

or men.<sup>22</sup> As regards legal provisions prohibiting maternity- or pregnancy-related discrimination, for example, in Côte d'Ivoire, employers may not use the pregnancy of a woman as a reason for refusing to hire her or terminating her contract of employment during a trial period.<sup>23</sup> In various cases, provisions nullify contracts or restrain employers that attempt to restrict rights related to maternity, as in Fiji, the Philippines and Singapore. In others, it is specifically stated that differential treatment which provides support during maternity is not deemed to be contrary to non-discrimination legislation.<sup>24</sup>

### Prohibitions against pregnancy tests

The current international standard concerning maternity protection, Convention No. 183 of 2000, specifically prohibits requiring women to take pregnancy tests (with the exceptions cited below) at the time they apply for employment.

*Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:*

- (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or*
- (b) where there is a recognized or significant risk to the health of the woman and child.*

**Convention No. 183, Article 9(2)**

The explicit prohibition of pregnancy tests does not seem to be widespread in labour legislation. Among the 141 countries for which information is available in the database, 47 countries set out explicit or implicit provisions banning pregnancy tests (see Appendix V).<sup>25</sup> These include, for example, Albania, Argentina, Brazil, Chile, Colombia, the Democratic Republic of the Congo, Denmark, El Salvador, France, Mongolia, Nicaragua, Panama, Portugal, Romania, Serbia, Slovakia, Slovenia, Uruguay and the Bolivarian Republic of Venezuela.<sup>26</sup> Mongolia's legislation prohibits questioning on the subject of pregnancy, while Slovenia and Slovakia prohibit seeking information about pregnancy, which implies a prohibition against pregnancy tests. While the Convention prohibits pregnancy tests when the woman

is applying for employment, a few countries provide for even broader protection, prohibiting tests throughout employment (Brazil and Colombia), in retention, promotion, mobility or contract renewal (Chile) and terminations or transfers (France). Several countries (Albania, Colombia, Congo, Portugal and Serbia), but not all, do include specific exemptions to the prohibition in the case of work-related risk to the woman or child.

Pregnancy testing as a discriminatory practice against women has also been addressed by the CEACR under Convention No. 111, particularly in Latin America, including in the Dominican Republic and Guatemala (CEACR, Observation, C111, Dominican Republic, 2012; CEACR, Observation, C111, Guatemala, 2011). Chile and Honduras adopted legislation explicitly prohibiting the requirement of pregnancy testing as a condition of employment. Recently, the CEACR has noted with interest the adoption by Uruguay of a 2012 law, which prohibits the requirement of a pregnancy test or a medical certificate attesting that a woman is not pregnant as a condition of the selection process, recruitment, promotion or retention in any job or position, in both the public and private sectors (ILO CEACR, 2014).

### Monitoring and implementation

Legislative provisions for employment protection and non-discrimination are only effective if implemented in practice. Poor implementation can stem from a number of gaps: lack of awareness of legal requirements and rights by workers and employers; lack of accessible, affordable, reliable and expeditious complaint mechanisms; reluctance to claim or pursue rights for fear of costs, exposure or reprisal; lack of monitoring and enforcement; lack of sanctions or other remedies and many other reasons. For example, a study of maternity protection in the garment factories in Cambodia found that workers and their line supervisors had very little awareness of the details of maternity leave rights and payments (ILO, 2012b). In the United Kingdom, one study found that 71 per cent of women who suffered dismissal or disadvantage based on maternity took no action at all, not even to report the matter to a supervisor or manager (Massetot et al., 2012). In Slovakia, judicial protection for discrimination cases is very limited, providing only limited compensation when discrimination is proved, which serves as a deterrent to