

leave because there are no alternative jobs available are entitled to fully paid leave, financed by social security. This is a preferable solution, as the employer is not solely liable for the costs of the transfer.

In other countries, leave is paid at less than the usual salary if there is no suitable alternative job for a pregnant or nursing woman. In Portugal, workers are compensated at 100 per cent of their pay if they must take leave for the duration of the risk (according to medical certification) because there is no alternative job for them. In a small number of countries, including Guinea and Seychelles, workers may take sick leave when there is no alternative job available. In the Dominican Republic and the United States, any such leave is unpaid.

The woman should retain the right to return to her job or an equivalent job as soon as it is safe for her to do so.

Recommendation No. 191, Paragraph 6(5)

Where the woman's right to return to the same or an equivalent job when it is safe for her to do so is concerned, information is available in only a small fraction of countries. In Canada, an employee who was required to take a leave of absence is entitled to be reinstated in the position they held before the leave of absence began, and the employer is required to reinstate the employee in that position.²⁶

Notes

1. Key ILO instruments on occupational safety and health include: The Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002. The Convention provides for the adoption, implementation and periodical review of a coherent national occupational safety and health policy, as well as tripartite action to promote occupational safety and health and to improve working conditions. The Protocol calls for the establishment and the periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics. The Occupational Health Services Convention, 1985 (No. 161) provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventative functions and which are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment. The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) aims to promote a preventative safety and health culture and to work to achieve a safe and healthy working environment. It requires ratifying States to continuously improve their occupational safety and health system and to develop a national policy, system and programme on occupational safety and health. See ILO, 2012b, Module 8 Health protection at the workplace.

2. The earlier Recommendation (No. 95 of 1952) stated that night work and overtime should be prohibited for pregnant and nursing women, in line with the Night Work (Women) Convention (Revised), 1948 (No. 89), which stated that women shall not be employed during the night in industrial undertakings. A Protocol was adopted in 1990 to "ease prohibitions where some form of restriction aimed only at women was considered to be still valid" (ILO, 2001, p. 21), thus introducing greater flexibility into Convention No. 89. However, the variations and exemptions permitted according to the Protocol are not allowed for women workers during a period before and after childbirth.

3. The CEACR has noted in its General Survey of 2001 on night work of women in industry, "the question of devising

measures that aim at protecting women generally because of their gender (as distinct from those aimed at protecting women's reproductive and infant nursing roles) has always been and continues to be controversial" (paragraph 186). In reviewing protective measures against changes in societal views and in technological and scientific knowledge, it is widely recognized that night work has harmful effects for men and women alike and regulatory frameworks should provide protection for all (paragraph 195), while still recognizing the need for special protection for women under particular circumstances (paragraph 200), including during maternity and breastfeeding in view of research that night work can increase the risks of spontaneous abortion, pre-term births and low birth weight and can exert long-term negative effects on family life (ILO, 2001).

4. This is the case in Colombia. In Austria, at the employer's request, the Labour Inspectorate may, in individual cases, grant permission to employ pregnant employees and employees who are breastfeeding in the hotel and restaurant industry until 10 p.m. and in music performances, theatre performances, public shows, amusements, festivities and in cinemas until 11 p.m. In Belize the prohibition does not apply to women holding responsible positions of a managerial or technical character, women employed in health and welfare services who are not ordinarily engaged in manual work, industrial undertakings in which only members of the same family are employed, and in a case where the work has to do with raw materials which are subject to rapid deterioration. In Cameroon, exceptions are made for women whose work consists of management duties or those who work in services not involving manual labour. In Egypt, the prohibition does not apply to women who occupy administrative, supervisory or technical positions.

5. In Nicaragua, women who are more than six months pregnant may not undertake night work. In Viet Nam, a female employee who is seven months pregnant or who is nursing a child under the age of 12 months may not work at night. In Malta, night work is prohibited beginning eight weeks before an expected birth. In Seychelles, a female worker may not