

Methodological notes***Protection from unlawful dismissal***

- PREGNANCY = workers are protected from dismissal during pregnancy.
- LEAVE = workers are protected from dismissal during maternity leave.
- ADDITIONAL PERIOD = workers are protected from dismissal during a period after their return to work from maternity leave.
- NO PROTECTION = the law does not provide any type of legal protection against dismissal in relation to maternity.
- *** = information is not available or could not be identified.

Employment protection and non-discrimination – Maternity Protection Convention, 2000 (No. 183), Article 8.1:

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on [maternity leave or leave before or after the maternity leave in the case of illness, complications or risk of complications arising out of pregnancy or childbirth] or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing.

This indicator determines whether the legislation provides employment protection during maternity, which constitutes a period including pregnancy, maternity leave and an additional period following the worker's return to work. All the periods covered by statutory employment protection for which information was available or could be identified are reported for each country. The indicator does specify whether the legislation allows dismissal on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The value "ADDITIONAL PERIOD" includes any period of protection from dismissal upon return to work in relation to maternity; the length of this period varies from country to country. For more information on the duration of this period, where this information is available or could be identified, see the ILO Working Conditions Laws Database.

Burden of proof

- EMPLOYER = the burden of proof rests on the employer.
- WORKER = the burden of proof rests on the worker.
- NOT PROVIDED = the legislation does not include a statutory provision on the burden of proof.
- *** = information is not available or could not be identified.

Employment protection and non-discrimination – Maternity Protection Convention, 2000 (No. 183), Article 8.1:

[...] 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.

This indicator aims to determine on which party, if any, the legislation places the obligation to prove that the unlawful dismissal has or not occurred ("burden of proof"). The shift to the defendant to prove that discrimination had not occurred is a significant asset in assisting victims of discrimination in judicial or other dispute settlement mechanisms.

Right to return to work

- SAME POSITION = workers are entitled to return to the same position after maternity leave.
- SAME POSITION OR EQUIVALENT = workers are entitled to return to the same or an equivalent position after maternity leave.
- NOT GUARANTEED = women are not guaranteed the right to return to the same or an equivalent position after maternity leave.
- *** = information is not available or could not be identified.

Employment protection and non-discrimination – Maternity Protection Convention, 2000 (No. 183), Article 8.2:

A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

This indicator assesses whether the legislation grants the right to job-protected maternity leave and under what conditions. Since, in some countries, the legislation provides for the right to return to the same position, while in others employers can choose to reintegrate the worker into the same position or an equivalent one after maternity leave, a distinction is made between "SAME POSITION" and "SAME POSITION OR EQUIVALENT". This indicator does not specify whether the same or equivalent position is paid at the same rate as before maternity leave. For more information, see the ILO Working Conditions Laws Database.