

Discriminatory practices linked to pregnancy and maternity continue to exist and have been particularly linked to dismissal and denial of the right to return to work after maternity leave.<sup>13</sup> Importantly, employers should not be allowed to require a pregnancy test or proof of sterilization as a condition of employment, nor should they be allowed to question a job applicant about their plans for childbearing.

As previously discussed, available data suggest that some employers may intentionally avoid hiring young women, fearing that they may utilize maternity leave at some future point in their careers. In many countries, pregnancy appears to be a factor not only in women losing their jobs but also in their having difficulty in obtaining a job in the first place. This is more than an issue of discrimination between men and women. Pregnant women or women who have young children can be subject to discrimination relative to female workers without children, or breastfeeding women may be subject to discrimination in comparison to working mothers who are not breastfeeding. Clear policies on non-discrimination related specifically to a woman's reproductive function are essential and measures must be put in place to protect women of reproductive age. In fact, this perspective is relatively recent in legislation and as such, not always understood or considered by policy-makers.

The Maternity Protection Convention, 2000 (No. 183) calls for member States to adopt appropriate measures to prevent discrimination in employment specifically on the grounds of maternity, including access to employment. Previous ILO standards on maternity protection did not contain specific provisions on discrimination based on maternity, which is a key concern from the point of view of equality of opportunity and equal treatment of men and women. Convention No. 183 also specifically prohibits requiring women to take pregnancy tests (with a few exceptions related to work-based risks to health, i.e. Article 9(2), see below) at the time they apply for employment. Such a prohibition therefore also needs to be expressly established by national law and practice. A general prohibition of discrimination based on maternity would not be sufficient to give effect to this provision of the Convention.

While no specific provisions on the subject of discrimination are contained in Conventions Nos. 3 and 103 on maternity protection, a number of other ILO

Conventions address the matter of discrimination in employment:

- *The equal remuneration Convention, 1951 (No. 100)* requires that rates of remuneration be established without discrimination based on sex. This is one of the Fundamental Human Rights Conventions of the ILO, and has been ratified by 171 member States.
- *The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* contains a specific definition of discrimination and encourages ILO member States to take measures to eliminate any kind of discrimination with respect to employment and occupation. Although pregnancy and maternity are not specifically included as grounds of discrimination in this Convention, the CEACR considers that sex-based discrimination also includes that based on marital status or, more specifically, family situation (especially in relation to responsibility for dependent persons), as well as pregnancy and childbirth (ILO, 2012d). As with Convention No. 100, this is one of the Fundamental Human Rights Conventions of the ILO, ratified by 172 member States.
- *The Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)* calls for social policy to aim at abolishing all discrimination against workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of labour legislation and agreements; admission to public or private employment; conditions of engagement and promotion; opportunities for vocational training; conditions of work; health, safety and welfare measures; discipline; participation in the negotiation of collective agreements; and wage rates, which shall be fixed according to the principle of equal pay for work of equal value. It has been ratified by 32 countries.
- *The Employment Policy Convention, 1964 (No. 122)* requires freedom of choice of employment and the fullest possible opportunity for all workers to qualify for, and to use their skills and endowments in jobs for which they are well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. This Convention has 108 ratifications.
- *The Workers with Family Responsibilities Convention, 1981 (No. 156)* aims to ensure equality of opportunity and treatment for men and women workers