

employer to terminate an employment contract with a pregnant woman or a person raising a child under 3 years of age. In the Russian Federation, protection also extends to the person responsible for caring for the child if the mother is absent. In Finland, Germany, Iceland, Israel, Italy, New Zealand and Norway, prohibition of dismissal also covers employees on different types of leave (maternity, paternity or parental leave). In some countries, such as Spain, Sweden and the Bolivarian Republic of Venezuela, adoption leave is also covered by prohibitions on dismissal.

Permissible grounds for dismissal

One of the aims of protective measures is to prevent discrimination on the grounds of maternity. However, according to Convention No. 183, dismissal should be permitted for reasons not linked to maternity, while Convention No. 103 calls for an absolute prohibition of maternity-related dismissal. Among the countries where dismissal is allowed during the periods of protection, different grounds can be invoked as legitimate. The following are some of the most common:

- *serious fault, gross negligence or violation of work discipline on the part of the employee*, for instance, in Barbados, Costa Rica, Cuba, France, Guatemala, Guinea, Italy, Slovakia and the Bolivarian Republic of Venezuela;
- *valid reasons stipulated in common and labour law or by the Ministry of Labour*, for example in Colombia, Honduras, Germany, Nicaragua, Spain and the Bolivarian Republic of Venezuela. In Honduras, however, the fact that the output of a woman worker has decreased by reason of her pregnancy shall not be a valid ground for her dismissal;
- *the undertaking has ceased to exist*, for example, in Barbados, Belarus, Bulgaria, Italy, Republic of Korea, Mongolia, the Russian Federation, Somalia, Tajikistan (provided that alternative employment is found) and Viet Nam. In Germany, women may be eligible to receive maternity benefits from the state if they lose their job because their company is insolvent;
- *expiry of fixed-term contracts or the end of the work for which a woman was engaged*, for instance in Croatia, Italy, Luxembourg, Somalia and Tajikistan (where,

however, the employer has a responsibility to find the employee alternative employment). During the period in which alternative employment is being sought, wages shall continue to be paid but not for more than three months from the day on which the fixed employment contract expires. The CEACR has repeatedly expressed concern regarding the maternity protection situation of women in temporary and contract employment, in light of the growth of these non-standard jobs, especially during the economic crisis. Trade unions' comments have reported a significant number of cases of women still experiencing problems of recruitment or of losing their jobs when they become pregnant as their contracts are not renewed in this case. Under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee has exhorted ratifying countries' governments, such as those of the Islamic Republic of Iran and the Netherlands, to tackle the problems of application in practice of the prohibition of discrimination based on maternity more effectively (ILO CEACR, 2014).

- *imprisonment* (e.g., Cuba);
- *cause of dismissal predates pregnancy*, such as in El Salvador. Even when dismissal is allowed on these grounds, it will not take effect until the end of maternity leave;
- *work for another undertaking while on leave* (as in Lebanon);
- *failure to resume work on the expiry of the unpaid leave granted to look after her children* (as in Cuba).

Burden of proof

The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

Convention No. 183, Article 8(1)

A key and innovative element in Article 8 of the Maternity Protection Convention, 2000 (No. 183) is the provision regarding the burden of proof. Specifically, the Convention states that the burden of proving that dismissal is not related to maternity shall rest on the employer. This provision offers important protection