4.1 Employment protection during maternity

The protection of the employment of pregnant women and women on maternity leave has always been an important element of the maternity protection standards of the ILO and has evolved in the instruments adopted by the Organization. In the earlier Conventions (Nos. 3 and 103), there was an absolute prohibition against employers serving notice of dismissal during maternity leave, an additional leave granted in case of illness arising out of the pregnancy or childbirth that made a woman unable to work or at any other time in which the notice would expire during such periods. In Recommendation No. 95 of 1952, which accompanied Convention No. 103, the same principle applied, but it called for a more extensive period of protection from the date of the notification of the pregnancy to the employer until at least one month after the end of maternity leave. Furthermore, this Recommendation set out legitimate reasons for dismissal during the protected period, such as a serious fault on the part of the employed woman, the shutting down of the undertaking or the expiry of the contract of employment. The ILO Termination of Employment Convention, 1982 (No. 158) states that issues including sex, marital status, family responsibilities, pregnancy and absence from work during maternity leave shall not constitute valid reasons for termination (Article 5).

Convention No. 183 provides for a longer period of protection against dismissal than did the previous ILO Conventions. It covers pregnancy, the period of leave and a period after returning to work, to be prescribed by national laws. Dismissal is prohibited only on grounds related to pregnancy, birth of a child and its consequences, or nursing. However, the burden of proving that the reasons for dismissal are unrelated to maternity rests with the employer.

Protection against dismissal in national laws

> It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations.
>
> **Convention No. 183, Article 8(1)**

In the vast majority of countries for which information is available in the database, there is some legislative provision to protect employment during maternity, usually prohibition of dismissal during pregnancy and maternity leave, and covering longer periods in some cases. Of the 165 countries with available information, all but 20 had explicit prohibitions against discrimination during pregnancy, leave and/or an additional prescribed period.[6] However, these prohibitions are flexible to varying degrees, depending on the country. In some, dismissal is prohibited with no exceptions;[7] while, in others, it is prohibited on the grounds of maternity, but allowed when unrelated to it.[8]

One of the main concerns in legislative provisions prohibiting dismissals during pregnancy is ensuring that any permissible notices of dismissal (for instance, related to serious misconduct of the worker or grounds unrelated to pregnancy) are not issued during the woman's maternity leave or at a time when the notice would expire during such an absence.[9] The CEACR has noted that the intention of Conventions Nos. 3 and 103 is not to preserve the employment relationship in any situation, but to protect women on leave by ensuring that any dismissal does not take effect while she is away (CEACR Direct Request, C103, Spain, 2009). The CEACR has also noted that protections against dismissal should encompass all workers covered by the relevant instruments. For example, in 2011, the CEACR called for protections against dismissal to be extended to public sector workers in Sri Lanka (CEACR, Observation, C103, 2011). In 2009, the CEACR urged Hungary to extend protection to workers in managerial positions (CEACR, Direct Request, C183, Hungary, 2009). Employment protection is also regulated in the EU Directive on pregnant workers, and therefore applicable to the Member States of the European Union. EU Member States are directed