



Key Elements of Maternity Protection at Work

Key Elements of Maternity Protection at Work with Special Reference to ILO Convention 183 and Recommendation 191

Maternity protection at the workplace is a legal and social recognition of the contribution that women make by having babies. The International Labour Organization (ILO) first recognised the importance of maternity protection in 1919 in its third convention (C3). In 1952, a second ILO maternity protection convention was adopted (C103), and in 2000 a third. During the 20th Century, most countries of the world have enacted maternity protection legislation at national level.

There are seven key elements to maternity protection in general. These elements are: scope, leave, benefits, health protection, job protection and non-discrimination, breastfeeding breaks and breastfeeding facilities. Our goal is to have these elements implemented as a minimum standard in national legislation on maternity protection. Hence this section provides the relevant text of C183 and R191 (see box) while examining each of the seven criteria on maternity protection.

1. Scope: who is covered?

Maternity protection may be *broad* enough to cover women in all sectors of the economy, or it may be *narrow* and cover only some women. Each country sets its own conditions for eligibility. In general the scope tends to be narrow, exclusive rather than inclusive.

National legislation usually covers only women who are employed in the *formal sector*, that is, only those who have entered into a formal contract of employment and/or who have contributed to specific

SCOPE

ILO Convention 183 Article 1

For the purpose of this Convention, the term woman applies to any female person without discrimination whatsoever and the term child applies to any child without discrimination whatsoever.

ILO Convention 183 Article 2

- 1) This Convention applies to all employed women, including those in atypical forms of dependent work.
- 2) However, each Member which ratifies this Convention may, after consulting the representative organisations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.
- 3) Each Member which avails itself of the possibility afforded in the preceding paragraph, shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

ILO Recommendation 191, Item 10

- (9) Where national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by the Convention, especially regarding leave, benefits and employment protection.

funding such as insurance or other such schemes. In other words, whole sectors of the economy may be excluded, for example, women working in the private sector, or in the informal sector, or independent workers.

A national law may include only full-time workers, or only women who have worked for the same employer for a minimum length of time (qualifying period) and who have been confirmed or made permanent in their jobs, or those who have paid into a benefits fund.

Moreover, a law may be used to serve a religious or social agenda, or an economic purpose. Benefits may be reserved only for mothers who are married. They may apply only for a woman's first one or two children. Leave or benefits might be distributed only once every two or three years, thus favouring women who are able to space their pregnancies.

It should be a top priority to examine the possibilities of extending maternity protection to women in the *informal sector*, as they generally do not enjoy any formal maternity protection. Informal workers constitute a large proportion of the workers in many countries (up to 80%). Most of them are women who run their own small businesses or work for micro-enterprises, for example, selling food, tea, or vegetables in a market stall, or sewing garments in sweatshops. In general these enterprises and jobs are not officially registered, and workers have no (or very few) entitlements. These women work under harsh conditions with meagre earnings, often in temporary and seasonal activities, with little or no job security and no health or financial benefits. They are most often not organised, and as a consequence they lack most forms of protection. (See Section 9)

The same can be said of rural women who work in the fields as farm labourers or farmers and who toil long hours doing back-breaking work. Although women in agricultural work are technically not part of the informal sector they suffer the same work conditions. Maternity protection has hardly any meaning for these women even where legislation exists. However in 2001 C184 on *Safety and Health in Agriculture* was adopted by ILO to protect men and women in agriculture. Article 18 of C 184 states: "Measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health".

MATERNITY LEAVE

C183, Article 4

- 1) On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.
- 4) With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organisations of employers and workers.

R191, Item 1: Maternity Leave

- (1) Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.
- (2) Provision should be made for an extension of the maternity leave in the event of multiple births.
- (3) To the extent possible, measures should be taken to ensure that the women is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth.

Though the scope of C183 is wider than that of the previous maternity protection conventions, it still effectively excludes women working in agriculture and in the informal sector who do not benefit from work contracts. In some cases these workers organise on their own or in conjunction with existing trade unions or even with their governments. Some have set up credit funds, co-operatives, and mutual benefit societies. Organising/unionising women in the informal sector is central to facilitating long term improvements in their working conditions.

2. Leave: a period of absence from the job

Leave is the most common benefit provided for maternity protection. It may be fully paid leave, unpaid leave or partially paid leave. Where women do not get paid leave it may be difficult for the family to manage financially without the mother's usual earnings. Thus, for most women, the length of leave

LEAVE IN CASE OF ILLNESS OR COMPLICATIONS

C183, Article 5

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

R191, Item 10: Related Types of Leave

- (1) In the case of death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave.
- (2) In the case of sickness or hospitalisation of the mother after childbirth and before the expiry of postnatal leave, and where the mother cannot look after the child, the employed father of the child should be entitled to leave of a duration equal to the unexpired portion of the postnatal maternity leave, in accordance with national law and practice, to look after the child.
- (3) The employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave.
- (4) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits and the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.

taken is closely connected to the amount of funds they are entitled to. Other considerations may include a woman's career path, because while she is absent she might miss opportunities for advancement or lose specific skills.

The purpose of maternity leave, taken both before and after birth, is to safeguard the health of mother

and child. A longer leave allows the mother more rest and time to provide care for her child. She can better work through breastfeeding challenges and establish a routine.

Length of leave varies from country to country. Differences are considerable, running from approximately eight weeks in many countries to one year or more in a very few. Worldwide, the typical maternity leave ranges from 12 to 14 weeks. For details see *Chart Status of Maternity Protection by Country* (Section 3b).

Women in general, and their allies such as the trade unions, tend to favour a clearly defined relatively long paid leave. On the other hand, employers seem to favour supplementing a short maternity leave with annual leave, sick leave, disability leave, personal leave or vacation.

When should leave be taken? Some laws specify that a portion must be allocated *before* the mother's due date so that she is well rested before giving birth. Many laws (including C183) impose "compulsory leave," of six weeks *following* the birth,¹ so as to prevent anyone from forcing a woman back to work before she has recovered, at least minimally.

In many countries women object to being told how to take their leave, and progressive laws tend to let women partly decide for themselves. Mothers-to-be can choose to work until confinement if they so desire and employers cannot force them to take leave before their due date. On the other hand, mothers who do choose to take leave before delivery are entitled to it by law and employers have to comply with this request. After confinement, mothers are under the obligation to take at least six weeks leave, and no one, not even the woman herself, can change this. When they are left to choose, most mothers tend to work as close as possible to delivery and to take as long a leave as possible after giving birth.

1. It takes an average of six weeks for women's bodies to return to normal after delivery; this is why caregivers schedule a postnatal check-up six weeks or 40 days after birth.

Related types of leave are often included in discussions about maternity protection. In many countries, one to 14 days of **paternity leave** are granted to new fathers, who thus can directly participate when their baby is born and care for mother, baby, and any other dependent members of the household.

Adoption leave is similar to maternity or paternity leave. It allows workers who become parents through adoption to enjoy the same job-protected leave as people who give birth.

In most countries that offer **parental leave**, it is available to both parents, although a portion of the leave may be assigned specifically to the father or to the mother. In many cases parental leave is gender neutral, which protects both parents from discrimination and gives fathers the opportunity of increasing their involvement with the care of their children. The length of leave may be as short as three months or as long as three years; or it may offer the option of part-time work for some years. In general it is unpaid or only partially paid, but it does guarantee that the parent can return to the same job or a similar one.

BENEFITS

C183, Article 6

- 1) Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.
- 2) Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.
- 3) Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.
- 4) Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.
- 5) Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.
- 6) Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

- 7) Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

R 191, Item 2 & 3: Benefits

- (2) Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during leave referred to in Articles 4 and 5 of the Convention should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

To the extent possible, the medical benefits provided for in Article 6, paragraph 7, of the Convention should include:

- a) care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist;
- b) maternity care given by a qualified midwife or by another maternity service at home or in a hospital or other medical establishment;
- c) maintenance in a hospital or other medical establishment;
- d) any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and
- e) dental and surgical care.

Family leave broadens the focus even more than parental leave. It specifies leave that can be taken to care for *any family member*, such as a spouse, older child, or infirm parent. When campaigning, it may be easier to enlist support among workers for family leave, since almost every worker will need to use it at some point in his or her lifetime.

3. Benefits: medical care during pregnancy, confinement, and recovery, plus income replacement during leave

Medical benefits are intended to protect the health of both mother and baby by ensuring that women receive necessary maternity services; these may be free or available at low cost. This usually includes a certain number of visits to health professionals, a health care facility, and visits following birth, as well as any necessary prescribed medication. Some of the costs are covered by the national health insurance plan. Where social security is not provided, some women contribute to local health schemes or private insurance that cover some of the costs of maternity. But many women who lack maternity protection are not covered at all, and they have to pay for all of these services. Women who cannot afford to pay for medical assistance may get no prenatal care, and they may give birth without adequate professional supervision.

Cash benefits replace some or all of the earnings a mother loses by being on leave. Ideally, the amount of cash benefits is sufficient to provide a “suitable standard of living for mother and child”. Without cash benefits, many women cannot even afford to take time after giving birth to rest and recover, not to mention time to establish breastfeeding. This problem is acute in the informal sector where most women earn very low salaries and/or are not included in insurance schemes.

Who pays for benefits?

It is one thing to accept collective responsibility as a principle, and quite another thing to actually provide the money. The question of how to finance maternity benefits is hotly debated. One way to finance maternity benefits is from a public insurance fund, usually

FINANCING BENEFITS

C 183, Article 6

- 8) In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer’s specific agreement except where:
- (a) such is provided for in national law or practice in a Member State prior to the date of adoption of this Convention by the International Labour Conference; or
 - (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

R191, Item 4:

Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex.

provided through a social security system. This method shares the costs broadly. But in many countries, the system of public financing is not yet well developed. Other needs, such as retirement funds/pension, disability pay, or unemployment benefits, compete with maternity protection benefits and are often given higher priority.

In countries where any kind of social security or social insurance systems are not well developed, employers are sometimes required to pay the woman’s salary while she is on leave. This may act as a disincentive to hiring women, or to continuing to employ them if they become pregnant. In other systems, employers and workers share the burden by contributing to an insurance scheme.

HEALTH PROTECTION

C183, Article 3:

Each Member shall, after consulting the representative organisations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obligated to perform work which has been determined by the component authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

R191, Item 6

- (1) Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the assessment should be made available to the woman concerned.
- (2) In any of the situations referred to in Article 3 of the Convention or where a significant risk has been identified under subparagraph (1) above, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of:
 - a) elimination of risk;
 - b) an adaptation of her conditions of work;
 - c) a transfer to another post, without loss of pay, when such an adaptation is not feasible; or
 - d) paid leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.
- (3) Measures referred to in subparagraph (2) should in particular be taken in respect of:
 - a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;
 - b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;
 - c) work requiring special equilibrium;
 - d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.
- (4) A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing.
- (5) 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.
- (6) A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy.

4. Health protection: protection for women and their babies from hazards in the workplace

Pregnancy, childbirth, and the postnatal period are a time of increased health risks for both mother and child. In some developing countries, the lifetime risk of maternal mortality can be as high as one woman out of 23.

The workplace can expose a woman to conditions that are hazardous for her pregnancy or her baby. Hazards include possible exposure to toxic substances, infectious agents, radiation, vibrations, stress, and risks of injury. National laws generally protect a pregnant or breastfeeding worker from being obliged to do work in conditions that risk her health or her child's health. Occupational safety and health regulations can require employers to make the job safer or to provide another work setting at the same rate of pay during the period of maternity protection.

Maternity protection laws safeguard maternal and child health in ways that go beyond minimising harmful exposures at the workplace. The laws protect women's and children's health by assuring that women get prenatal care, by covering the medical costs of delivery, by providing paid maternity leave for recovery from childbirth, and by supporting sustained breastfeeding after mothers return to work.

5. Job protection and non-discrimination: holding a woman's job or a job at the same level to which she can return after leave; forbidding discrimination on the grounds of maternity

Job protection and non-discrimination are central to equality of treatment and equality of opportunity for men and women.

Job protection ensures that women who take maternity leave or medical leave for reasons related to the pregnancy will regain their posts when they return to work. They are entitled to the same salary and level of responsibility. During leave, they will have accumulated seniority and other related benefits. In other words, concerning their job, they are not placed at a disadvantage relative to other workers who have not had to cope with the demands of childbearing.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

C183, Article 8:

- 1) It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 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. 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.
- 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.

R191, Item 5:

- (1) A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her leave referred to in Article 5 of the Convention. The period of leave referred to in Articles 4 and 5 of the Convention should be considered as a period of service for the determination of her rights.

Worldwide, most laws protect women who are pregnant, who return from maternity leave and/or are breastfeeding, from being transferred to a lower position, isolation, or being passed over for job advancement opportunities.

Discrimination applies to differentiating workers adversely on the basis of their age, creed, race or sex. In this case, it could mean not wanting to hire a young woman because she may become pregnant. **Non-discrimination** means therefore that women who are pregnant or who may become pregnant should be considered for employment on an equal basis with others, men or women. Employers should not be allowed to require a pregnancy test or proof of sterilisation as a condition of employment, nor should they be allowed to question a job applicant about her plans for childbearing. However, not all laws cover this important aspect.

This is more than an issue of gender discrimination, for childbearing women can be subject to

discrimination in relation to women who do not have children as well as in relation to men. Without protection from discrimination, breastfeeding women could even find themselves at a disadvantage in relation to other mothers who are not breastfeeding.

6. Breastfeeding breaks: time provided for breastfeeding or expressing milk during the work day

BREASTFEEDING MOTHERS

C183, Article 10:

- 1) A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
- 2) The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

R191, Items 7 and 8

- (7) On production of a medical certificate or other appropriate certification as determined by national law and practice, the frequency and length of nursing breaks should be adapted to particular needs.
- (8) Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.

Since 1919, ILO maternity protection conventions have included breastfeeding breaks or “nursing breaks”. Most national laws (more than 90 countries) provide breastfeeding breaks in some form.

The issues concerning breastfeeding breaks are

- a) the number of nursing breaks allowed in a given time period,
- b) their frequency and length,
- c) the length of time after birth that a worker may take nursing breaks,
- d) whether breaks are paid or unpaid,
- e) whether breaks are counted as working time, and

- f) whether a worker loses income because she takes nursing breaks—for instance, a worker who is paid by the piece, not by the hour, or who earns a bonus based on productivity.

In general, women are entitled to two 30-minute breaks per day in every eight-hour working day for a period of approximately six to 12 months. In some countries it is possible to combine them and take them at the beginning or end of the work day. This practice shortens the total time a woman must spend away from her baby. This option may be more feasible in situations where the mother's workplace is far from where her baby is and transport is problematic.

In 2001 and again in 2002, the World Health Assembly recommended as a public health policy, that babies be exclusively breastfed for six months, and that they continue to breastfeed until age two years or more, with timely introduction of locally prepared indigenous complementary foods. Thus, for the majority of mothers, who return to work after a maternity leave of less than six months, and for those who have hardly any leave at all, breastfeeding breaks or reduced work hours are essential to the maintenance of exclusive breastfeeding.

7. Breastfeeding facilities: a place where a worker can feed her baby or express her milk

BREASTFEEDING MOTHERS

R191, Item 9:

Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.

Many people assume that breastfeeding facilities must be complicated to set up, expensive, and hardly worthwhile, given the number of workers likely to use them. The truth is quite different.

At the minimum, a breastfeeding facility is a small, clean space with a chair. There is a screen, curtain, or door for privacy, access to clean running water, and

secure storage space for milk that has been expressed. It needs to be located near enough to the workers that use it, so their limited break time is not wasted in travel. More elaborate facilities might offer a refrigerator or an electric outlet for an electric pump. A worker who lacks facilities has to choose between two unhealthy alternatives: weaning her baby too soon, or breastfeeding/expressing milk in unsanitary conditions at the workplace.

Childcare is an issue that is closely related to breastfeeding facilities. One solution to the challenge of sustaining breastfeeding after returning to work is for mothers to have a crèche (nursery) at or near the workplace. Several nations have maternity protection laws that require employers to provide a crèche if they have more than a minimum number of female workers. However many women are unable or unwilling to bring the babies to their work places as they have to expose them to the ordeal of crowded public transport, fumes and unfavourable weather conditions. (See Section 10)

Seven parts make up the whole

It is important for breastfeeding advocates to understand and promote all seven of the maternity protection criteria. It will enable them to propose and defend strong maternity protection legislation that protects all working women. At the same time, it is important for others to realise that breastfeeding is the final stage in a woman's reproductive cycle, and as such, it is not just a "feeding option", but an intrinsic part of maternity protection at work. Its successful completion is influenced by what happens to the mother in the earlier stages of reproduction – pregnancy and childbirth. Thus, her economic security, her stress level, the information she receives during prenatal care, her exposure to health risks, the support she receives from her family and co-workers will influence her capacity to bear a healthy child and breastfeed adequately.

When breastfeeding advocates take an active role in promoting all the elements of maternity protection, other people will be more likely to listen and to understand that breastfeeding should be on everyone's agenda.