

Employment protection and non-discrimination

4

KEY MESSAGES

- It is crucial not only to protect women's employment during pregnancy, maternity leave and during a given period following their return to work but to ensure that maternity is not a source of discrimination in employment.
- Convention No. 183 provides protection against dismissal during pregnancy and prohibits dismissal on grounds related to pregnancy, birth of a child and its consequences, or nursing.
- The right to return to work to the same position or an equivalent position paid at the same rate after maternity leave is an essential protective measure. It is, however, provided in the legislation of only 64 countries out of 146 countries with available information.
- Convention No. 183 sets out that the burden of proving that reasons for dismissal are unrelated to pregnancy, childbirth or nursing shall rest on the employer. Only 54 countries have legal provisions that place the burden of proof on the employers.
- The ILO addresses the right of all women not to be treated less favourably in a work situation – including access to employment – because of their reproductive function. All but 20 of the 165 countries with available information had explicit prohibitions against discrimination during pregnancy, leave and/or an additional prescribed period. “Maternity” or “pregnancy” was explicitly given as prohibited grounds for discrimination in 43 countries.
- Yet, maternity discrimination persists around the world, exacerbated in many instances by the economic crisis.

ILO standards on maternity protection call both for (1) the protection of women's employment during maternity leave and during a given period following her return to work and (2) measures to ensure that maternity is not a source of discrimination in employment. The first of these goals, **employment protection**, refers to the right of a female worker *not to lose her job* during pregnancy or maternity leave, including a period following her return to work (the duration of which is specified by national laws or regulations). Employment protection also covers the right of a woman employee, after maternity leave, *to return to the same or an equivalent position* to the one she held prior to maternity leave and to be paid at the same rate. Employment protection has been a fundamental element of maternity protection since the very first ILO

Convention on the issue in 1919 and remains a key provision of the most recent ILO Convention on Maternity Protection, 2000 (No. 183). The second aspect refers to **protection against discrimination in employment on the basis of maternity** which addresses the right of all women not to be treated less favourably in a work situation – including access to employment – because of their reproductive function. Convention No. 183 recognizes the fact that, while discrimination might be suffered in the workplace, it can also occur during recruitment and hiring, prejudicing women's chances of finding employment. Therefore, measures are required to prevent maternity from constituting a source of discrimination. Explicit treatment of discrimination on the basis of maternity was not a part of early maternity protection standards (Conventions Nos. 3 and 103) and