be **compensated** at a level to be set by Member States. Parents will also have the right to request to take the leave in a flexible way (e.g. part-time or in a piecemeal way).
- Introduction of **carers' leave** for workers providing personal care or support to a relative or person living in the same household. Working carers will be able to take **5 days per year**.
- Extension of the existing right to request **flexible working arrangements** (reduced working hours, flexible working hours and flexibility in place of work) to all **working parents of children up to at least 8 years old, and all carers**.

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.188.01.0079.01.ENG

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[Pregnant women] tend to suffer from discrimination at work because of the idea that maternity is a liability... But the fact is that maternity protection produces enormous benefits

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Laura Addati, ILO's Maternity Specialist

Benefits for companies that manage maternity well



- Women who return to work after childbirth are an asset for the company as they understand the company priorities better than new employees and fit well within the company culture, due to ***an already developed skillset to their job.***
- When retaining new mothers, ***companies avoid the high cost of replacement and retraining.*** Companies usually pay about one fifth of an employee's annual salary to replace an employee, regardless of the level of wages paid to the departing or incoming employees.
- The ***cost to retrain*** a new employee and loss of productivity during the training period can be ***relatively higher than the cost of the absence required*** for maternity leave.
- If companies do not address maternity issues, eventually, they can encounter ***challenges in achieving a balanced representation of women and men in decision-making positions.***

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_410183.pdf

What can companies do?

The following ILO recommendations can assist companies to manage maternity well:



Offer adequate maternity leave

Adequate maternity leave allows women to take time to care for their infants, provides financial stability during the maternity period and encourages women to return to their jobs feeling confident and ready.

Ensure employment protection and non-discrimination

Companies should ensure that maternity and paternity are not a source of discrimination in employment. Awareness training for staff and non-discrimination policies should be implemented.



Provide health protection at the workplace

Companies should safeguard the health of the employee and their unborn or new-born child, without discriminating against women on the basis of the pregnancy or childbirth.

Develop re-entry programmes

Companies can re-engage talented women, who have put their careers on hold after having children and are interested in returning to work, by providing them with accelerated re-entry routes.



Offer paternity leave

Companies can actively encourage fathers to take time off to care for their children by creating a supportive workplace culture and ensuring fathers are not discriminated against for taking up caregiving activities.

Support flexible working arrangements and childcare

Providing flexible working conditions and supporting childcare activities can encourage new parents to remain actively involved in the workforce while managing their parental responsibilities.





Maternity protection and work-family measures are essential to promoting the health and well-being of mothers and their children achieving gender equality at work and advancing decent work for both women and men



*ILO - Maternity and paternity at work,
Law and practice across the world*

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