

burden for low-income self-employed workers, some governments subsidize such programmes or require certain categories of self-employed workers to make only a minimum flat-rate payment (see under the heading 2.4 *Scope and eligibility requirements* later in this chapter for examples).

Individual employer liability schemes place liability for providing cash maternity benefits on individual employers (see box 2.2). To ensure their fulfilment of this obligation, some governments require employers to purchase private insurance.

It is important to note that employer liability schemes obliging individual employers to pay the wage or a part thereof directly during the maternity leave period do not meet the principles of solidarity in funding cash benefits schemes and pooling of risks, which are essential to allow the combination of resources to ensure a fairer and collective distribution of the costs and responsibilities of bearing children. This results in discriminatory practices against women in the labour market. According to ILO experience and available research, employer liability schemes work against the interests of women workers, as employers may be reluctant to hire, retain or promote pregnant workers or women with family responsibilities or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during maternity leave as well as other (potential or actual) direct and indirect costs linked to their replacement.

Box 2.2 Individual employer liability for maternity cash benefits in Malaysia

In Malaysia, working women are entitled to 60 days of maternity leave with full pay. The law covers employees, thus excluding the self-employed, and places responsibility for payment on the employer of the individual worker. To qualify, a woman has to be employed at any time during the four months prior to childbirth and for a period of not less than 90 days in the nine months prior to childbirth. An employee is not eligible for cash benefits if she already has five or more surviving children.

Source: ILO Working Conditions Laws Database – Maternity Protection. Available at: <http://www.ilo.org/travdata-base> [26 Mar. 2014].

In many cases, this simply means not hiring women of childbearing age at all (Lewis et al., 2014). This is also the reason why ILO maternity protection instruments traditionally excluded this option in their provisions covering the financing of benefits and why Convention No. 183, while allowing the option, nonetheless imposed a series of safeguards to restrict its practical application to a limited number of cases.

Moreover, compliance with individual employer liability schemes is often problematic, particularly in developing countries, where employers often do not pay the wage replacement and legislation is not enforced (see also section 2.4: *Scope and eligibility requirements* below). An establishment survey of 100 companies on maternity protection conditions in Zambia shows that almost 25 per cent of interviewed women would only be eligible for unpaid leave in case of maternity (Fumpa, forthcoming). Another study in Ghana argues that the limited participation of women in the formal labour market is also partly related to “discriminatory barriers erected against qualified women as firms anticipate the future cost of having too many employees claiming maternity benefits” (Hampel-Milagrosa, 2011). Individual employers’ liability is perceived to be excessive and to involve unsustainable costs for small enterprises in countries such as Malta where employers, including SMEs, are expected to finance the first 14 weeks of maternity leave (Borg, 2011 and 2012 cited in Lewis et al., forthcoming). In this respect, employers’ liability schemes have long been viewed as detrimental to the promotion of equal treatment of men and women in the labour market.

Even when the direct costs of wage replacement are collectively borne, costs for employers might arise from the administration of leave, including the cost of temporary replacement of staff on leave. The data, however, show that these indirect costs, rarely quantified, are often low or outweighed by benefits in retention and human capital development (Gornick and Hegewisch, 2010). For instance, a study in Italy shows that maternity management represents 0.23 per cent of the overall cost of staff management in Italian companies (Cuomo and Mapelli, 2009). Good practices, which are found also in small enterprises, that appear to lower such costs further include: information/training sessions on leave policies; occupational safety and health during pregnancy; “maternity planning” among workers and employers/