

with family responsibilities, and between workers with family responsibilities and those workers without such responsibilities, without being subject to discrimination. Article 3 also states that member States shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination. This standard has been ratified by 43 member States of the ILO.<sup>14</sup>

### Legal prohibition against discrimination in relation to maternity

*Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including – notwithstanding Article 2, paragraph 1 – access to employment.*

Convention No. 183, Article 9

In all regions, there are countries that have enacted legislation prohibiting discrimination based on sex. However, countries vary in how specifically their legislation sets out the grounds of discrimination. Of the 155 countries for which information was available, 114 had legislation in place prohibiting discrimination

in employment (which typically includes access to employment, recruitment, promotion, changes in position, dismissal, retirement and other working conditions) on the basis of “sex” alone or “sex” in addition to other grounds that did not directly link to maternity or pregnancy. Some 43 countries explicitly specify “maternity” or “pregnancy” as prohibited grounds for discrimination, including nine countries in Africa,<sup>15</sup> four in Asia,<sup>16</sup> five in Latin America<sup>17</sup> and 24 in the Developed Economies and in Eastern Europe and Central Asia.<sup>18</sup> A total of 21 countries provide no overarching prohibitions in their labour codes against discrimination in employment on the basis of sex, maternity or pregnancy, although some of these may have very specific prohibitions pertaining to a particular aspect of employment, for example, against wage discrimination by reason of sex or maternity<sup>19</sup> or against dismissal on the basis of maternity (see Appendix V).<sup>20</sup>

In all regions, there are countries that have enacted legislation prohibiting discrimination based on sex, although the nature and scope of such legislation varies. Many countries protect all workers against discrimination based on sex, in terms of (with varying specificity) access to employment, recruitment, promotion, changes in position, dismissal, retirement and other working conditions. Some countries have special anti-discrimination provisions that cover either women<sup>21</sup>

#### Box 4.1 Regional instruments addressing discrimination in employment in relation to maternity

Regional instruments also address discrimination on the basis of sex, including maternity. In the European Union, the principle of equality and non-discrimination between men and women is enshrined in the treaty that established the European Community. Article 3 states that the Community shall aim to eliminate inequalities, and to promote equality between men and women (European Community, 2002). Developing this principle, some provisions, such as Directive 76/207/EEC on equal treatment, amended by Directive 2002/73/EC and then recast into Directive 2006/54/EC of 5 July 2006, have been adopted. In several of its judgements, the European Court of Justice has considered that refusing to appoint a woman because she is pregnant constituted direct discrimination on grounds of sex and therefore contrary to Directive 76/207/EEC (Commission of the European Communities,

1999). All EU Member States are thus required to respect the provisions concerning equal treatment and non-discrimination between women and men, taking into account the interpretation of the European Court of Justice.

In the Caribbean region, the Caribbean Community (CARICOM) has issued model legislation on issues affecting women, including model legislation on equality for women in employment. The text sets out detailed provisions on the protection of women from discrimination on the grounds of sex, marital status or pregnancy with respect to access to employment and other aspects. Although not binding on CARICOM Member States, the instruments provide clear guidance to countries in the region on how to tackle discrimination on these grounds through legislation.