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Maternity at Work: A Review of National Legislation

Abstract

[Excerpt] Protecting the maternity of women workers is essential to women's rights and abilities to successfully combine their reproductive and productive roles, free from discrimination in employment on the basis of their actual or potential role as mothers. Maternity protection for women workers contributes to the health and well-being of mothers and their babies, and thus to the achievement of Millennium Development Goals 4 and 5, which seek the reduction of child mortality and improvement of the health of mothers. By safeguarding women's employment and income security during and after maternity, maternity protection is also essential for ensuring women's access to equality of opportunity and treatment in the workplace, and progress towards Millennium Development Goal 3: promoting gender equality and women's empowerment.

This global report provides a comprehensive review of national legislative provisions for maternity protection in 167 countries and their conformity with the ILO Maternity Protection Convention, 2000 (No. 183), and its accompanying Recommendation (No. 191). The first section analyses three key aspects of maternity leave provisions: the duration, the cash benefit paid and the source of the funding. The second part of the report covers other kinds of leave provisions, safeguards on employment, health and safety, and breastfeeding. Apart from maternity leave, access to other kinds of leave provisions, such as paternity leave, parental leave and adoption leave, are also important to help both women and men reconcile work and family life.

This updated review shows that, over the last 15 years, there have been noticeable improvements in maternity protection legislation around the world, with a shift towards longer rest periods at the time of childbirth, and movement away from employer liability systems of financing maternity leaves. This report draws from information on maternity protection legislation from the ILO Database of Conditions of Work and Employment Laws, a searchable online database.

Keywords

International Labour Office, ILO, maternity, women's rights, worker rights

MATERNITY AT WORK

A review of national legislation

Findings from the ILO Database of
Conditions of Work and Employment Laws

Second edition

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International Labour Office Geneva

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PREFACE

Protecting maternity has been among the first concerns of the ILO. It was during the first International Labour Conference (ILC) in 1919 that the first Convention on maternity protection (Convention No. 3) was adopted. This Convention was followed by two others: Convention No. 103 in 1952 and Convention No.183 in 2000, which progressively expanded the scope and entitlements of maternity protection at work. The core concerns have been to ensure that women's work does not pose risks to the health of the woman and her child and to ensure that women's reproductive roles do not compromise their economic and employment security.

Indeed, the importance of paid work to the lives of most adult members of society makes the intersection of maternity and work a particularly critical focal point for efforts to improve both health and equality. Maternity protection for women workers contributes to the health and well-being of mothers and their babies, and thus to the achievement of Millennium Development Goals 4 and 5 adopted by the member States of the United Nations, which seek the reduction of child mortality and improvement of the health of mothers. And by safeguarding women's employment and income security during and after maternity, maternity protection is also essential for ensuring women's access to equality of opportunity and treatment in the workplace, and progress towards Millennium Development Goal 3, promoting gender equality and women's empowerment.

The conclusions of the 98th International Labour Conference in June 2009 have also acknowledged that strengthened maternity protection is key to gender equality at work and therefore called on the ILO to promote the ratification and application of Convention No.183 and to “[...] *compile and disseminate good practices on parental leave and paternity and maternity leave and benefits, and provide technical support to governments to develop effective laws and policies*”.

This study analyses the main legal provisions that are found in maternity protection legislation all over the world. It is based on the new ILO

Database of Conditions of Work and Employment Laws on Maternity Protection,¹ which covers 167 countries. A summary can be consulted in Annex I of this report. This is a very rich analysis that gives detailed information on the state of legal protection on the different aspects, comparing regions and countries as well as their evolution over the last 15 years. On the positive side, 63 ILO member States are party to at least one of the maternity protection Conventions. Moreover, whether ratified or not, the conventions have had a very broad influence, with virtually all countries having adopted some measures of maternity protection. Over the last 15 years, there have been noticeable improvements in maternity protection legislation, with a shift towards longer rest periods at the time of childbirth, and movement away from employer liability systems of financing maternity leaves. However, uncertainty remains about how effectively existing legislation is implemented, underscoring the importance of social dialogue and tripartite action involving government, employers and workers; monitoring and enforcing existing legislation; and collecting information on maternity protection in practice, to ensure that the principles and goals of maternity protection are realized.

I would like to thank and congratulate Shannon Harper for her extensive revision and update of this book, which was originally issued in 2005 and authored by Ida Öun and Gloria Pardo Trujillo. I would also like to thank Naomi Cassirer and Laura Addati for their guidance and work on this research and Ana Carolina Antunes, Shadia El Dardiry, Najati Ghosheh, Federica Ninni, Carola Nolte and Melanie Poduschnik for their accurate legal review. Finally, special thanks for their administrative and editorial support go to Kristine Falciola, José Antonio Garcia, Claire Piper and Coralie Thompson.

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¹ This can be consulted at <http://www.ilo.org/dyn/travail/travmain.home>. Two other databases are available: one on working time and another on minimum wages.

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EXECUTIVE SUMMARY

This report reviews national legislative provisions for maternity protection in 167 member States with a particular focus on how well countries' provisions conform to the ILO Maternity Protection Convention, 2000 (No. 183), and its accompanying Recommendation (No. 191). The study found legislation on maternity protection in all of the 167 member States studied and no member State has yet been identified without any legislation.

One part of the study covers three key aspects of maternity leave provisions: the duration, the benefit paid and the source of the funding (see Annex I). It compares the legal provisions in 167 ILO member States with the most recent ILO standards, both separately and combined by region. This assessment shows, within the limitations of the data available, that globally 30 per cent of the member States fully meet the requirements of Convention No. 183 on all three aspects: they provide for at least 14 weeks of leave at a rate of at least two-thirds of previous earnings, paid by social security, public funds or in a manner determined by national law and practice where the employer is not solely responsible for payment. The regions with the highest proportion of countries in conformity with these aspects of the Convention are Central Asia and Europe, while conformity is particularly low in, Asia and the Pacific and the Middle East.

Looking separately at the key provisions of Convention No. 183 on leave duration, level of pay and source of payment, the proportion of countries meeting the standards varies by the specific provision. Half of the countries studied in 2009 provide at least 14 weeks of leave. With respect to the payment of cash benefits during leave, 42 per cent of the countries reach the standard of at least two-thirds of earnings paid for at least 14 weeks. A small minority of countries do not provide cash benefits during maternity leave.

Preventing discrimination is not only a question of legislation against discrimination, but also of reducing the direct cost of maternity to the employer. By 2009, half of the countries examined (53 per cent) financed benefits through social security, while 17 per cent relied on a mix of payments by

employers and social security. Roughly one-fourth (26 per cent) of countries continued to stipulate that payment during leave be covered entirely by the employer with no public or social security provision.

Over time, there has been a gradual improvement in maternity protection across the world. In 1994, 38 per cent of countries for which information was available provided at least 14 weeks of maternity leave. Among this same set of countries, 48 per cent provided at least 14 weeks of maternity leave in 2009. During this period, there has also been a shift away from employer liability systems of financing maternity benefits. The percentage of countries that finance cash benefits through employer liability systems decreased from 31 per cent to 26 per cent, with a shift towards systems in which employers and social security systems share responsibility for paying benefits.

The proportion of employed women covered by maternity protection legislation is a major concern of the Maternity Protection Convention, 2000 (No. 183), which stipulates that it should apply to all employed women, no matter what occupation or type of undertaking, including women employed in atypical forms of dependent work. Nevertheless, different groups of workers are excluded from protection in the legislation of several countries. This is often the case for, among others, domestic workers and casual or temporary workers, although a small but growing number of countries are extending protection to these workers.

The second part of the report covers other kinds of leave provision, safeguards on employment, health and safety, and breastfeeding. Apart from maternity leave, access to other kinds of leave provisions, such as paternity leave, parental leave and adoption leave, can also help workers to reconcile work and family life. No ILO standard exists regarding these types of leave, but at least 49 countries provide some form of leave that fathers can use around the birth of a child. A similar number of countries provide some type of parental leave in addition to maternity leave, and many countries make leave available to adoptive parents.

Measures safeguarding the employment of pregnant workers and combating discrimination based on maternity are an integral part of maternity protection. The current maternity standards require legislation against discrimination in employment, including access to employment, dismissal and the maintenance of employment benefits during leave. In almost all countries for which information is available, some kind of legislative provision protects employment during maternity. At a minimum, these provisions usually prohibit dismissal as a result of pregnancy or during periods of leave; however, the content of these prohibitions varies by country. A number of countries also consider the period of leave to be a period of service with regard to the determination of employment rights.

During pregnancy and breastfeeding, there may be risks at the workplace that could affect the health of the woman and her child. Many countries include provisions in their legislation to protect pregnant or nursing women

from work-related risks, including requiring risk assessments or specifying dangerous substances that must be avoided. If a significant risk exists at the workplace, legislation often requires that employers take measures to mediate those risks by transferring a woman to other tasks or allowing her to take leave early.

The right to continue breastfeeding upon return to work and access to appropriate and hygienic facilities for nursing are also important for the health of the mother and her child. Legislation in roughly half of countries provides for breastfeeding breaks in addition to regular breaks.

This report is limited to a study of legislation and shows that virtually all countries have established legislative provisions for maternity protection, even if those provisions do not always meet the ILO standards. A remaining question, of course, is whether the legislation is effectively implemented so that eligible women are actually able to benefit from the rights provided.

Maternity protection has been a major concern of the International Labour Organization since the first year of its existence, when the first Maternity Protection Convention, 1919 (No. 3), was adopted. Although additional Conventions have been adopted over time, the primary concerns of the ILO with respect to maternity protection remain the same: to enable women to successfully combine their reproductive and productive roles, and prevent unequal treatment in employment due to their reproductive role.

Maternity is a condition which requires differential treatment to achieve genuine equality and, in this sense, it is more of a premise of the principle of equality than a dispensation. Special maternity protection measures should be taken to enable women to fulfil their maternal role without being marginalized in the labour market. (International Labour Office, 1996, p. 42)

Protective measures for pregnant women and women who have recently given birth include the prevention of exposure to health and safety hazards during and after pregnancy; entitlement to paid maternity leave; entitlement to breastfeeding breaks; protection against discrimination and dismissal; and a guaranteed right to return to the job after maternity leave.

Maternity protection for women workers contributes to the health and well-being of mothers and their babies, and thus to the achievement of Millennium Development Goals 4 and 5 adopted by the member States of the United Nations, which seek the reduction of child mortality and improvement of the health of mothers (United Nations, 2009). By safeguarding women's employment and income security during and after maternity, maternity protection also contributes to the realization of Millennium Development Goal 3, promoting gender equality and women's empowerment.

Three Conventions on maternity protection have been adopted by the ILO: the Maternity Protection Convention, 1919 (No. 3), the Maternity

Protection Convention (Revised), 1952 (No. 103), and the Maternity Protection Convention, 2000 (No. 183). Convention No. 3 has been ratified by 30 member States and Convention No. 103 by 30 member States. Convention No. 183 entered into force on 7 February 2002 and, as of April 2010, has been ratified by 18 countries: Albania, Austria, Belarus, Belize, Bulgaria, Cuba, Cyprus, Hungary, Italy, Latvia, Lithuania, Luxembourg, Mali, the Republic of Moldova, the Netherlands, Romania, Slovakia and Slovenia.² In all, 63 countries are now party to at least one maternity protection Convention. The influence of the maternity protection Conventions extends well beyond ratifications; virtually every country around the world has adopted some type of maternity protection legislation.

Convention No. 183 is divided into a number of different aspects of maternity protection:

- scope;
- health protection;
- maternity leave;
- leave in case of illness or complications;
- cash and medical benefits;
- employment protection and non-discrimination; and
- breastfeeding mothers.

This Convention should normally be implemented through laws or regulations, although different means used in the national practice of the member States, such as collective agreements and arbitration awards, may also give it effect.

Recommendation No. 191 complements Convention No. 183, often by suggesting higher protection, such as a longer duration of leave and higher benefits. Also, the Recommendation is more precise about certain aspects of maternity protection treated in the Convention, such as how to ensure health protection, and adds some additional aspects related to types of leave and financing of benefits.

In order to have a view of the current situation worldwide, the Conditions of Work and Employment Programme of the ILO developed a

² According to the 2004 report of the Committee of Experts on the Application of Conventions and Recommendations, the entry into force of Maternity Protection Convention No. 183 implied closure of the ratification of Convention No. 103, as ratification of Convention No. 183 by a State party to Convention No. 103 involves the automatic denunciation of the latter. On the other hand, Convention No. 3 remains open for ratification as the ratification of Convention No. 183 does not lead to the automatic denunciation of Convention No. 3. As a result, it is possible, as occurs in practice, for certain States to be parties to the two instruments. The Committee has, however, suggested that States in this position denounce the older instrument out of a concern for greater clarity and legal certainty (International Labour Office, 2004).

maternity protection database of national legislation.³ Currently, the database includes detailed information on maternity protection laws in 111 countries, organized by the different aspects of Convention No. 183 listed above, including provisions on maternity leave, related types of leave, cash benefits, medical benefits,⁴ health protection, non-discrimination and employment security. The database also includes more limited information for an additional 56 countries, on the duration, payment and source of funding of maternity leave (for a total of 167 countries; see Annex I for the list of countries).

Summarizing and comparing national legal provisions can be difficult because of the wide variety of national systems. In some countries, constitutional arrangements, such as federal systems, mean that there is no single national standard, as legislation can vary between states, provinces or cantons. Often, provisions about maternity protection are included in a number of different texts, such as labour and social security laws, so all these texts must be considered. In some countries, the public sector is covered by separate regulations, typically with more generous benefits for civil servants (e.g., in Belgium, Djibouti, Greece and Tunisia). For these countries, it is the legislation that applies to the private sector that serves as the basis in this report. Finally, because some aspects of maternity protection are sometimes given effect through instruments other than legislation, such as collective agreements and arbitration awards, this report notes examples of these, where information was found.⁵

Using this information, the primary objectives of this report are to describe national legislative provisions, particularly in relation to Convention No. 183 and Recommendation No. 191, as well as to describe how maternity protection legislation has changed since the publication of the first ILO review in 1994. The report is divided into four sections. The first section covers maternity leave (duration of leave, cash benefits, and its source of payment and scope); the second section discusses other types of leave (paternity leave, parental leave and adoption leave); the third considers protection from dismissal and discrimination; and the last reviews health protection throughout maternity as well as breastfeeding provisions for nursing workers. Some innovative policies and approaches to maternity protection used in various countries are highlighted throughout the document.

³ This database is available at <http://www.ilo.org/dyn/travail/travmain.home>.

⁴ As regards medical benefits, in many cases these are provided by health insurance laws or regulations, and are often unrelated to maternity protection as described in Convention No. 183, as they do not just cover employed women. Therefore, the analysis of the compliance of countries in relation to medical benefits goes beyond the scope of this report. For detailed information on medical benefits in different countries, see, for example, Social Security Worldwide, available at <http://www.issa.int/engl/homef.htm>.

⁵ In some countries, collective agreements at the enterprise or sector level play an important role in the provision of maternity protection, but these agreements are excluded from the database, given their limited coverage.

MATERNITY LEAVE

This section considers national legislation on three aspects of maternity leave provisions in relation to the ILO standards on maternity protection. The first part considers the duration of statutory maternity leave. The second analyses the right to payment when on maternity leave (cash benefits) and the source of benefits. Finally, scope and eligibility requirements for maternity leave and cash benefits are discussed.⁶

DURATION OF LEAVE

...a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks. [Convention No. 183, Article 4(1)]

Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks. [Recommendation No. 191, Paragraph 1(1)]

Compared to its predecessors, Convention No. 183 mandates a longer minimum leave period: 14 weeks, up from 12 weeks in the previous Conventions. Its accompanying Recommendation No. 191 goes even further and suggests that the members should try to increase the period of maternity leave to at least 18 weeks. As noted in the introduction, just 17

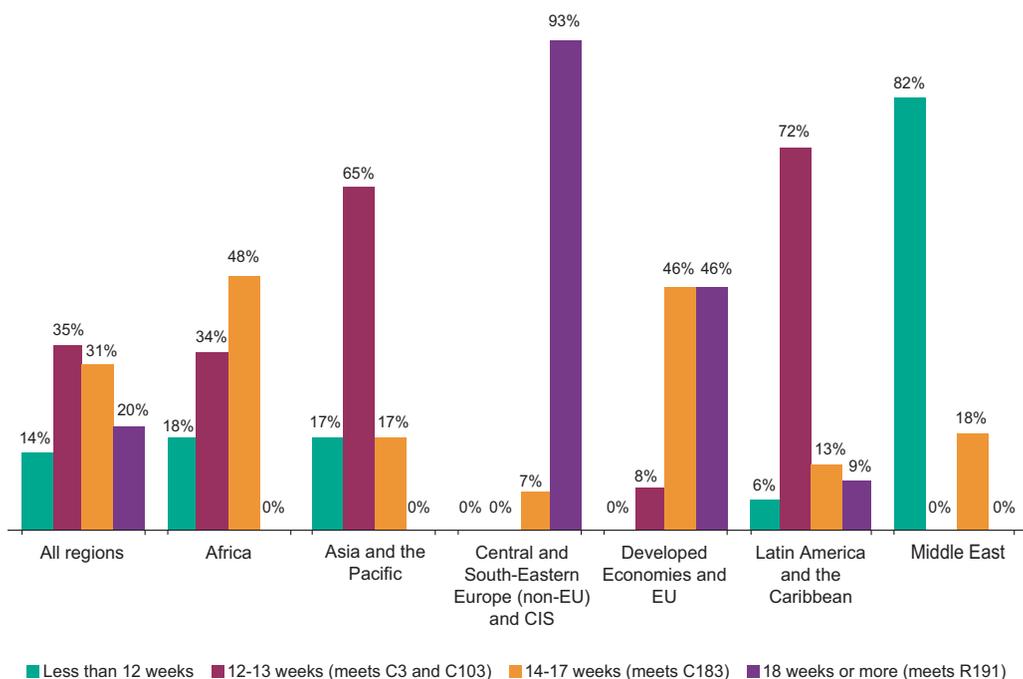
⁶ Information on the normal duration of maternity leave, cash benefits and the source of payment is available for 167 countries. For the rest of the issues in this section (i.e., when maternity leave can be taken and rules about the extension or reduction of the leave period) information is only available for 111 countries. Where percentages are presented, the set of countries used for the calculation will be stated.

countries have ratified Convention No. 183. However, far more ILO member States meet the requirement of 14 weeks' maternity leave.

Countries meeting the ILO standard

Globally, 51 per cent, of countries provide a maternity leave period of at least 14 weeks, the standard established by Convention 183. 20 per cent of countries meet or exceed the 18 weeks of leave suggested in Recommendation No. 191. About one-third (35 per cent) of countries provide 12 to 13 weeks of leave – less than the duration specified by Convention No. 183, but consistent with the level set by Conventions No. 3 and 103 of at least 12 weeks of leave. Only 14 per cent of countries provide less than 12 weeks of maternity leave. Figure 2.1 shows the percentage of countries in each region providing maternity leave durations of these lengths.

Figure 2.1.
Length of statutory maternity leave, by region, 2009 (167 countries)



Note: Figures may not add up to 100 per cent because of rounding.

Source: ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a).

The regions vary in the proportion of countries that meet the standard of at least 14 weeks. In the Developed Economies and European Union (EU) countries, and in Eastern Europe (non-EU) and Commonwealth of Independent States (CIS) countries, nearly all countries meet or exceed this standard (92 and 100 per cent, respectively). Among the Eastern European (non-EU) and CIS countries, 93 per cent meet the 18-week standard in Recommendation No. 191, as do 46 per cent of Developed Economies and EU countries.⁷

Among the 50 African countries analysed, almost half (48 per cent) provide 14 weeks of leave or more, and 34 per cent provide 12 to 13 weeks. One in five of the African countries (18 per cent) provides less than 12 weeks of leave. Tunisia, with its leave period of 30 days, provides the shortest leave period among the African countries covered in this report. At the other end of the distribution, South Africa provides four months of maternity leave.

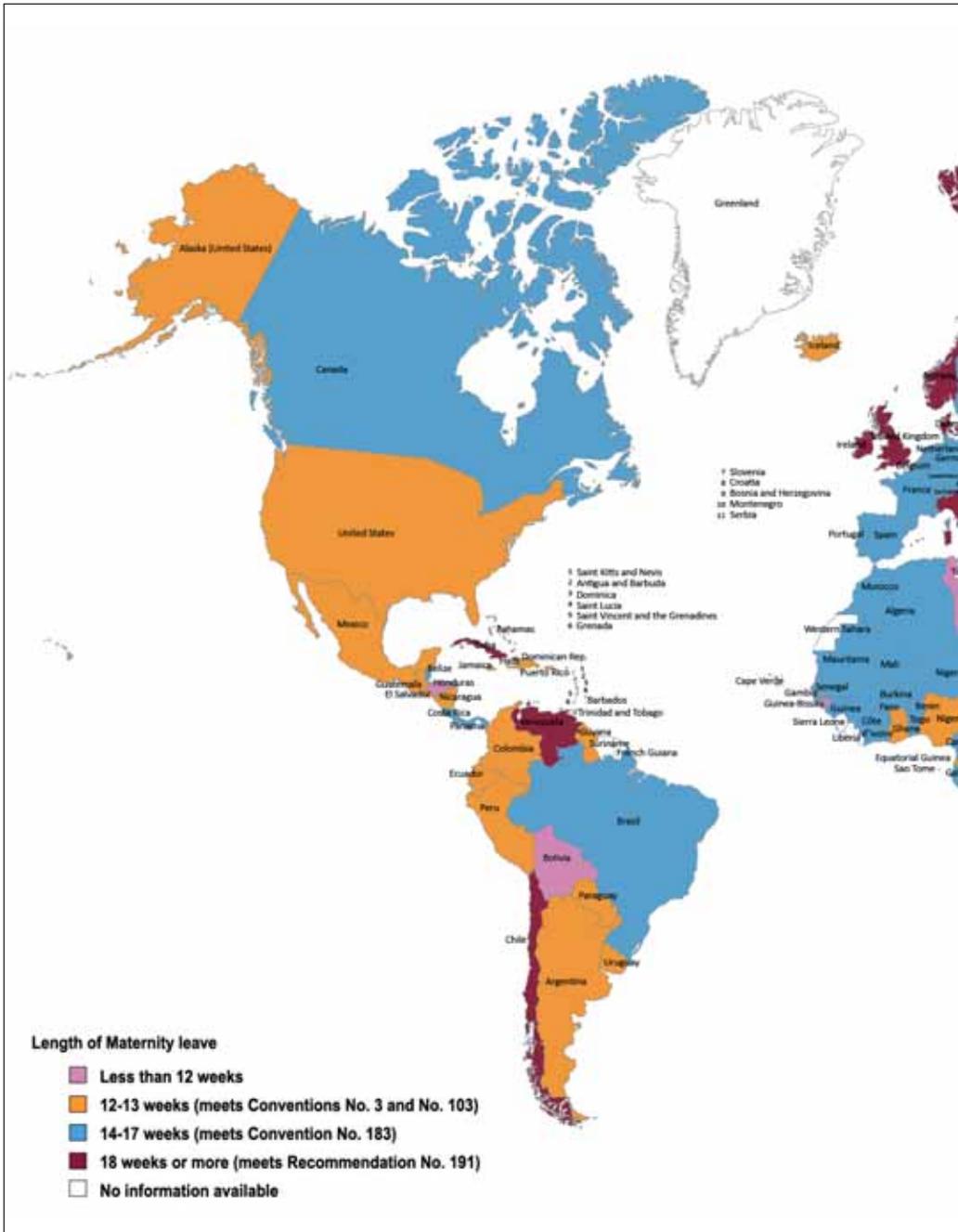
Of the 11 Middle Eastern countries studied, only two, Syria and Iran, meet the 14 week minimum established by Convention No. 183. The remaining nine Middle Eastern countries studied (82 per cent) provide fewer than 12 weeks of leave.

Among the 32 Latin America and Caribbean countries covered in this report, four countries (Belize, Brazil, Costa Rica and Panama) provide at least 14 weeks of leave while three countries go beyond Convention No. 183, providing 18 weeks of leave and meeting the level set by Recommendation No. 191 (Chile, Cuba and Venezuela). Three-fourths of countries in this region (72 per cent) provide 12–13 weeks of maternity leave, and an additional 6 per cent provide less than 12 weeks.

In the Asia and Pacific region, very few countries meet the standard set out by Convention No. 183. Just four countries provide at least 14 weeks of leave: Bangladesh provides 16 weeks, Mongolia 120 days of leave, Singapore 16 weeks and Viet Nam four months. 65 per cent of the 23 Asian and Pacific countries studied provide 12–13 weeks of leave and four countries (Malaysia, Nepal, Papua New Guinea and the Philippines) provide fewer than 12 weeks.

⁷ ILO member States that are also members of the European Union are subject to Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding (EU Pregnant Workers Directive). The minimum length of maternity leave required by the Directive is the same as in Convention No. 183: 14 weeks [European Economic Community, 1992, Article 8(1)]. Among countries in the EU, all but Iceland, which provides three months of maternity leave, meet the 14-week minimum.

Map 2.1: Length of maternity leave in 167 countries



Trends between 1994 and 2009

This section describes trends in the duration of maternity leave over the last 15 years at the global and regional levels. These comparisons will be based on the subset of 139 countries for which information is available in both 1994 and 2009.⁸

Figure 2.2 shows that there has been a gradual global shift towards longer maternity leave periods. The proportion of countries providing less than 12 weeks of leave has decreased from 19 to 14 per cent from 1994 to 2009. Indeed, more countries are now providing longer leaves, as the percentage of countries providing 14 to 17 weeks of leave has increased from 29 to 35 per cent, and the proportion providing at least 18 weeks of leave has increased from 9 to 13 per cent.

A small number of countries (two) for which data are available for both 1994 and 2009 have reduced the statutory duration of maternity leave. In Qatar, the length of leave was reduced from 60 days to 50 days over this period and in Sao Tome and Principe, it decreased from 70 days to 60 days.

In most ILO member States, however, the duration of leave has stayed constant or increased over this 15-year period.

In Africa, for most countries (of the 47 with data), the duration of maternity leave in 2009 was the same as in 1994. However, six countries have increased the duration of maternity leave: Kenya increased leave from 2 to 3 months; Morocco increased leave from 12 to 14 weeks; South Africa from 12 weeks to four months; Uganda increased leave from eight weeks to 60 working days; and Zimbabwe from 90 to 98 days. Egypt had the largest increase, moving from 50 to 90 days.

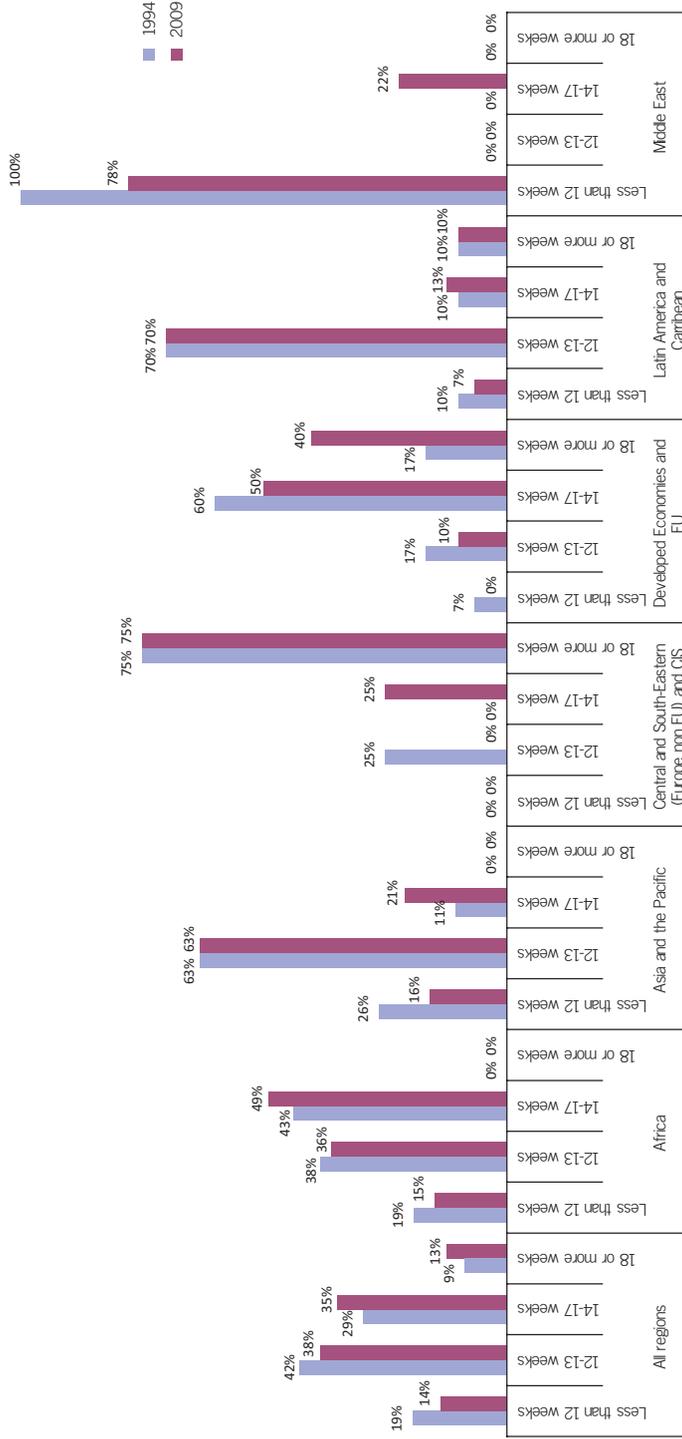
In Asia and the Pacific, the length of leave increased in several countries. For example, it increased from 12 weeks to 16 weeks in Bangladesh and from 101 days to 120 days in Mongolia. Leave also increased in the Republic of Korea (from 60 to 90 days) and in Singapore (from eight to 16 weeks).

The length of leave remained constant in most of the Latin American and Caribbean countries analysed. The number of countries providing at least 14 weeks of leave increased from six to seven between 1994 and 2009, as Belize increased leave entitlements from 12 to 14 weeks. Bahamas increased the length of leave from eight to 12 weeks. The proportion of countries providing less than 12 weeks of leave has decreased from 10 to 7.⁹

⁸ In 1994 and 2009, the ILO had data on maternity leave duration and cash benefits for 139 countries. As regards the source of benefits, information was available for 138 countries in both years (see figure 2.6).

⁹ None of the countries in this region reduced the length of maternity leave.

Figure 2.2.
Length of statutory maternity leave, by region, 1994 and 2009 (139 countries)



Sources: International Labour Office, 1994; ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a).

Among the Central European and CIS countries, information for both years was available for just four countries. Of these, three had no changes in the length of leave between 1994 and 2009. One country, Turkey, increased the length of maternity leave, from 12 to 16 weeks.

The two regions with the greatest number of countries that increased the length of maternity leave between 1994 and 2009 were the Developed Economies and EU region and the Middle East region. Among the Developed Economies and EU countries, 12 countries have increased the length of leave. For example, Poland increased it from 16 to 20 weeks, Portugal from 90 days to 120 days and Ireland increased it from 14 weeks to 26 weeks.¹⁰ As a result of these increases, all of the Developed Economies and EU countries analysed provided at least 12 weeks of leave in 2009, compared with 94 per cent in 1994. During this period, the proportion providing at least 14 weeks of leave increased from 77 per cent to 90 per cent.

Among the Middle Eastern countries, five of the nine countries analysed improved their provisions for maternity leave. For example, Bahrain increased the length of leave from 45 to 60 days, Iran increased it from 90 days to four months, and Syria increased it from 50 days to 120 days (for the first child).¹¹ As a result of these changes, two of the nine countries provide 14 or more weeks of leave in 2009, compared with none in 1994.

When can maternity leave be taken?

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 organizations of employers and workers. [Convention No. 183, Article 4(4)]

All three Conventions on maternity protection (No. 3 of 1919, No.103 of 1952 and No. 183 of 2000) provide for a compulsory leave period of six weeks after the birth of the child, during which the mother must not be allowed to work. This is intended to protect the woman from being pressured to return to work, which could be detrimental to her health and that of her child. This principle constitutes a fundamental component of the protection afforded by the ILO standards. With the adoption of Convention No. 183, some flexibility was introduced concerning the provision of compulsory leave. This instrument opens up the possibility for agreements to be made at the national level on the arrangement of compulsory leave.

¹⁰ Other countries that increased the length of leave were Bulgaria (from 120 to 227 days), Cyprus (from 16 to 18 weeks), Greece (from 16 weeks to 119 days), Iceland (from two to three months), Malta (from 12 to 14 weeks), Romania (from 112 to 126 days), Sweden (from 12 to 14 weeks), Switzerland (from eight to 14 weeks) and the United Kingdom (from 14 to 52 weeks).

¹¹ In addition, Jordan increased leave from six to ten weeks and Lebanon increased it from 40 days to seven weeks.

Among the countries for which detailed legislative information is available (111 countries), around three-quarters mandate a period of compulsory leave before or after childbirth. Although there are many variations regarding the duration of this compulsory leave period and how it is distributed before and after childbirth, more than half of the countries analysed (56 per cent) provide for at least six weeks' compulsory leave after childbirth as specified in Convention No.183,¹² with some of these countries stipulating more than six weeks of compulsory leave.¹³

Some countries provide for periods of compulsory leave both before and after childbirth.¹⁴ Yet other countries provide compulsory periods only before birth.¹⁵

In EU Member States, maternity leave must include a period of compulsory leave of at least two weeks allocated before and/or after confinement, stipulated by EU Directive 92/85/EEC [European Economic Community, 1992, Article 8(2)]. Although many EU countries provide longer periods of compulsory leave, several EU countries provide the two-week minimum.¹⁶

However, in some countries (27 of the 111 considered here) there is no period of compulsory leave.¹⁷ According to the 2004 report of the Committee of Experts, in its Report on the Application of Conventions and Recommendations, “[t]he examination of the reports provided by governments on the applications of these Conventions has ... shown that in a not insignificant number of cases the compulsory nature of the portion of post-natal leave during which the woman must not be allowed to work has not been explicitly established” (International Labour Office, 2004, p. 10).

¹² Among the 61 countries that provide six weeks of compulsory leave after birth are Barbados, Bosnia and Herzegovina, the Dominican Republic, El Salvador, Fiji, Lesotho, Myanmar, Niger, Portugal, Somalia, Spain and Uruguay.

¹³ The following countries are among those that provide more than six weeks of compulsory leave after childbirth: Central African Republic (eight weeks), Iran (45 days), Japan (eight weeks), Republic of Korea (45 days), Panama (eight weeks), Madagascar (eight weeks), Slovakia (14 weeks), Switzerland (eight weeks) and Viet Nam (two months).

¹⁴ Countries with compulsory leave before and after birth include Afghanistan (30 days before and 60 after), Azerbaijan (70 days before and 56 days after), Bahamas (one week before and eight weeks after), Cyprus (two weeks before and seven weeks after), Ecuador (two weeks before and six weeks after), Latvia (two weeks before and two weeks after) and Senegal (six weeks before and eight weeks after).

¹⁵ Countries with compulsory leave periods only before birth include Algeria (one week), Hungary (four weeks), Macedonia (28 days), Slovenia (28 days) and Zimbabwe (21 days).

¹⁶ Examples of EU countries with two-week compulsory maternity leave periods include Denmark (after birth), Iceland (after birth) and the United Kingdom (after birth). On the other hand, many EU countries provide longer periods of compulsory leave. For example, Austria mandates leave eight weeks before and eight weeks after birth, and Belgium prohibits employment one week before birth and nine weeks after birth.

¹⁷ For example, in Brazil, Cambodia, Cote D'Ivoire, Ghana, Guatemala, Kuwait, Lithuania, Russia, the United States and Zambia, there is no compulsory leave period.

To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth. [Recommendation No. 191, Paragraph 1(3)]

Except for the period of six weeks' compulsory postnatal leave, Convention No. 183 does not stipulate how the maternity leave should be distributed before and/or after childbirth, and Recommendation No. 191 emphasizes the advantages of providing women with flexibility in this regard. Legislation that leaves more choice regarding how non-compulsory maternity leave should be distributed is more likely to meet women's needs. The woman should thus be able to choose freely when she takes any non-compulsory portion of her maternity leave.

Countries differ considerably in the extent of flexibility and choice provided as to when women may take statutory maternity leave and how to distribute it before and after childbirth. Some countries provide significant flexibility regarding when and how the leave can be taken. In these countries, the legislation leaves some room for women to decide how to distribute the allotted leave. For example, in Peru, the system is flexible regarding when the non-compulsory part of the leave can be taken. The normal duration of leave is 90 days, with a compulsory period of 45 days after confinement. The remaining 45 days can be taken before birth or they can be totally or partially deferred and added to postnatal leave if the woman desires and if it does not affect the mother and child negatively. In France, women are entitled to 16 weeks of leave, to be divided into six weeks before and ten weeks after the expected birth. If a woman desires, and if a medical practitioner approves, she may reduce the prenatal leave by up to three weeks and transfer those weeks to the postnatal period.¹⁸ In Singapore, women are entitled to 16 weeks, with a compulsory period of four weeks after birth. If a woman prefers, and her employer agrees, the last seven weeks of leave may be taken flexibly during the first twelve months after birth.¹⁹

¹⁸ In France, for the third and each subsequent child (if the woman already has two or more children or if her household is in charge of two or more children) the duration is extended to eight weeks before and 18 weeks after the expected birth. For these women, the eight weeks' period of prenatal leave may be extended by two weeks with a corresponding reduction of postnatal leave. France also allows women to preserve their maternity leave if a newborn is hospitalized for a long period. If a child is hospitalized until the sixth week after confinement, mothers may postpone taking their remaining leave until the child leaves the hospital.

¹⁹ Another example is Estonia, where the duration of maternity leave is 140 days, and the woman has the right to commence pregnancy and maternity leave up to 70 days before the estimated date of delivery. Other countries with similar flexibility include Latvia (where women may choose how to distribute all but four weeks of the allotted 112 days of leave) and Sri Lanka (where, for their first two children, women can transfer any days they work during their allotted two weeks of prenatal leave into postnatal leave).

On the other hand, many countries prescribe precisely how to distribute the leave and state the number of days' leave that may be taken before and after childbirth. This is the case, for example, in Guatemala, where the maternity leave period is set at 30 days before and 54 days after confinement. Other examples include Fiji, where leave is to be taken 42 days before and 42 days after the expected birth, Guinea, where the 14 weeks' maternity leave may be taken six weeks before and eight weeks after confinement, and Russia, where leave is to be taken 70 days before and 70 days after birth.

Extension or reduction of the leave period

National legislation often allows or requires changes in the duration of maternity leave if some unusual or unexpected event takes place during pregnancy or confinement. For example, many countries extend the leave period if the birth occurs later than expected, in case of multiple births, or in the event of the mother's or child's illness.

The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave. [Convention No. 183, Article 4(5)]

Several ILO member States provide for an extension of the prenatal leave period if the child is born after the expected date (e.g. Bahamas, Barbados, Cuba, Ireland, Lesotho, Uruguay).²⁰ Another group of countries extend the postnatal leave period if the birth occurs before the due date (e.g., Argentina, Croatia, Luxembourg, Netherlands, Nicaragua), while some countries (e.g. Austria, Cyprus, Equatorial Guinea, Venezuela, Swaziland) provide for both extended prenatal and postnatal leave in the case of a longer or shorter pregnancy than was foreseen.

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. [Convention No. 183, Article 5]

A number of countries provide for additional leave in case of illness or complications, although the length of the extension varies significantly. In some countries, the length of the extension is not specified (e.g., Austria, Bolivia, Chile, Fiji, Germany, Italy, Nigeria, Paraguay), while in some coun-

²⁰ In Peru, women must take sick days to compensate for any time between the expected and actual due dates.

tries the duration of additional leave is set explicitly. The latter is the case, for instance, in Barbados, where an employee is entitled to an additional six weeks of leave for illness arising from the birth, and in Niger and Senegal, where women workers may take three more weeks of leave on medical grounds arising from pregnancy or confinement. In Kuwait, maternity leave may be extended by up to 100 days in the event of illness (although this period is unpaid).²¹ Many countries also extend the maternity leave period when a child is born prematurely²² or if the child has special medical needs.²³

Many countries provide for special periods of leave for miscarriage, stillbirth, death or other complications arising from abnormal confinement. Examples of countries providing leave for any of these grounds are Nicaragua and Panama, where paid leave is provided in accordance with the woman's needs in the case of miscarriage, stillbirth or other abnormal confinement. Azerbaijan and the Russian Federation also extend the postnatal portion of leave for "abnormal" births. Mauritius provides two weeks of miscarriage leave and Indonesia provides leave for one-and-a-half months in the case of a miscarriage. In Denmark, the leave period in the event of a stillbirth is 14 weeks; in Tanzania, the allotted leave period is one month.²⁴

Provision should be made for an extension of the maternity leave in the event of multiple births. [Recommendation No. 191, Paragraph 1(2)]

Consistent with Recommendation No. 191, several member States have special provisions in case of multiple births, for example, Belgium, Cuba and Nicaragua extend the maternity leave period by two weeks for a multiple birth. Estonia and Iran both extend it by 14 days for multiple births.²⁵

²¹ Similar extensions of leave for illness exist in, among others, Lao People's Democratic Republic (up to 30 days, on a physician's advice), Latvia (14 days), Malta (eight weeks), Uruguay (up to six months) and Uzbekistan (two weeks). In other countries, women may take sick leave or receive sickness benefits (e.g., El Salvador, Honduras, Philippines, the Seychelles and Sudan) or leave (e.g., Dominican Republic and Ecuador) if they require additional leave because of illness after the maternity leave period ends.

²² For example, Austria, Germany and Luxembourg extend the postnatal portion of leave from eight to 12 weeks for premature births.

²³ For example, in Argentina, women who have worked for their employers for at least one year may extend their leave by three to six months to care for their children; if a child has Down's syndrome, maternity leave may be extended by an additional six months without pay but with the same conditions as paid maternity leave.

²⁴ In some countries, fathers are provided with a leave period in the event of the mother's death. In France, for example, a father may take leave for a maximum period of 10 weeks after the birth of a child if the mother dies during maternity leave.

²⁵ Similar extensions of leave for multiple births exist in Afghanistan (15 days), Albania (25 days), Ghana (two weeks), Israel (three weeks for twins, plus three additional weeks for each additional child), Moldova (two weeks), Peru (30 days), Portugal (30 days) and Viet Nam (30 days for each additional child), among others.

In Iran, the maternity leave period is further extended if the mother is breast-feeding: from four to five months in the event of twin births and to 12 months in the event of multiple births of three or more children.

Some countries also provide an extension of maternity leave according to family size or composition. In France, for example, maternity leave is extended from 16 to 26 weeks for the third child. In Croatia, women may extend the maternity leave period to three years for the third or subsequent child. In Slovakia, single mothers are entitled to 37 weeks of leave, compared with 28 weeks for other mothers.

A small number of countries allow extensions of the normal maternity leave period upon request, although the extended leave period may be unpaid. Viet Nam and Zimbabwe, for example, allow unpaid extensions of the normal duration of maternity leave. In Argentina, a woman who has worked for more than one year in an enterprise may opt to extend her period of maternity leave by a period of not less than three months and not more than six months to care for her child.

CASH BENEFITS

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. [Convention No. 183, Article 6(1)]

Out of the 167 countries studied for this paper, 97 per cent provide cash benefits to women during maternity leave. Only five exceptions were found: Australia,²⁶ Lesotho, Papua New Guinea, Swaziland and the United States, all of which provide some form of maternity leave but where there is no general legal provision of cash benefits.²⁷

In some countries, the cash benefit does not cover the entire period of the minimum statutory leave. For example, Paraguay pays leave benefits for nine weeks when the normal duration of leave is 12 weeks, and in Haiti, benefits are paid for six weeks of the normal leave duration of 12 weeks. Other countries where benefits are paid for only part of the normal leave period include Bahrain (45 of 60 days) and Canada (15 of 17–18 weeks, depending on the province). In such cases, the figures on duration in the previous section refer to the total length of the leave provided and not the period which is paid.

²⁶ In 2009, the Australian government announced plans to provide 18 weeks of maternity leave paid at the national minimum wage, effective as of 1 January 2011.

²⁷ In some countries, cash benefits are only available for a certain number of births. In Malaysia, for example, cash benefits are provided for a woman's first five children. In Egypt, a woman may receive maternity leave benefits three times during a spell of employment.

This section considers the amount of cash benefits paid during maternity leave, and how these benefits are financed, as well as trends in the provision of cash benefits over the last fifteen years.

Amount and duration

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. [Convention No. 183, Article 6(2)]

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. [Convention No. 183, Article 6(3)]

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. [Convention No. 183, Article 6(4)]

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. [Recommendation No. 191, Paragraph 2]

In order to be in conformity with Convention No. 183, the cash benefit paid during maternity leave should be at least two-thirds of a woman's previous earnings, or a comparable amount if other methods are used to determine cash benefits, for a minimum of 14 weeks.

The Convention does not contain a definition of "previous earnings", and countries have defined such earnings in different ways. For example, in Iceland, the percentage is applied to the worker's average wage during a 12-month consecutive period ending two months prior to the first day of maternity/paternity leave. In Senegal, the rate of 100 per cent is applied to the daily wage received on the last pay day, including allowances directly related to the nature of the work. In Peru, the benefit is calculated on the basis of the average daily wage during the four months preceding the start of benefits. In Mongolia, the average salary is calculated over the preceding 12 months.

Variation in methods of calculating cash benefits

Among the countries that provide paid maternity leave, determining the exact number of countries in conformity with the Convention is difficult, given the variety of methods countries use for determining the level of cash maternity benefits. In the simplest case, a country calculates benefits based on a woman's past earnings and pays a constant benefit for the entire leave period. This is the most common way of calculating cash benefits,²⁸ and in these cases it is easy to see if the payment reaches the required level of two-thirds of past earnings.²⁹

In several countries, the amount paid is greater at the beginning than at the end of the leave period. Cash benefits are paid during the entire length of the leave in Grenada, for example, but the percentage decreases from 105 per cent in the first two months to 65 per cent in the last month of leave. Thailand provides 100 per cent of past wages for the first 45 days of maternity leave but 50 per cent for the remaining 45 days. In Albania, benefits are paid at 80 per cent for 150 days and then at 50 per cent for the rest of the period (215 days). In these countries, assessing compliance with the standard in Convention No. 183 is also relatively straightforward.

For countries using alternative methods of assigning cash benefits, assessing conformity with the ILO standard of two-thirds of earnings can be complicated. For example, some countries, primarily in Europe, provide benefits as a percentage of earnings but limit cash benefits to a ceiling. Percentages are capped by a ceiling in, among others, Belgium, France, Israel, the Netherlands and the Russian Federation.

Other countries pay a flat monthly maternity benefit, regardless of a woman's previous earnings.³⁰ In some cases, the flat rate is set at the national minimum wage level or less, in which case, workers who earn more than 151 per cent of the minimum wage would not receive the minimum of two-thirds of previous earnings required by Convention No. 183.

In any country with a flat-rate benefit or a ceiling on benefits, the proportion of women workers who receive at least two-thirds of their salaries depends on the distribution of wages. As a result, when determining what proportion of countries complies with the Convention, those who pay a flat rate or place a limit on cash benefits are not assessed unless their compli-

²⁸ The following countries are examples of those that calculate benefits as a percentage of prior earnings: Afghanistan, Argentina, Bosnia and Herzegovina, Bulgaria, Costa Rica, Djibouti, Guyana, Italy, Japan, Jordan, Malawi, Nepal, San Marino, Saint Vincent and the Grenadines, and the United Arab Emirates.

²⁹ In some countries that calculate benefits based on past earnings, such as Finland, Israel and Portugal, low-wage workers are guaranteed a minimum level of cash benefits (European Industrial Relations Observatory On-Line, 2004).

³⁰ Flat-rate benefits are paid in, for example, Fiji and the Seychelles.

ance can be determined through other available information.³¹ For example, countries that fail to meet the standards on other grounds (i.e., length of leave) are counted as not in compliance, even if there is ambiguity about the level of benefits paid.³² Using these criteria, 15 countries were excluded from the analysis of conformity with Convention No. 183 with respect to length of leave and cash benefits.³³

Conformity with Convention No. 183 with respect to length of leave and cash benefits

Globally, 42 per cent of the 152 countries studied provide cash benefits of at least two-thirds of earnings for at least 14 weeks. In fact, 34 per cent of the countries studied go beyond this standard by providing 100 per cent of previous earnings for at least 14 weeks (see figure 2.3). In over half (59 per cent) of the countries studied, however, maternity leave is unpaid, paid at less than two-thirds of previous earnings, or paid for a period of less than 14 weeks.

Among the 11 Central and South-Eastern European (non-EU) and CIS countries analysed, there is a very high rate of countries meeting the standards established by Convention No. 183. 18 per cent of countries meet and 82 per cent of countries exceed the duration and payment standards in this Convention.

Many of the 27 Developed Economies and EU countries³⁴ also meet the standards of Convention No. 183 on both dimensions, with 78 per cent

³¹ A small number of countries, such as Belgium, Croatia and the United Kingdom, change from a percentage of earnings at the beginning of the leave to a flat rate at the end of the leave period. If the period during which a percentage is paid is at least 14 weeks, then the country's compliance with the Convention can be assessed. If the flat rate begins before 14 weeks, the country's compliance cannot be assessed.

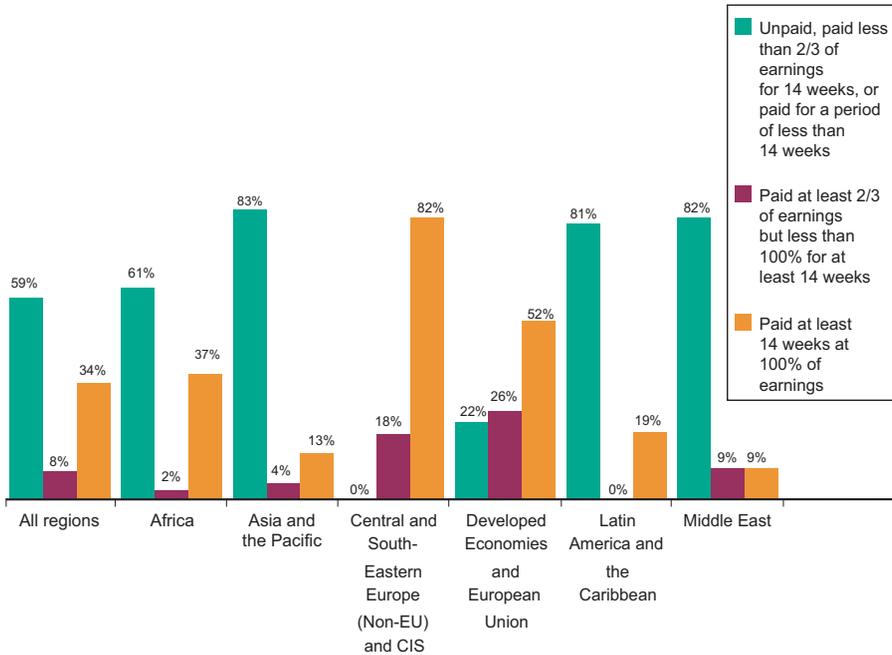
³² For example, Eritrea and Fiji, use flat-rate benefits or lack information on cash benefit levels; however, in these countries the length of leave is insufficient to meet the standard in the Convention so they are counted as not in compliance.

³³ These 15 countries were Belgium, Chile, Finland, France, Ireland, Israel, Kyrgyzstan, the Netherlands, New Zealand, the Russian Federation, Seychelles, Slovenia, Switzerland, and the United Kingdom. Bosnia and Herzegovina has not been categorized, since the amount of benefits varies between 50 and 100 per cent, depending on the region. Note that some of the countries that have been excluded from this analysis may be in compliance in practice (i.e., if the ceiling on benefits allows all or nearly all women to receive two-thirds of their previous earnings).

³⁴ For the Member States of the European Union, compulsory provisions apply concerning cash benefits. Article 11 of the EU Directive provides (European Economic Community, 1992):

[T]he employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for workers ... must be ensured in accordance with national legislation and/or national practice ... [This] allowance ... shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation.

Figure 2.3.
Cash benefits and leave duration, by region, 2009 (152 countries)



Note: Figures may not add up to 100 per cent because of rounding.

Source: ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a).

of countries meeting or exceeding the standards. Roughly one in four (22 per cent) of these countries provide lower cash benefits than Convention No. 183 calls for. As noted, because of ceilings on the cash benefits paid or complicated systems of assigning cash benefits, it was impossible to assess conformity in ten of the countries in this region.³⁵

Nearly all of the African countries calculate maternity benefits as a percentage of prior earnings. The exceptions are the Seychelles, which pays women a flat-rate benefit, and Lesotho and Swaziland, in which no cash ben-

³⁵ In Malta, as of January 2008, benefits are paid at 100 per cent of past earnings for 14 weeks, instead of 13 weeks.

efits are paid.³⁶ Of the 50 African countries studied, 39 per cent provided for at least two-thirds of earnings for 14 weeks. Of these, the Democratic Republic of Congo pays two-thirds of prior earnings for 14 weeks, while Algeria, Benin, Burkina Faso, Chad, Cameroon, Comoros, Congo (15 weeks), Côte d'Ivoire, Gabon, Guinea, Madagascar, Mali, Mauritania, Morocco, Senegal, Togo and Zimbabwe all pay 100 per cent of earnings for 14 weeks. Among the remaining countries that do not provide at least two-thirds of earnings for 14 weeks, some, such as Guinea-Bissau and Sudan, pay 100 per cent of prior earnings, but for a period of less than 14 weeks (60 days and eight weeks, respectively). Others provide at least 14 weeks of maternity leave, but with lower levels of compensation. For example, the Central African Republic provides 14 weeks of leave paid at 50 per cent of earnings.

Thirty-one of the 32 Latin American and Caribbean countries calculate benefits as a percentage of earnings. Only Bolivia uses a flat rate plus a percentage of prior earnings. Among the Latin American countries, 19 per cent meet or exceed the standards on duration and level of pay. Belize, Brazil, Chile, Costa Rica, Cuba, Panama and Venezuela provide at least 14 weeks of leave paid at 100 per cent of prior earnings. Many of the remaining countries provide at least two-thirds of earnings, but for less than 14 weeks. For example, Barbados, Colombia, Ecuador, Honduras and Mexico provide 12 weeks at 100 per cent of earnings. Jamaica provides 100 per cent of previous earnings for eight weeks.

All but two of the 23 Asian countries studied provide benefits as a percentage of prior earnings. The exceptions are Fiji, which pays a flat-rate benefit, and Papua New Guinea, where benefits are unpaid. Of these 23 countries, only two provide at least two-thirds of earnings for 14 weeks: Mongolia provides 70 per cent of earnings for 120 days, and Viet Nam provides 100 per cent of earnings for four to six months, depending on the type of work. Among the remaining countries, a large number provide full earnings during maternity leave, but for less than 14 weeks: Afghanistan (90 days), India (12 weeks) and Nepal (52 days). Countries providing both lower levels of earnings and less than 14 weeks include Cambodia (90 days at 50 per cent), Kiribati (12 weeks at 25 per cent), the Solomon Islands (12 weeks at 25 per cent) and Vanuatu (12 weeks at 50 per cent).

Among the 11 Middle Eastern countries, all calculate benefits based on prior earnings. Two of these 11 countries meet the ILO standards, with Iran providing for four months (if breastfeeding) and two-thirds of prior earnings and Syria providing for 120 days and 100 per cent of earnings (for the first child). Nearly all of the remaining countries provide 100 per cent of earnings but do so for fewer than 14 weeks.

³⁶ In Eritrea, cash benefits are paid, but the ILO has no information on the amount paid or the basis on which benefits are calculated.

Source of benefits

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. [Convention No. 183, Article 6(8)]*

ILO Conventions No. 3 and No. 103 emphasized that employers should not be individually liable for the cost of maternity benefits payable to women employed by them, and that benefits should be provided through social insurance or other public funds. The principle of payment through social insurance or other public funds is important for mitigating against discrimination in the labour market, which could be more likely where employers directly bear the costs of maternity leave. This principle is maintained in Convention No. 183, although this Convention allows employers to be individually liable for maternity benefits in cases where they have given their specific agreement, where this was determined at the national level before the adoption of Convention No. 183 in 2000, or where it is agreed upon at the national level by the government and the social partners (International Labour Office, 2004).

Countries typically adopt one of three main approaches towards financing cash benefits for maternity: social security, employer liability or mixed systems.³⁷ Social security systems include not only health or unemployment insurance, but also other types of public funds, such as those coming from municipalities, states or governments. These systems use contributions from some combination of employees, employers and government revenues to create an insurance pool that is then used to finance benefits.³⁸

³⁷ It is important to note that in some cases, although there is a mechanism for pooling the contributions for cash benefits, contribution payments into pooled funds may not always be mandatory. Funding systems that rely on voluntary contributions are likely to be less effective at ensuring maternity protection than those that require mandatory contributions. However, it is often difficult to determine whether payment funding schemes are mandatory or voluntary. In Annex I, we present information, where available, on whether funding systems are mandatory or voluntary.

³⁸ A small number of countries use alternative financing arrangements under government control. Iceland and New Zealand have universal coverage for maternity benefits; China and Switzerland use individual accounts to collect and pay benefits.

When employers are solely responsible for the cash benefits, the proportion of prior earnings they must pay varies widely. In some countries employers are responsible for full replacement pay of a woman worker's earnings during her maternity leave.³⁹ In other cases, employers are required to provide cash benefits at a rate which is lower than full pay.⁴⁰

When countries use a mixed system in which employers and social security systems share responsibility for benefits, the percentage employers must contribute to cash benefits varies. Sometimes, employers' contributions are relatively small.⁴¹ In many countries, such as, Burundi, Costa Rica, Guinea, Madagascar and Togo, contributions are split equally between social security and employers. Other countries require employers to make variable contributions, such as when employers must pay the difference between the social security benefit and a woman's previous earnings. In a few of the cases where mixed systems exist, employers bear responsibility for the majority of the cash benefit.⁴²

With respect to employers' participation in the payment of cash benefits, the Committee of Experts on the Application of Conventions and Recommendations has decided that Convention No. 103 is observed where the contribution of the employer to maternity benefits is less than one-third of insured income and the share paid by social security is at least two-thirds (International Labour Office, 1994). While Convention No. 183 provides greater flexibility under certain, very specific circumstances as mentioned above, this report considers national legislative provisions in relation to the basic principle of payment through social insurance or other public funds.

As shown in figure 2.4, half (53 per cent) of the 167 countries surveyed⁴³ provide for cash benefits through national social security schemes.⁴⁴ In 26 per

³⁹ In Afghanistan, Bangladesh, Comoros, Gambia, Indonesia, Kenya, Malaysia, Montenegro, Pakistan and Qatar, among others, employers must pay 100 per cent of prior earnings during the leave period.

⁴⁰ In Botswana and Kiribati, for example, employers are responsible for 25 per cent of earnings. In Libyan Arab Jamahiriya, Nigeria, Somalia and Vanuatu, employers must pay half of prior earnings.

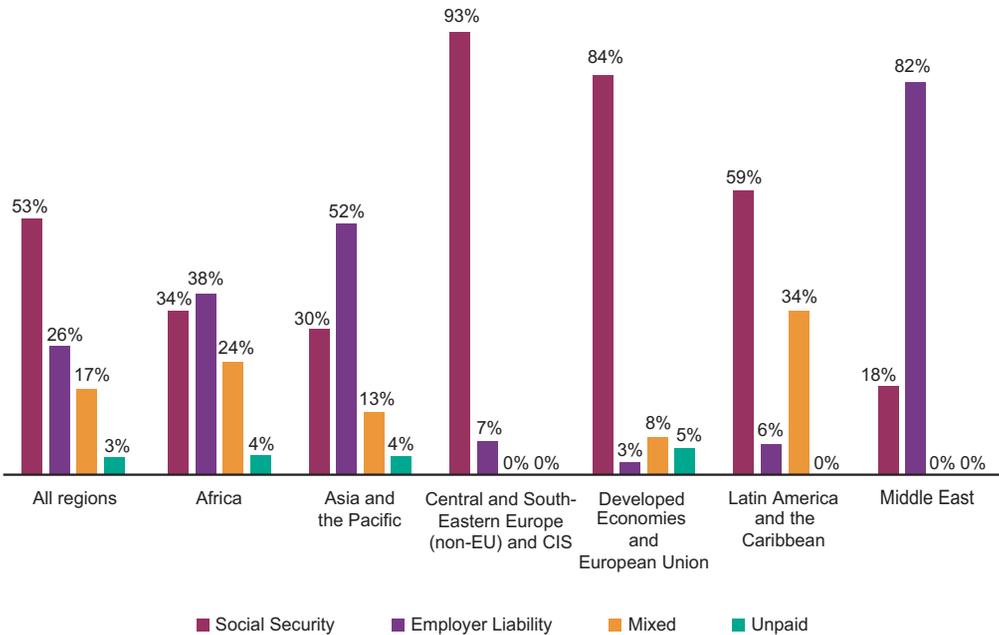
⁴¹ For example, in the United Kingdom, the employer is responsible for the payment of cash benefits, but is reimbursed for 92 per cent by public funds. Other examples include Ecuador and Egypt, where employers pay 25 per cent, and Guatemala, where they pay one-third of benefits.

⁴² In the Republic of Korea, the employer pays the full benefit for 60 days and the social security system pays for 30 days. In Singapore, the employer and government pay cash benefits for the first two children and the government for the third and subsequent ones. In Thailand, the employer is responsible for 100 per cent of earnings for the first 45 days of leave and social security pays 50 per cent for the remaining 45 days.

⁴³ Observations for this section include 167 countries.

⁴⁴ Some countries may rely on more than one type of financing, with the responsibility determined by some eligibility criteria. For example, in some countries, women who are covered by social insurance receive benefits funded by a mixed system, but those who are not eligible for social insurance are entitled to cash benefits paid by their employers. This report aims to identify and classify countries according to the source of funding that applies to the largest fraction of women.

Figure 2.4.
Who pays the benefit, by region, 2009 (167 countries)



Note: Figures may not add up to 100 per cent because of rounding.

Source: ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a).

cent of the countries, benefits are paid solely by the employer. In 17 per cent of countries, employers and social security systems share the cost of cash maternity benefits. In five countries (3 per cent), benefits are unpaid.

Regional differences with respect to who pays cash benefits are striking. In the Developed Economies and European Union countries, benefits are paid through social security systems in 84 per cent of the countries, with just one country (Malta) relying on employers as the direct source of cash benefits.

Central and South-Eastern Europe (non-EU) and CIS also rely predominantly on social security systems, with 93 per cent of countries providing payment through social security, and only 7 per cent⁴⁵ relying on employer-financed benefits. Most Latin American and Caribbean countries rely either on social security systems (59 per cent), or on mixed systems (34 per cent). Just 6 per cent of countries in this region rely on an employer liability system.⁴⁶

⁴⁵ Employers are responsible for benefits in Kazakhstan.

⁴⁶ Employers are liable for benefits in Haiti and Jamaica.

Employer liability systems are most common in Africa, in Asia and the Pacific and in the Middle East, where challenges in extending social security systems have remained considerable. In Africa, 38 per cent of countries rely on employer liability systems, one-third of countries rely on social security systems and roughly one in five rely on mixed systems. In Asia and the Pacific, 52 per cent of countries finance benefits through employer liability systems, while just 30 per cent provide benefits through social security systems and 13 per cent through mixed systems.⁴⁷ In the Middle East, reliance on social security is the lowest of all regions, and more than four-fifths (82 per cent) of countries in this region rely on employer liability systems; only Iran and Iraq provide benefits through their social security systems.

Conformity with Convention No. 183 on duration, cash benefits and financing of benefits

When all three dimensions of leave duration, level of payment and source of payment are taken into consideration, the number of countries reaching the standard declines.⁴⁸ Of the 145 countries included here, 30 per cent reached or exceeded all three of the provisions in Convention No. 183 (see figure 2.5). Over two-thirds (101) of the 145 ILO member States studied fall short of the provisions set out by Convention No. 183 when these three key aspects are considered.⁴⁹

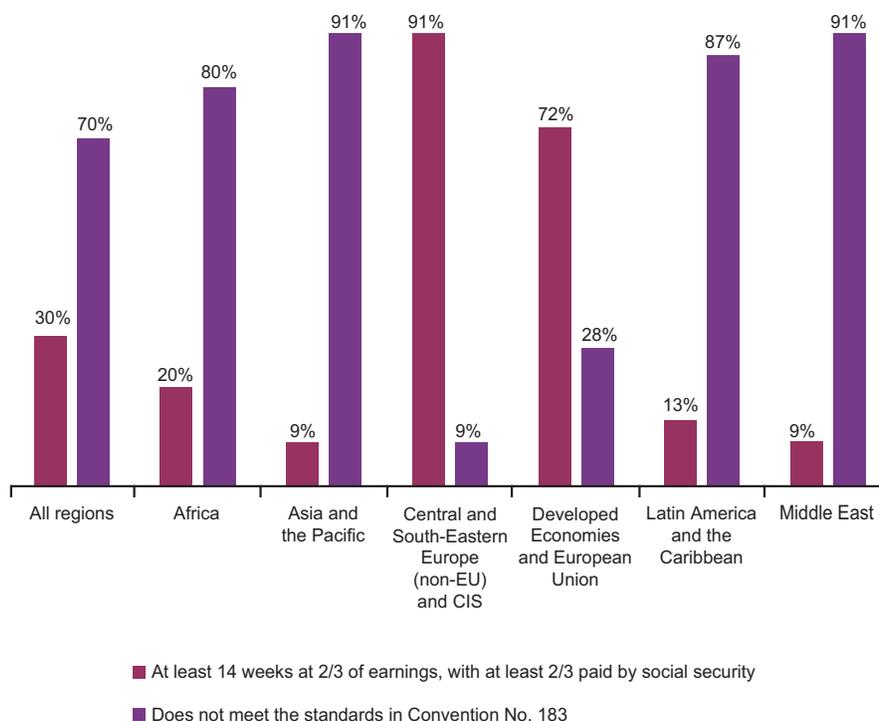
The highest rates of conformity on all three standards are in the Central and South-Eastern Europe (non-EU) and CIS and the Developed Economies and European Union countries, where 91 and 72 per cent of countries meet all three standards. At the same time, these regions also have the largest number of countries for which it is not possible to assess compliance (three and twelve, respectively).

⁴⁷ Among countries in this region, India, Lao People's Democratic Republic, Mongolia, the Philippines and Viet Nam use social security systems alone. The Republic of Korea and Thailand use mixed systems. Singapore uses a mixed system for the first two children, but the government is responsible for paying benefits for subsequent children.

⁴⁸ For this section, countries are counted as in compliance with Convention No. 183 if they fund benefits through social security systems or a mixed system in which employers are responsible for no more than one-third of cash maternity benefits.

⁴⁹ As noted, compliance could not be assessed for 22 countries because the national systems for calculating and financing benefits make it difficult to directly compare national provisions to the ILO standards. While omitted from the analysis, some of these countries may nevertheless be in compliance with Convention No. 183.

Figure 2.5.
Percentage of countries reaching the ILO standards on length of maternity leave,
payment and source of benefits, by region, 2009 (145 countries)



Source: ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a).

Larger proportions of countries in the remaining regions fell short of the standards in Convention No. 183. Among the 45 African countries studied, nine met or exceeded all three standards, 36 fell below, and five could not be assessed. Among the 23 Asian countries, two met the standards and 21 fell below. Four Latin American and Caribbean countries met the standards, 26 fell short, and two could not be assessed. Among the 11 Middle Eastern countries, only one met all three standards.

In order to show what steps might be taken to strengthen maternity protection around the world, table 2.1 classifies the 101 countries which fall short of the three provisions, by the provision (or provisions) on which they fall short.

Table 2.1. Number of countries that fall short of Convention No. 183, by provision and region (101 countries)¹

	Gaps in one provision			Gaps in two provisions			Gaps in three provisions		Totals
	Less than 14 weeks	Less than 2/3 wages	Employer Liability ²	Less than 14 weeks and less than 2/3 wages	Less than 14 weeks and employer liability	Less than 2/3 wages and employer liability	Less than 14 weeks, less than 2/3 wages, and employer liability		
All regions	27	5	15	6	31	2	15	101	
Africa	5	3	9	0	11	1	7	36	
Asia (East, South-East, Pacific, South)	6	0	2	0	7	0	6	21	
Central and South-Eastern Europe (Non-EU) and CIS	0	0	1	0	0	0	0	1	
Developed Economies and European Union	1	2	1	1	0	1	1	7	
Latin America and the Caribbean	14	0	1	5	5	0	1	26	
Middle East	1	0	1	0	8	0	0	10	

¹ In the following countries, there is insufficient information to determine whether a country meets the standards on the level of payment of maternity benefits and the employer liability: Angola (employer liability); Belgium (level); Bosnia and Herzegovina (level); Burkina Faso (employer liability); Chile (level); Denmark (employer liability); Eritrea (level); Finland (level); France (level); Germany (employer liability); Guinea Bissau (employer liability); Ireland (level); Israel (level); Kyrgyzstan (level); the Netherlands (level); New Zealand (level); Panama (employer liability); the Russian Federation (level); Seychelles (level and employer liability); Slovenia (level); Switzerland (level); United Kingdom (level). These countries are not included in the table above.

² Employer liability includes countries in which employers are responsible for more than one-third of the maternity benefit.

Globally, the most common challenges are improving the length of leave (27 countries) and improving the length of leave while simultaneously reducing reliance on employers for payment to one-third or less of cash maternity benefits (31 countries). 47 countries would need to improve just one of the three provisions in order to reach the standards in Convention No. 183. 39 countries would need to address two provisions, and 15 countries would need to improve all three dimensions of maternity protection to reach the standards in the Convention.

Regions vary in terms of which provisions pose challenges for compliance. Among the 36 African countries examined, many provide 100 per cent of earnings, but often the length of leave is below 14 weeks and/or the employer is responsible for all or a substantial fraction of earnings. Among the 36 countries considered here, 11 provide leave for less than 14 weeks and rely on employers for all or more than one-third of cash maternity benefits. Accordingly, increasing the statutory duration of maternity leave would help strengthen maternity protections in the region, while developing social security systems which include maternity benefits also continues to pose challenges.

Many Asian countries provide adequate payment during maternity leave. However, a number of countries (seven) specify short periods of leave while also relying on employers for paying benefits. Six of the 23 Asian countries analysed fall below all three standards. Increasing the length of maternity leave and developing social security systems which include maternity benefits are key challenges in this region.

Financing maternity benefits through social security systems is fairly common among the Latin American countries. The length of leave is the most common gap of the three provisions in this region. Although many Latin American countries provide 100 per cent of prior earnings, 14 fall short of the 14-week standard in Convention No. 183. An additional five countries provide less than 14 weeks of leave and pay less than two-thirds of prior earnings.

As noted, many of the countries in the Middle Eastern region have increased the length of leave since 1994. However, improving the financing and the length of maternity leave in order to protect working women and their children remains a challenge, as eight of the ten countries considered fall short on length and rely on employer liability systems.

Among the Developed Economies and the Central European and CIS countries, a majority of countries meets all the three standards. The only Central European and CIS country that does not, relies on an employer liability system. Among the seven Developed Economies considered, four countries would need to improve just one of the three provisions in order to reach the standards in Convention No. 183. Two countries would need to address two provisions and only one country would need to improve all three dimensions of maternity protection.

Trends between 1994 and 2009 in level and source of payment

In the 15 years between 1994 and 2009, there has been notable progress in improving payment levels and a gradual shift away from reliance on employers for maternity leave benefits.⁵⁰

Between 1994 and 2009, the small number of countries not providing any cash benefits during maternity leave declined from seven to five. In 1994, for example, Namibia was preparing a social security code including paid maternity benefits and by 2004, it provided 12 weeks of maternity leave paid by the social security system at 80 per cent of the woman's wages. By 2009, Namibia had further extended cash benefits to provide for 100 per cent of a woman's wages up to a ceiling (Namibian Social Security Commission, 2009). Between 1994 and 2009, New Zealand, which formerly offered unpaid leave, introduced cash benefits during leave.

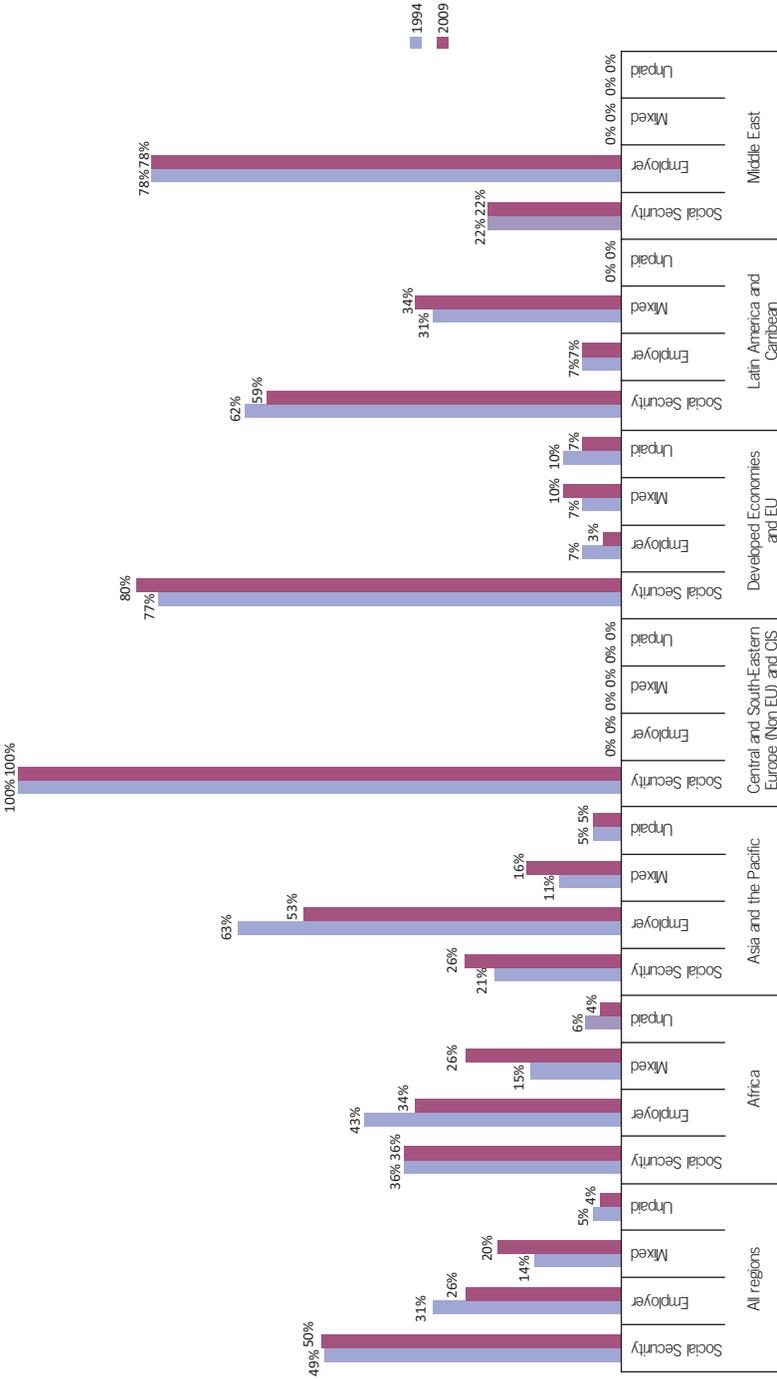
Although paid leave existed in Switzerland in 1994, maternity protection at that time was not applicable in federal legislation. The length of leave, percentage of earnings paid and sources of payment differed in the public and private sectors (depending on the legislation and/or collective agreements applicable in each case). Amendments to the social security legislation, which went into force in 2005, provide women workers uniform protection across the country that meets the minimum period and remuneration set out in Convention No. 183 (14 weeks at 80 per cent of previous earnings).

The level of payment during maternity leave increased in 17 countries between 1994 and 2009. In Israel, the level of benefits increased from 75 per cent to 100 per cent, while in Jordan, benefits increased from 50 per cent to 100 per cent, and in Syria, the level of payment went from 70 per cent to 100 per cent (while also increasing leave from 50 to 100 days as noted earlier). In Ghana, benefits increased from 50 per cent to 100 per cent. In Belize, benefits increased from 80 per cent to 100 per cent. The percentage of earnings paid during leave increased from 84 per cent (up to a ceiling) to 100 per cent (up to a ceiling) in France and from 75 per cent to 100 per cent of average earnings in Spain.

Although the overall trends during this period were towards longer and better paid leave, there were a few countries in which the level of payments appears to have decreased. In Bulgaria, for example, benefits were reduced from 100 per cent of prior earnings to 90 per cent between 1994 and 2009, although this came with an increase in the length of leave from 120 to 227 days. Cambodia also reduced benefits from 100 per cent of prior earnings to 50 per cent.

⁵⁰ Many of these changes had been made by 2004, when the last review of maternity protection laws was published. In this section, we review these changes and also note new developments between 2004 and 2009.

Figure 2.6.
Who pays the benefit, 1994 and 2009 (138 countries)



Source: International Labour Office, 1994; ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2008a).

Map 2.2: Source of funding of maternity cash benefits in 167 countries





Regarding the sources of payment, figure 2.6 provides information on how cash benefits were financed in 1994 and 2009 for the 138 countries covered in both years. Globally, the percentage of countries which rely on employer liability systems has declined over time from 31 to 26 per cent. There has been a shift towards mixed systems in which employers and social security systems share responsibility for benefits, which increased from 14 per cent in 1994 to 20 per cent in 2009. The overall percentage of countries relying on social security systems alone for financing cash benefits remained steady at 50 per cent in 1994 and 2009.

Countries that have changed their system of financing of benefits during this period include Tanzania, which moved from a system of employer liability to social security; Singapore, which moved from an employer liability system to a mixed system; Benin, Nicaragua and the Seychelles, which moved from social security financing to mixed systems; and Azerbaijan and Cote d'Ivoire, which changed from a system of mixed financing to a social-security-only system. Switzerland switched from a system relying on employers to a system of mandatory private accounts.

These changes in financing sources differed somewhat by region. In Africa, an overall shift towards mixed systems occurred as one country moved away from employer liability systems, and three moved away from social security systems alone. In contrast, in Asia, reliance on employer liability systems decreased from 63 to 53 per cent, as countries moved towards social security and mixed systems. Among the Latin American and Caribbean countries, increased reliance on mixed systems (from 31 to 34 per cent) corresponded with a decrease in the share of countries financing benefits through social security alone.

In conclusion, the vast majority of countries provides for cash benefits during maternity leave and the small minority providing leave but no payment has declined since 1994. The complexity of systems makes it difficult to determine whether benefits are generally increasing or decreasing. Globally, social security systems are used as the sole source of payment in half of the countries covered in this report, and pay at least some of the benefit in another 20 per cent of countries. The number of countries in which employers are fully responsible for paying maternity benefits has declined slightly during the last 15 years, while the usage of mixed systems is on the rise. The shift away from systems relying entirely on employer responsibility is encouraging as it reflects progress towards the kinds of legal provisions called for in ILO standards. However, the small shift in recent years away from social security systems towards systems that place new responsibilities on employers should also be noted with concern. As noted earlier, finding viable ways of financing maternity benefits without placing undue financial costs on the woman's employer can help promote labour market equality between men and women.

SCOPE

This Convention applies to all employed women, including those in atypical forms of dependent work. [Convention No. 183, Article 2(1)]

However, each Member which ratifies this Convention may, after consulting the representative organizations 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 social problems of a substantial nature. [Convention No. 183, Article 2(2)]

Since the first Maternity Protection Convention (No. 3 of 1919), the scope of coverage has been broadened to cover all employed women. Convention No. 3 covered women working in any public or private industrial or commercial undertaking. Convention No. 103, adopted in 1952, extended the scope of protection to a larger number of categories of women workers, to include women employed in non-industrial and agricultural occupations, including women wage earners working at home. Convention No. 183 broadened the scope of coverage to all employed women, no matter what occupation or type of undertaking, including women employed in atypical forms of dependent work, who have often received no protection. Expanding the scope of maternity protection as set out by Convention No. 183 is of critical importance in ensuring the health and well-being of greater numbers of women workers and their children worldwide.

At national level, the percentage of employed women covered depends on:

- who is covered by or excluded from labour legislation or social security;⁵¹ and
- any eligibility requirements specified in order to obtain benefits.

Workers excluded from maternity leave provisions

Most of the analysed countries provide maternity protection for employed women in the private and public sectors. However, it is difficult to say if all women workers are actually covered. In part, this may depend on how countries define a worker and whether certain categories of workers are excluded from coverage.

In many countries, various categories of workers are explicitly excluded from the scope of labour legislation and/or social security legislation or from

⁵¹ It may also depend on whether coverage is automatic or voluntary, or if workers need to opt in to coverage.

the corresponding law regulating cash maternity benefits. In the list below, in countries marked by an asterisk, the concerned group of workers is covered for maternity leave but not for cash benefits. In countries marked with a plus sign, these workers may be eligible for voluntary coverage. Frequently excluded groups include:

- domestic workers (e.g., Argentina, Bangladesh, Cambodia, Egypt, Honduras*+, Jordan, the Republic of Korea, Kuwait, Lebanon, Madagascar, Panama*, the Philippines, Singapore, Sudan, Tunisia, and Yemen).⁵²
- members of the employer's family or women working in family undertakings (e.g., the Dominican Republic*, Ecuador*, Egypt, Republic of Korea, Lebanon, Nigeria, the Philippines, Sudan, Tunisia and Uganda).
- casual or temporary workers (e.g., the Dominican Republic*, Honduras+, the Republic of Korea, Kuwait, Panama*, Sudan, Viet Nam* and Zambia).
- agricultural workers (e.g., Bolivia, Egypt, Honduras+ (if less than 10 employees), Lebanon, Sudan, Swaziland and Thailand).⁵³
- workers in the armed forces and/or police (e.g., Somalia, South Africa, Sudan, Swaziland and Zambia).
- managers/business executives (e.g., Nigeria, Paraguay, the Philippines and Singapore).
- workers earning over a certain ceiling (e.g., the Dominican Republic* and El Salvador*).
- apprentices (e.g., Honduras, and Zambia).
- certain groups of civil servants (e.g., Botswana, Cambodia, Honduras, Lao People's Democratic Republic, Lebanon, Lesotho, Niger, Panama, Paraguay, the Philippines, Senegal and Sudan), but they are usually covered by special maternity protection regulations for the public sector (e.g., Colombia, Cote d'Ivoire, Ecuador, Egypt, Japan, Kuwait, Madagascar, Tunisia and Viet Nam).

In some countries, women who work for small businesses are also excluded from maternity protection laws. For example, the United States' Family and Medical Leave Act (FMLA) provides up to 12 weeks of unpaid leave that may be used to care for a newborn child, but this provision covers

⁵² See, for example, International Labour Office (2009b).

⁵³ Argentina has a separate programme for agricultural workers. In the Philippines, agricultural workers are excluded if they are not paid a regular daily wage and do not work at least six uninterrupted months a year.

only individuals who work for employers with 50 or more employees. In Honduras, the labour code on maternity protection does not cover workers in agricultural and stockbreeding enterprises that employ fewer than ten permanent workers.⁵⁴

In many countries, national laws may make no specific reference to, nor explicitly exclude or include these frequently excluded categories of workers. This is often the case for domestic workers.⁵⁵ It could thus be assumed that all workers should enjoy the same protection regarding maternity leave. However, the reality is often different, both with respect to leave and cash benefits. In other cases, the law may only provide social security protection on a voluntary basis for some types of workers, as is the case for domestic workers in Honduras and Mexico.

The exclusion of non-standard workers (such as part-time, casual and temporary workers) can affect an important number of women workers, since a significant proportion of them, even in the formal economy, may not be full-time, regular workers. In Japan, for example, maternity leave is granted to all workers covered by health insurance, but Japanese employers do not have to pay pension and health insurance premiums for non-regular workers⁵⁶ who work less than three-quarters of the hours put in by full-time employees in a firm. The employment of non-standard workers, especially part-time workers, has been on the rise (Abe et al., 2003; OECD, 2003). By 2007, one-third of all Japanese workers were non-regular workers, with two-thirds of them defined as part time and without employer health insurance and pension coverage (OECD, 2008). This is particularly important for health insurance because women are much more likely to be in non-regular employment than are men.⁵⁷

In Australia, there is also a high and rapidly rising level of non-standard employment, primarily casual employees, who lack most rights and benefits.⁵⁸ Casual employees were excluded from the Australian provision of 12 months of unpaid maternity leave available to women with at least 12

⁵⁴ Other examples include the Republic of Korea, where women working in enterprises with less than five employees are not entitled to maternity leave.

⁵⁵ For example, in the Central African Republic, Colombia, Denmark, El Salvador, Finland, Guatemala, the Lao People's Democratic Republic, Malta, Nicaragua, Sweden, Venezuela and Zambia (Ramirez-Machado, 2003).

⁵⁶ Non-regular workers are those who generally do not have a regular, permanent employment contract. In Japan, a majority of non-regular workers are part-time employees in the sense that they work less than 35 hours per week, which is the definition of part-time work in the statistics in Japan. These workers are not entitled to the same degree of employment protection as their full-time counterparts (OECD, 2003).

⁵⁷ In 2008, 54 per cent of the employed women were non-regular workers, compared with 19 per cent of men (Japanese Statistics Bureau, 2009).

⁵⁸ In Australian statistics, casual employees are employees without paid holidays and sick leave. Instead, they receive a cash compensation for the absence of these rights. In 2003, roughly a quarter of all Australian workers were on casual contracts. Among women, the proportion was 31 per cent (Australian Bureau of Statistics, 2005).

months of continuous service with an employer until a test case lodged by the Australian Council of Trade Unions (ACTU) in the federal industrial relations jurisdiction extended maternity leave to casual employees with at least 12 months of continuous service (Charlesworth et al., 2002).

In its 2008 report, the ILO's Committee of Experts on the Application of Conventions and Recommendations expressed concern that some categories of workers are excluded from coverage in several countries that have ratified at least one of the Conventions related to maternity leave. This is the case for the Libyan Arab Jamahiriya, where domestic workers and persons in similar categories, women engaged in stock raising and agriculture, and permanent or temporary officials working in state administrations and public bodies, are excluded from the scope of the Labour Code. The Committee also noted that various categories of workers, including part-time workers, workers in the *maquila* (factory export) sector and public employees, did not receive cash maternity benefits in Ecuador (International Labour Office, 2008).

On the other hand, there are also countries where some of these groups are explicitly included in the scope of labour law. In South Africa, for example, domestic workers are entitled to at least four consecutive months of maternity leave and are entitled to cash benefits.⁵⁹ In fact, in at least 54 countries, domestic workers are covered by maternity leave legislation.⁶⁰ In Mauritius, casual workers, apprentices, share workers and part-time workers are included in maternity protection legislation; in Viet Nam, apprentices and domestic workers are explicitly covered; and in Belarus, Madagascar and Russia, students are explicitly covered.

In some countries, employer policies or collective bargaining agreements have increased the number of women covered or the amount of the benefit paid. For example, in Australia, where there is no statutory right to cash benefits during maternity leave, some employees are remunerated by the employer during part of the leave according to an award or other relevant workplace and/or individual employment agreement. As a result, in Australia, this kind of negotiated paid leave is estimated to be available to 15 to 23 per cent of private sector workplaces with more than 20 employees

⁵⁹ Another example of a country that includes an otherwise excluded group of women is Senegal, where only employed women qualify for cash benefits. However, a Senegalese non-employed woman married to an insured employee has the right to receive a prenatal allowance and a maternity benefit at a flat rate. In Germany, while housewives and the self-employed are not automatically covered by maternity legislation, they can claim maternity benefit at the same rate as sickness benefits if they have paid sufficient voluntary contributions into the statutory health insurance scheme (Germany, Federal Ministry of Health and Social Security, n.d.).

⁶⁰ Domestic workers are provided maternity leave in Austria, Bulgaria, the Czech Republic, Denmark, Iran, Ireland, Israel, Italy, Latvia, Kazakhstan, Mozambique, Namibia, Panama, Paraguay, Peru, Portugal, Spain, Sri Lanka, South Africa, Trinidad and Tobago, Viet Nam and Zimbabwe, among others (International Labour Office, 2009b).

(OECD, 2002). Relying on collective agreements or employer policies alone, however, is not a substitute for legislated entitlements, as many women will not benefit.

In general, there has been a trend towards extending protection to all women workers, as reflected in the texts of the three Conventions on maternity protection, although in practice, various categories of workers are still excluded. According to the Committee of Experts on the Application of Conventions and Recommendations, in certain countries, the protection of women engaged in agriculture or working at home or as domestic workers remains insufficient. However, the Committee has noted that the legislation in an ever-increasing number of countries affords the protection set out in the Conventions to these categories of women workers (International Labour Office, 2004).

Eligibility requirements for maternity leave

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. [Convention No. 183, Article 4(1)]

According to Convention No. 183, the only prerequisite for a worker's right to maternity leave is the production of a certificate indicating the expected date of birth. In national laws, a woman's right to take maternity leave is often linked to various eligibility requirements. These differ from country to country, but some of the more common requirements are discussed below.⁶¹

Often, national laws determine a certain period of notice for when a woman must inform her employer of her plan to go on maternity leave.⁶² In Croatia, for example, a worker must notify her employer of her intention to take maternity leave as soon as possible, and not less than one month in advance. In Belgium, a woman must inform her employer no later than seven weeks before the expected birth based on a medical certificate. In Colombia, there is no fixed period of notice, but an employee must inform the enterprise of her pregnancy, the presumed date of confinement and the date of commencement of the period of leave, as well as present a medical certificate to the employer upon confinement. A woman worker in

⁶¹ These eligibility requirements for maternity leave may or may not be the same as those for receiving cash maternity benefits. Requirements for cash maternity benefits are discussed in the next section.

⁶² Informing the employer is also an eligibility requirement for maternity leave in the EU Directive (European Economic Community, 1992).

the Seychelles must give her employer three months' notice before her expected date of confinement.

In some countries, a woman needs only to be employed at the time of going on maternity leave in order to be entitled to such leave.⁶³ In other countries, a woman has to have been employed for a certain period before the maternity leave, and often this has to be with the same employer.⁶⁴ In the Libyan Arab Jamahiriya, for example, the granting of maternity leave is conditional upon the completion of a qualifying period of six consecutive months of service with an employer. In its 2004 report, the Committee of Experts pointed out that this type of qualification period is contrary to Convention No. 103, ratified by this country (International Labour Office, 2004).

In some countries, part-time workers may be particularly affected by rules setting minimum working hours as a condition of eligibility for leave. For example, the Family and Medical Leave Act in the United States applies only to employees who have worked 1,250 hours for the employer over the past 12 months, or about 104 hours per month.⁶⁵ On the other hand, in South Africa, a female employee must work a minimum of 24 hours a month for her employer to be required to grant her maternity leave.

A number of countries restrict the number of times a woman can take maternity leave, or leave is granted only once over a given period. The former is the case in Egypt, where a worker may not obtain maternity leave more than twice throughout the period of employment, and in Barbados, where women cannot take maternity leave more than three times while working for the same employer. In Sri Lanka, women giving birth to a third or subsequent child are only entitled to six out of 12 weeks of maternity leave. Since Sri Lanka has ratified Convention No. 103, the Committee of Experts has remarked on the need to ensure full leave, irrespective of the number of children (International Labour Office, 2004).

Citizenship may also be a requirement for maternity protection. In Mongolia, for example, maternity protection under the Labour Act covers only citizens. In other countries, such as Israel, Sweden and Uzbekistan, all women residing in the country have the right to leave.

⁶³ Countries where a woman must simply be employed to qualify for leave include, among others, Algeria, Burkina Faso, Central African Republic, Chile, Cyprus, Fiji, France, Ghana, Honduras, Iran, Republic of Korea, Kuwait, Lesotho, the Netherlands, Peru, Sri Lanka, Sweden, Tajikistan, Uganda, Uruguay, Uzbekistan and Venezuela.

⁶⁴ In Barbados, for example, only female employees who have been employed for at least 12 months for their employer qualify for leave. In Papua New Guinea, women must have been employed by the same employer for not less than 180 days within a period of 12 months or for not less than 90 days within a period of six months immediately preceding the commencement of maternity leave. Other countries with minimum periods of continuous employment include Australia (12 months), Belize (150 days during the 12 months preceding confinement), Canada (federal, six months), Egypt (ten months) and Swaziland (12 months or 9 months for domestic workers).

⁶⁵ According to Heymann (2000), all the limits of the FMLA together exclude nearly half of American workers.

Eligibility requirements for cash maternity benefits

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. [Convention No. 183 Article 6(5)]

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. [Convention No. 183 Article 6(6)]

The right to receive cash benefits while on maternity leave may also depend on eligibility requirements, which sometimes differ from the eligibility requirements for leave.⁶⁶ According to Convention No. 183, a member State may set up conditions a woman must meet to qualify for cash benefits, provided that these can be satisfied by a large majority of women workers and that women who do not qualify for cash maternity benefits are entitled to adequate benefits paid out of social assistance funds.

In a number of countries, a woman must have been employed for a certain period before qualifying for cash benefits during maternity leave.⁶⁷ Many countries in which employers are liable for payment specify such requirements. For example, in Zimbabwe, a woman needs at least one year of service with the current employer to qualify for paid leave. An employee who has served for less than one year is entitled to leave but not cash benefits. Some countries where the maternity benefit is paid out of public funds also require a minimum period of employment before qualifying for maternity benefits. In Denmark, eligibility for paid leave concerns those women who have been employed for at least 120 hours in the 13 weeks before going on leave. In Niger, women must have at least six consecutive months of work with one or more employers, at least 18 days or 120 hours of work per month as well as a minimum monthly income in order to receive cash benefits.

Another example of an eligibility requirement for paid leave is found in laws that limit the number of times a woman can obtain maternity cash benefits. In Tanzania, women on maternity leave are eligible for cash bene-

⁶⁶ At least one country makes eligibility for benefits contingent on a woman taking care of her health. In Barbados, an insured woman may be disqualified from receiving cash benefits if she fails without due cause to take due care of her health or to answer any reasonable inquiries by the National Insurance Board to determine whether she is doing so, or if she fails without good cause to comply with a notice in writing by the Director of the National Insurance Board requiring her to attend medical or other examinations.

⁶⁷ The following countries, among others, require minimum periods of employment or insurance contributions for cash benefits (but not leave): Algeria, Cambodia, Chile, Cyprus, Ecuador, El Salvador, Mongolia and Tunisia. In some countries, such as Moldova, Russia and Switzerland, unemployed women are eligible for cash benefits if they are covered by the social insurance system.

fits if it has been at least three years since they last received maternity benefits. In Malaysia, an employee is not eligible for cash benefits if she already has five or more surviving children.⁶⁸ In some countries, this limit applies only if a woman works for the same employer.⁶⁹

In many countries where cash benefits are totally or partially paid by social security, workers must have a minimum period of contributions to insurance schemes or tenure in insured employment prior to the maternity benefit period. These minimum contribution periods vary greatly across countries. In Iran, a woman must have 60 days of social insurance contributions in the year preceding confinement. In Paraguay, a woman worker must have contributed for at least six weeks during the four months preceding the maternity leave, while in Costa Rica, cash benefits are available only to workers who have contributed for six months in the 12 months immediately preceding the birth or the adoption. In Mongolia, women are eligible for benefits if they have paid insurance premiums for at least 12 months, with no interruption in the six months prior to maternity leave. In Canada, a woman who claims maternity benefits must have at least 600 hours of insurable employment in the previous 52 weeks or since the last claim. In Sweden, to be entitled to cash benefits, a parent has to have been in insured employment for at least 240 consecutive days before birth. Swedish residents not qualifying for the 80 per cent level receive cash benefits at a flat rate.⁷⁰

In some countries, there is no minimum period of employment or contributions to qualify for cash maternity benefits. In Brazil, for example, a woman must simply be employed in insured employment.

In 2004, the Committee of Experts noted that in many countries the provision of cash maternity benefits is subject to a minimum qualifying period or coverage by the insurance system. The Committee accepted these restrictions, provided that the qualifying periods are set at a reasonable level and that women who do not meet the condition are provided (subject to certain means-related conditions) with benefits financed through social assistance funds.⁷¹ The Committee of Experts also noted that, in certain cases, national programmes have as an objective the progressive elimination of this qualifying period, which will provide a greater number of working women with financial protection during maternity leave (International Labour Office, 2004).

⁶⁸ As of 2008, in Singapore, maternity benefits are fully paid by the government as of the third child.

⁶⁹ In Zimbabwe, paid maternity leave may only be granted three times for the same employer and only once during a 24-month period.

⁷⁰ According to the EEC Directive, EU Member States may set conditions of eligibility for maternity cash benefits, but these conditions may not provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.

⁷¹ When countries set eligibility requirements for cash benefits, the EC also ruled that countries should count periods of insurance, employment or residence in other ILO Member States (European Community, 2007: 17).

RELATED TYPES OF LEAVE

Apart from maternity leave, access to other kinds of leave is important for a worker's ability to reconcile work and family life. Such leave provisions include paternity leave, parental leave and adoption leave, and will be discussed in this section. Information on these issues comes from the ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a), which at present includes full data for 111 countries.⁷² Unfortunately, information from 1994 is not available concerning paternity, parental and adoption leave, and thus this section will not provide any information on trends between 1994 and 2009.

PATERNITY LEAVE

Paternity leave is usually a short period of leave around the time of childbirth, but the length varies from country to country. No ILO standard exists concerning paternity leave, but paternity leave provisions are available in national law in a number of countries. In other countries, provisions are frequently available in collective bargaining agreements.⁷³ Overall, paternity leave provisions are becoming increasingly common, which may be an indicator of the growing importance attached to the presence of the father around the time of childbirth.

⁷² See Annex II for a list of countries that are included in this and the following two chapters.

⁷³ In Uganda, for example, among the 82 organizations that responded to a mail survey of the Federation of Uganda Employers, 15 reported that they provided paternity leave, which varied between one to four weeks (Federation of Uganda Employers, 2002). In European Union countries, collective bargaining agreements often provide additional paternity benefits to covered workers. In Austria and Germany, for example, there is no statutory paternity leave, but collective agreements sometimes provide one to two days of paternity leave. Although paternity leave is unpaid in Norway, a great majority of Norwegian men receive reimbursement during the two weeks of paternity leave as a part of the collective agreement between the social partners (Einarsdóttir and Pétursdóttir, 2004).

Among the countries for which there is information on national provisions for paternity leave (see table 3.1), the duration ranges from one day in Tunisia and Saudi Arabia, to three months in Iceland and Slovenia. The period of paternity leave is often paid, either by the employer,⁷⁴ through the social security system⁷⁵ or by a combination of both.⁷⁶ However, in other cases national legislation does not provide for paid paternity leave.⁷⁷

One interesting example of a paternity leave provision can be found in Iceland, where fathers have an independent, non-transferable leave quota.⁷⁸ The overall length of the combined maternity/paternity leave is nine months, divided into thirds, with three months reserved for the mother, three months reserved for the father, and another three months that the parents can divide between them as they please. The reimbursement rate is 80 per cent of the normal salary.⁷⁹

The right to non-transferable leave for fathers is provided in several other countries as well. In the Resolution of the Council and of the Ministers for Employment and Social Policy on the balanced participation of women and men in family and working life, EU Member States are encouraged to grant working men an individual and non-transferable right to paternity leave upon the birth or adoption of a child. During this time their employment rights should be maintained. The leave should be taken at the same time as the mother takes maternity leave, irrespective of the length of the periods of maternity leave and paternity leave (European Community, 2000). At the same time, the Commission is leading a consultation process aimed

⁷⁴ In Brazil, for example, male employees are entitled to five days of paternity leave paid by their employers. In the Philippines, all married male employees in the private and public sector are entitled to seven days' paternity leave with full pay from their employer for the four first deliveries of the legitimate spouse with whom they cohabit. Male employees in Algeria are entitled to three days of paternity leave paid by their employers.

⁷⁵ In Finland, paternity leave benefits are paid from social insurance for a total of 18 working days. As of January 2010, a father can take 24 more days if he takes the last 12 weekdays of the parental leave period. In Colombia, fathers are entitled to between four and eight days of social insurance benefits (depending on whether or not both parents are insured).

⁷⁶ In Belgium, the first three days are paid by the employer at a rate of 100 per cent of the preceding average remuneration, and the remaining seven days are paid by the sickness and indemnity insurance scheme at a rate of 82 per cent. In Spain, two days of paternity leave benefits are paid by the employer and 13 days are paid by social security. In the United Kingdom, employers are reimbursed for 92 per cent of paternity leave benefits paid to employees.

⁷⁷ In the Bahamas, for example, employed fathers are entitled to one week of unpaid leave.

⁷⁸ As discussed in Chapter 2, several countries, including Croatia and Poland, allow fathers to take some portion of the maternity leave allowance if mothers do not take the full amount of leave allowed.

⁷⁹ The Icelandic father quota was phased in between 2001 and 2003. As the length of the paternity quota increased, the average number of leave days taken by men increased from 39 in 2001 to 83 in October 2003 (Einarsdóttir and Pétursdóttir, 2004). Take-up rates for paternity and parental leave are discussed in more detail below.

at improving the existing legislation on maternity protection (Directive 92/85/EEC) and on parental leave (Directive 96/34/EC), making more specific provisions for adoption leave and introducing two additional leave arrangements, namely paternity and filial leave. Several EU Member States provide this kind of leave, among them Denmark, where fathers are entitled to 14 days of paid paternity leave to be used during the 14 weeks following birth, which corresponds to the postnatal portion of maternity leave. Estonia also provides 14 days of paid paternity leave to be used during the mother's maternity leave period or in the two months following birth. In Slovenia, fathers are entitled to 15 days of paid paternity leave to be used until the child reaches six months of age, as well as 75 additional days of leave that may be used until their child is 3 years old.⁸⁰

Among non-EU countries, non-transferable paternity leave is less common, although a small number of countries do provide such leave.⁸¹ In Chile, for example, fathers are entitled to five days of leave to be taken in the month following their child's birth (one in the first three days after birth and four more in the months after birth). In the Philippines, married workers are eligible for seven days of paid paternity leave.

Instead of dedicated paternity leave, several countries offer general emergency leave or family leave which can be used by new fathers. In Croatia, for example, workers are entitled to seven days of paid leave for personal reasons. This type of leave is available in a number of African countries (including Djibouti, Madagascar, Seychelles, South Africa and Togo). In Madagascar, for example, the Labour Code does not provide for a specific paternity leave, but it entitles all workers covered by the law to ten days' leave a year for family events.⁸² Similar provisions exist in a number of other countries, including Afghanistan, Cambodia, Myanmar and Viet Nam.

⁸⁰ In Slovenia, during the 75 days of additional leave, the state makes social security contributions for the employee.

⁸¹ In Uganda, fathers are entitled to four days of paid paternity leave immediately after birth. In Tanzania, fathers are entitled to three days of paid paternity leave in the seven days after birth. In Azerbaijan, married male workers are entitled to 14 days of unpaid leave while their wives are on maternity leave.

⁸² The law in Madagascar leaves it up to the parties concerned to agree upon payment of such leave. In Tanzania, male workers have access to paid paternity leave as well as four days of leave for care of a spouse or family member.

Table 3.1. Examples of leave provisions in national legislation which can be used by fathers at the time of childbirth¹

Country	Provision
Africa	
Algeria	Three days' paid paternity leave
Cameroon	Maximum ten paid days' special family leave
Djibouti	Three days' paid paternity leave
Ethiopia	Five days of unpaid leave in the event of exceptional or serious events
Kenya	Two weeks' paid paternity leave
Madagascar	Ten days of unpaid leave for family events
Rwanda	Four days' paternity leave
Seychelles	Four days of paid leave for "compassionate reasons"
South Africa	Three days' paid family responsibility leave
Tanzania	Three days' paid paternity leave
Togo	Up to ten days of paid leave for "family events directly related to home"
Tunisia	One day of paternity leave (private sector); two days (public sector)
Uganda	Four working days' paid leave immediately after delivery
Asia (East, South-East, Pacific and South)	
Afghanistan	Ten days of "essential leave" (unpaid) that can be used for the birth of a new child
Cambodia	Ten days' special leave for family events
Indonesia	Two paid days when wife gives birth
Myanmar	Six days of paid "casual leave" that can be used by fathers to assist their spouses at the time of confinement
Philippines	Seven days' paid paternity leave for married workers
Viet Nam	Workers are allowed unpaid leave for family reasons
Central and South-Eastern Europe (Non-EU) and CIS	
Azerbaijan	Fourteen days' unpaid leave for men whose wives are on maternity leave
Bosnia and Herzegovina	Seven working days' paid paternity leave
Croatia	Seven days' paid leave for personal needs
Macedonia	Up to seven days' paid leave (determined by collective agreements)
Developed Economies and EU	
Belgium	Ten days' paid paternity leave
Estonia	Fourteen calendar days
Finland	Eighteen days' paid ²

Country	Provision
France	Eleven days' paid paternity leave, plus three days' paid leave for family reasons
Hungary	Five days' paternity leave
Iceland	Three months' paid parental leave reserved for the father
Latvia	Ten calendar days
Netherlands	Two days' paid paternity leave
New Zealand	Two weeks' unpaid paternity leave (or one week if only employed six months)
Norway	Ten weeks' paid parental leave reserved for the father
Portugal	Five days' paid paternity leave
Romania	Five working days' paid paternity leave
Slovenia	Ninety days' paternity leave (15 to be used before child is six months, remainder to be used before child is 3)
Spain	Four weeks' paid paternity leave ³
Sweden	Ten days' paid paternity leave, plus two months' paid parental leave reserved for the father
United Kingdom	Two weeks' paid paternity leave
Middle East	
Saudi Arabia	One day of paid paternity leave
Latin America and the Caribbean	
Argentina	Two days' paid paternity leave
Bahamas	One week of unpaid family-related leave
Brazil	Five days' paid paternity leave
Chile	Five days' paid paternity leave
Colombia	Eight days' paid paternity leave
Guatemala	Two days at birth of child
Paraguay	Two days' paid paternity leave
Uruguay	Three days' paternity leave for civil servants

¹ The table accounts for leave provisions reserved for fathers or leave that can be used by fathers as paternity leave. It does not include parental leave provisions that can be used by the father or mother unless a portion of the leave is reserved for fathers or such leave is indistinguishable from paternity leave (e.g., in Norway and Sweden maternity, paternity and parental leave are all considered part of the same system).

² If the father takes the last 12 working days in the parental allowance period, he gets 1-24 additional working days of leave ("daddy month").

³ Effective as of January 2011.

PARENTAL LEAVE

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. [Recommendation No. 191, Paragraph 10(3)]

Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded. [Recommendation No. 165, Paragraph 22(1)]

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 other manner consistent with national practice. [Recommendation No. 191, Paragraph 10(4)]

The length of the period following maternity leave and the duration and conditions of the leave of absence referred to in subparagraph (1) of this Paragraph should be determined in each country. [Recommendation No. 165, Paragraph 22(2)]

While maternity leave aims to protect working women during their pregnancy and recovery from childbirth, parental leave refers to a relatively long-term leave available to either parent, allowing them to take care of an infant or young child over a period of time usually following the maternity or paternity leave period.

Parental leave is not included in any of the ILO Conventions. However, both Recommendation No. 191 (accompanying Convention No. 183 on maternity protection) and Recommendation No. 165 (accompanying the Workers with Family Responsibilities Convention, 1981 (No. 156)) contain provisions on parental leave. Recommendations are non-binding instruments that set out guidelines that can orient national policy and action. According to Recommendations No. 191 and No. 165, a period of parental leave should be available to either parent after maternity leave without relinquishing employment and safeguarding the rights resulting from employment (this point will be discussed in Section 4). The duration of this leave period, as well as payment and other aspects, such as conditions of the leave and the distribution of parental leave between the parents, are not set by the Recommendations, but should be determined at a national level. In Recommendation No. 165, parental leave is regarded as part of an integrated approach to facilitate the reconciliation of work and family responsibilities.

The Workers with Family Responsibilities Recommendation, 1965 (No. 123) and the Maternity Protection Recommendation, 1952 (No. 95), preceding Recommendations No. 191 and No. 165 cited above, only included

provisions on maternity leave and only women's need to reconcile work with family responsibilities was considered. One important change in the policy of the ILO with the adoption of the current Recommendations (and the Convention on Workers with Family Responsibilities, 1981 (No. 156)) was the recognition of fathers' involvement in family responsibilities in general and in this case especially with regard to parental leave. This was an important step towards the creation of effective equality of opportunity and treatment for men and women workers. As discussed below, the way fathers are included in childcare leave policies can have important implications for gender equality as well as for the use of those policies.

The systems of parental leave differ significantly from one country to another. There is considerable variation concerning eligibility, payment, duration, possible flexibility in its use, the age of the child to be cared for and transferability between parents. The provisions reflect wider concerns within society in relation to child development, fertility, labour supply, gender equity and income distribution. In some countries, long parental leave may be seen as a way of supporting parental care of young children and reducing the need for childcare services, particularly for young children for whom services can be relatively expensive. In other countries, parental leave entitlements may be shorter, to prevent long absences from the labour market and the potential deterioration of skills (Hein, 2005).

Duration and payment

Parental leave is common in the European Union and other industrialized economies, and Central and Southern Europe (non-EU) and CIS countries, where almost all countries have some kind of parental or childcare leave provisions, but is rather rare in developing countries and less industrialized parts of the world. The duration and the financial compensation available while on parental leave differ significantly between countries. This is reflected through the examples of different parental leave provisions in the different regions given below. In general, the duration of parental leave is longer than that of maternity leave, but the payment is often lower (or such leave may be unpaid).

None of the countries analysed in the Middle East offered parental leave. Among the African countries analysed, only Burkina Faso and Guinea provide for the kind of long-term parental leave described above.⁸³ In Guinea,

⁸³ In addition, South Africa provides for a paid family responsibility leave of three days that can be used by both parents. Men and women employed for longer than four months and who work at least four days a week are entitled to this leave, for example when the child is born or sick (until the child reaches the age of 18). This is not a traditional form of parental leave, but could rather be called compassionate leave or emergency leave, as the length of parental leave is usually longer than three days. Moreover, the possible usage of the leave provided in South Africa is broader than what is normally defined as parental leave, as it can also be taken in the event of the death of family members (spouse or life partner, child, grandchild or sibling). A number of other countries offer similar provisions. In Azerbaijan, a single parent or another family member who is directly caring for a child until the age of 3, shall be eligible for partially-paid social leave. In Japan, workers are entitled to three months of leave (partially paid by employment insurance) to care for a spouse, child, parent or spouse's parent.

after the expiration of the 14-week maternity leave period, women may take an additional nine months of unpaid leave. In Burkina Faso, male or female employees can request up to six months of unpaid leave (renewable once) to care for their children. In the case of illness, the leave period can be extended to one year (also renewable once).

Among the Asian countries analysed, only a few provide for parental leave. In Mongolia, after expiry of maternity leave and annual leave, mothers and single fathers are entitled to leave with payment of benefits to take care of a child until the age of three. The Republic of Korea also allows childcare leave paid at a fixed monthly rate until a child is 1 year old.

In Latin America and the Caribbean, parental leave provisions seem to be a rather rare phenomenon. In Cuba, after maternity leave, either parent is entitled to unpaid parental leave for up to nine months until the child reaches 1 year of age. In Chile, both parents are entitled to leave, but only when an ill child under 1 year of age requires care in the home as confirmed by a medical certificate.

Contrary to the other regions, nearly all of the Developed Economies and the European Union, Central and Southern Europe (non-EU) and CIS countries analysed provide a period of parental leave to take care of a newborn or young child, even if the length of the leave differs from country to country.⁸⁴ In Estonia, a mother or a father shall be granted parental leave at his or her request to raise a child of up to 3 years of age. In Belgium and the United Kingdom, each parent has an independent right to a period of at least three months of parental leave. This is also the requirement in Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave. According to this Directive, EU Member States should provide parental leave for a period of at least three months, as an individual entitlement until the child reaches the age of 8, with the right to return to the same or an equivalent job. Similarly to the provisions of the Recommendations discussed above, each EU Member State shall define the conditions and forms of the parental leave (European Community, 1996).

Eligibility for parental leave

As for maternity leave, the right to parental leave and the corresponding cash benefits are often linked to different eligibility requirements, to be decided by each member State. These are often similar to the eligibility

⁸⁴ Among the countries in these regions for which full information is available in the database, Switzerland and the United States are among the small number with no federal childcare or parental leave provisions.

requirements discussed in the section on maternity leave.⁸⁵ One frequent condition for parental leave concerns the worker's previous employment. In some countries, where payment is provided during parental leave, the eligibility requirements for cash benefits may be more restrictive than for the leave.⁸⁶ In others, entitlement to leave is automatically associated with benefits.⁸⁷ In addition, as for maternity leave, different categories of workers are implicitly or explicitly excluded by the national legislation that affords parental leave. An interesting approach to respond to this problem can be found in Japan, where government guidelines recommend employers to provide part-time workers with a system of childcare leave.

⁸⁵ In Norway, in order to be entitled to a year of unpaid childcare leave, a parent must qualify for the 46- or 56-week cash benefit, for which the parent must have been employed and earning a pensionable income for at least six of the ten months immediately prior to the commencement of the benefit period. Both parents must fulfil the requirements if the father claims cash benefits. In Iceland, to be entitled to the 13 weeks' unpaid parental leave, an employee shall have six months' employment with the same employer. In addition, the employee shall notify her/his employer of the intention to take parental leave as soon as possible and at the latest six weeks prior to the intended first day of the leave. In Australia, employed parents are entitled to 52 weeks of combined maternity, paternity and childcare/parental leave after the birth of a child. Out of the 52 weeks, the mother may take six weeks' leave before childbirth. Parental leave is unpaid. To take parental leave, the parent must have been employed with the same employer for 12 consecutive months and must give the employer at least six weeks' notice of the expected date of birth, as stated in a medical certificate.

⁸⁶ In the Republic of Korea, parents are entitled to parental leave until the child is 1 year old. They may receive benefits for leave periods lasting over 30 days if they were insured for employment insurance benefits for a total of at least 180 days prior to taking the leave; if their spouse (if eligible for national employment benefits) is not currently on a leave of absence for child rearing; and if they apply for the cash allowance one month after the commencement date of the leave and within six months of the end of the leave period. In Sweden, workers who have been in the service of an employer, either for the preceding six months or for not less than 12 months in the last two years, are entitled to leave to take care of a child until the child reaches 18 months, irrespective of whether the parent receives parental cash benefits. In addition, workers are entitled to leave for the time during which they are entitled to parental benefits. However, to get the parental cash benefits at a rate of 80 per cent of earnings (flat rate for the last 90 days of a total of 480 days), the parents must have been in insurable employment for at least 240 consecutive days before the birth. If parents do not meet these conditions, they receive a flat-rate benefit during the entire leave period. In Spain, parents are eligible for parental leave without any previous employment requirements. In order to receive cash benefits, parents must meet employment history requirements.

⁸⁷ In Belgium, workers who have been employed for at least 12 months for the same employer within the 15 months preceding the notification of the employee of the intended date of leave are entitled to three months of career interruption for any reason, including the care of a child. Workers who interrupt their careers receive a flat-rate benefit from social security. In Latvia, parent on childcare leave receive 70 per cent of their average insurance contribution wage until their child is 1 year old. Parents can receive a fixed childcare benefit when their child is between 1 and 2 years old if they remain on childcare leave (or if they work fewer than 20 hours per week). In Romania, paid leave (85 per cent of wages) is available to all employed parents or persons who care for the child until the child is 2 years old. Benefits are paid to one parent if he/she has professional income subject to the income tax in the last 12 months preceding the birth of the child.

A major difference between maternity and parental leave is the scope of the provisions. While maternity leave is available only for women, parental leave provisions are normally also available for men. In some countries, it is a shared entitlement, where either the mother or the father has the right to take parental leave. In New Zealand, for example, parents are entitled to 38 weeks of paid leave. In addition, the father can use any period of maternity leave that has not been taken by the mother.

In other countries, such as Belgium, Chile (when the health of a child under 1 year of age requires care in the home, as confirmed by a medical certificate), Cyprus, Denmark and Iceland, each parent has an individual right to parental leave, which cannot be transferred to the other parent.⁹⁰ As mentioned above, according to the EU Directive on parental leave, it should be available to both parents as an individual entitlement. To promote equal opportunities and equal treatment between men and women, parental leave should, in principle, be granted on a non-transferable basis (European Community, 1996).

There are also examples of countries where parental leave can be used by a person other than the parents who takes care of the child. In Lithuania, parental leave can be granted, at the choice of the family, to the mother/adoptive mother, the father/adoptive father, the grandmother, the grandfather or any other relatives who are actually raising the child, or to the employee who has been recognized as the guardian of the child. The leave may be taken as a single period or be distributed in portions, and the employees entitled to this leave may take it in turns.⁹¹

The age of the child when the right to parental leave lapses varies a lot from country to country, from 6 months in Burkina Faso to 1 year in Chile and the Republic of Korea, to 9 years in Denmark.⁹² According to the EU Directive on parental leave, the right to parental leave should be available to parents of children under 8 years of age (European Community, 1996).

⁸⁸ In some countries, such as Guinea, only women are eligible for long-term parental leave.

⁸⁹ This is the case in Albania, Cuba, Estonia, Finland, Malta, New Zealand, Uzbekistan and Viet Nam.

⁹⁰ In Luxembourg, for example, each parent who meets the qualifying conditions has a right to six months of childcare leave paid as a flat monthly rate (or twelve months of half-time leave).

⁹¹ Also in Russia, child-rearing leave may be granted, in full or partially, not only to the mother, but also to the child's father, grandmother, grandfather, other relatives or tutor actually nursing the child. In Estonia, if a mother or father does not use the parental leave, it may instead be granted to the actual caregiver who lawfully resides in the Republic of Estonia. Uzbekistan has similar provisions extending the entitlement to childcare leave to whoever cares for a child.

⁹² Other examples are Belgium (6 years), Cyprus (6 years), Iceland (18 months), Japan (1 year), Lithuania (3 years), Mongolia (3 years), Russia (3 years) and Sweden (8 years).

Take-up rates

The introduction of parental leave provisions available to both fathers and mothers can be an effective tool for promoting gender equality. It recognizes the fact that fathers also have caring responsibilities. But even if parental leave by definition should be available to both mothers and fathers, women are most often the ones who take parental leave after maternity leave.⁹³ Generally, men's take-up rates are very low (International Labour Office, 1997). In Hungary, for example, 98 per cent of those on parental leave were mothers (European Industrial Relations Observatory On-line, 2004). In Austria and Ireland, only 2 and 5 per cent of eligible fathers, respectively, took parental leave, compared with 95 and 40 per cent of mothers, respectively (Drew, 2004). For this reason, some countries have introduced a paternity quota that can only be taken by the father and is lost if he does not use it.

In Norway, for example, parents are entitled to parental leave during the child's first year, provided that the total maternity, paternity and parental leave taken by both parents does not exceed one year. Three weeks before confinement and six weeks after the birth are reserved for the mother. Out of the 46 weeks of parental leave paid at a rate of 100 per cent of wages (or 56 weeks with 80 per cent of wages), ten weeks are reserved for the father. If he does not take these weeks, cash benefits are not payable for this period. The remaining leave, not including paternity leave (two weeks' unpaid leave) can be taken by either parent or shared between them. In Sweden, parental benefits are paid for 480 calendar days as a total for both parents at a rate of 80 per cent of earnings for a total of 390 days, and at a flat rate for the remaining period of 90 days. If the parents have joint custody, each parent is entitled to benefits for half of the leave period. A parent may give up his or her right to parental leave to the other parent, except for a period of 60 calendar days. If he or she does not take these 60 days, they are lost.⁹⁴

Sometimes take-up is low even among women, especially when parental leave is unpaid.⁹⁵ When schemes do not compensate the loss of income while on leave, it is difficult for lower paid workers to take advantage of them. High take-up rates are strongly related to the level of compensation for loss of earnings while on leave. In particular, fathers take parental leave only

⁹³ As noted, in some countries, parental leave is available to women only or to men only in very limited circumstances. In Mongolia, for example, childcare leave is available to men only if they are single fathers. In others, there is an implicit assumption that mothers will care for the child. In Bulgaria, for example, a father can take parental leave only with the mother's permission.

⁹⁴ Similar provisions also exist in Austria and Denmark (Hein, 2005).

⁹⁵ In the United Kingdom, for example, a recent survey of employees found that only 5 per cent of parents with children under age 16 had taken parental leave in the previous year and that a large fraction (41 per cent) of those who had taken leave had used between one and two days (as reported in European Industrial Relations Observatory On-line, 2004).

when a relatively high level of compensation for loss of earnings exists (International Labour Office, 1997). The experience in the Netherlands underscores the importance of compensation for encouraging use of parental leave: take-up rates of parental leave were almost twice as high in the public sector, where parental leave is paid at a higher rate (75 per cent) than other sectors (take-up in all sectors was 25 per cent compared to 49 per cent in the public sector: European Industrial Relations Observatory On-line, 2004).

Flexible arrangements and other innovative policies

Parental leave systems sometimes make it possible for parents to choose how and when to take the leave. In some countries, the parental leave should be taken as a continuous period directly after maternity leave; in others, it can be split over a period when the child is young. This permits the parents to choose to take parental leave as it suits them. In Malta, for example, an eligible employee is entitled to an unpaid leave of up to three months to care for a child until the child reaches 8 years of age. The leave may be shared by both parents in periods of one month each on a full-time or part-time basis; in a piecemeal way; or in the form of a time credit system as agreed upon between the employer and the employee. In Latvia, parental leave may also be granted as a single block or in parts.⁹⁶

In various countries, the parental leave can be taken part time, which gives the parents the possibility of reducing their working hours when their children are small.⁹⁷ An example of this is Norway, where a “time-account” option was made available to biological and adoptive parents in 1994. This system allows people who work at least half time to take partial parental leave combined with reduced working hours for a period of up to two years. However, not less than 12 weeks at a time may be taken under this system. Partial leave may also be taken as a reduction in working hours to 90, 80, 75, 60 or 50 per cent of a full-time post. This corresponds to a partial payment of parental benefit equal to 10, 20, 25, 40 or 50 per cent of the chosen daily rate. The time-account period does not include the last three weeks before delivery or the first six weeks after delivery, which are reserved for the mother, or the four weeks’ paternity quota.

⁹⁶ In Finland after maternity leave (105 days), the mother, or the father, is entitled to a total of 158 working days’ paid parental leave (70 per cent up to a ceiling from social security), which may be divided into a maximum of two parts, each part lasting a minimum of 12 working days. After the parental allowance is no longer paid, parents can take a childcare leave to look after a child under the age of 3 years, although both parents cannot be on leave at the same time. The minimum length of childcare leave is one month.

⁹⁷ Other countries that allow one or both parents to work part time if they have young children include Bosnia and Herzegovina, Switzerland and Uzbekistan. In Azerbaijan, mothers can request part-time work if they have children under age 14.

In Belgium, an employee can choose to take leave for a continuous period of three months, or by reducing her/his working time by half during six months, or by one-fifth during 15 months if he/she works full time. In Austria, unpaid parental leave is available full time until the child is 2 years old, or part time until the child is 7, with leave taken in periods of at least three months at a time. Furthermore, in Japan, the employer of a worker who takes care of a child under 1 year of age, but who does not take childcare leave, must, at the worker's request, reduce his or her working hours or take other measures to make childcare easier.⁹⁸

In some countries, the provisions on maternity, paternity and parental leave are integrated in one system. In Norwegian law, maternity, paternity and parental leave are treated as one system of "parental leave".⁹⁹ The case of Australia is similar. In the United States, 12 weeks of unpaid leave are afforded by the Family and Medical Leave Act. No distinction is made between maternity and paternity leave. An employee can, among other reasons, take the leave for the birth and care of a newborn child. This system is interesting as it is completely gender-neutral.

ADOPTION LEAVE

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. [Recommendation No. 191, Paragraph 10(5)]

As indicated by Recommendation No. 191, maternity leave provisions in accordance with Convention No. 183 shall be available for adoptive parents in member States that provide for adoption. This allows the adoptive parents to adapt to the arrival of the child.

In some countries, adoption leave provisions have been enacted that are similar to, or the same as the provisions for maternity or parental leave.

⁹⁸ Also, in Sweden, workers who have been in the service of an employer, either for the preceding six months or for not less than 12 months in the last two years, are entitled to use their parental benefit days to reduce their working hours by three-quarters, half, one-quarter or one-eighth of the normal working hours. Parents are also entitled to a reduction in the normal work time by up to one-quarter without parental cash benefit, until the child is 8 years old. In Finland, parents can choose to take a partial childcare leave, i.e. to reduce their working hours until the end of the year in which their child starts school, although this reduction is not financially compensated. The minimum length of the part-time childcare leave is six months, the specific arrangements being subject to agreement between the employee and the employer.

⁹⁹ In addition, the Swedish parental leave benefit system covers maternity, parental and paternity leave.

In Senegal and the United Kingdom, for example, the benefits and leave provided for maternity are also available for adoption. In Colombia, all of the benefits available to biological mothers are also available to adoptive mothers of a child under 7 years old. In Uzbekistan, adoptive mothers are eligible for the postnatal portion of the maternity leave available to biological mothers, as well as to parental leave.¹⁰⁰

The day when the child arrives in the home of the adoptive parents may then be counted as the date of birth in legislative terms.¹⁰¹ However, in some countries, parents have the right to start the leave earlier if they have to bring the child from another country. In Iceland, parental leave would start for adoptive parents on the day the child enters the home unless the parents need to leave the country to take custody of the child. In that case, the leave may start when the parents begin their journey.¹⁰²

In other countries, special leave provisions exist in the case of adoption. In Australia, adoptive parents are entitled to two days of unpaid pre-adoption leave, in addition to 52 weeks of unpaid parental leave post-adoption.

In many countries, the leave entitlement for adoptive parents is shorter than for biological ones, because the prenatal leave often available to natural mothers is eliminated. In Tajikistan, for example, adoptive mothers are entitled to 70 days of paid maternity leave for adopting a newborn, which corresponds to the postnatal leave period available to biological mothers. In Mongolia, women and single fathers adopting an infant are entitled to the same leave and benefits as women on maternity leave until the child reaches the age of 60 days, while biological mothers are entitled to 120 days of maternity leave.¹⁰³

¹⁰⁰ Similar provisions providing maternity leave benefits to parents who adopt young children also exist in Colombia (up to 7 years old), Iceland (up to 8 years old for unpaid leave) and South Africa (up to 2 years old), among others. In Israel, paid adoption leave is available for the normal paid maternity leave period (14 weeks) for parents who adopt a child under 10 years of age if at least one of the adopting parents has ten months of coverage in the last 14 months or 15 in the last 22 months. Couples may choose which one of them is eligible for payment for the entire period of the adoption leave or they can split it up between them, as long as each of their leave periods is no less than 21 days. In Sweden, the provisions on parental leave and benefits also apply to parents on adoption leave.

¹⁰¹ In Sweden, the date the parents receive the child in the household is considered to be the date of birth. Parental benefits are not paid for the adoption of a child above the age of 10 years. In Costa Rica the adoptive mother's right to adoption/maternity leave begins when she gets custody of the child. In Belarus, the right to maternity leave begins from the day of adoption or the day the child is placed under the care of the adoptive parent (if the child is under 3 months old). After the end of maternity leave, adoptive parents are also eligible for parental leave until the child is 3 years old.

¹⁰² In Canada (Quebec), adoptive parents are entitled to 52 weeks of parental leave starting the day the child is entrusted to the adoptive parent or on the day the parent leaves work to go to a place outside Quebec in order to have the child entrusted to him or her.

¹⁰³ In Norway, parental leave provisions also cover adoptive parents, but the adoption benefit period is three weeks shorter than for natural parents.

According to the EU Directive on parental leave, the individual right for men and women workers to parental leave for at least three months should also apply in the case of adoption of a child.

In the case of adoption, obviously no recovery from childbirth is needed for the woman. Nevertheless, when adoption leave provisions are available, only women workers have access to such leave in several countries. In Peru, for example, a worker applying to adopt is entitled to leave for 30 calendar days, provided that the child is under 12 months of age. But if the workers applying to adopt are married, the leave must be taken by the woman. Adoption leave is also limited to women workers in Albania, Costa Rica, Cyprus, Guatemala, South Africa and Venezuela. In other countries, adoptive fathers are only eligible for adoption leave in limited circumstances, such as when they are single parents or an adoptive mother does not take the available leave.¹⁰⁴

Adoptive fathers often qualify when the adoption leave is provided within parental leave schemes.¹⁰⁵ According to Recommendation No. 191 though, leave should be available to both parents adopting a child, which is the case in various countries. For example, in Iceland, each parent has an independent, non-transferable right to maternity/paternity leave of up to three months upon the adoption of a child, as well as a joint right to three additional months, which can be taken by one of the parents or split between them. In New Zealand, adoptive parents have the rights to both maternity and paternity leave.¹⁰⁶

In some countries, the age of the child affects the duration of the leave. In Brazil, the leave period is 120 days for adopting a child up to the age of 1 year. However, the period drops to 60 days for those who adopt children of 1 to 4 years of age, while mothers of children of 4 to 8 years have the right to 30 days of leave. In Slovenia, adoptive parents are entitled to 150 days of paid leave for adopting a child under 4, and to 120 days for adopting a child between 4 and 10 years old. In Italy, paid adoption leave is only available if the child is 6 or younger (or 18 in the case of an international adoption).¹⁰⁷

¹⁰⁴ In Colombia and Mongolia, leave for adoptive fathers is only available if the father does not have a permanent partner. In Macedonia, a woman who adopts a child is entitled to paid maternity leave until the child reaches 9 months of age; adoptive fathers may take the paid leave period only if the adoptive mother does not take it.

¹⁰⁵ In Russia, when a married couple adopts, the couple can choose to have the father take the leave period of up to 70 days after the child's birth and the parental leave period that may follow. In Finland, adoption leave benefits are granted to both adoptive parents (with the length depending on the age of the child).

¹⁰⁶ Adoptive parents who take custody of a child under age 5 are also eligible for an extended unpaid parental leave period for a year from the date at which they took custody of the child, which may be shared between them, if desired, or used by one parent.

¹⁰⁷ In Latvia, for a family which has adopted a child up to 3 years of age, one of the adopters shall be granted 10 calendar days of leave. Leave shall be granted for a period not exceeding one and a half years up to the day the child reaches the age of eight years (in a single period or in parts).

Discrimination against women on the grounds of maternity exists both in relation to termination of employment and access to employment. Thus, measures to safeguard the employment of pregnant workers and combat discrimination based on maternity are an integral part of maternity protection. ILO conventions have become increasingly comprehensive in terms of the extent of the protection that should be provided.

The protection of the employment of pregnant women and women on maternity leave has been addressed in all the ILO maternity protection standards. Both Conventions No. 3 and No. 103 focused on the prevention of dismissal of women absent from work during maternity leave or during any extension of such leave that may be required by illness resulting from pregnancy or confinement. Convention No. 183 extends the period of protection against dismissal to include the entire period of pregnancy, maternity leave and an additional period following her return to work to be prescribed by national laws or regulations.

The previous standards provided protection only for women already employed and did not mention the case of a woman seeking employment, which is a key concern from the point of view of equality of opportunity and treatment between men and women. This is a difficult issue, since motherhood and the family responsibilities associated with it still strongly influence the image of women at work and may be used by employers as a criterion when selecting candidates for a particular post, as noted by the ILO in its report on maternity protection at work:

The question is how to ensure that employers do not reject candidates of child-bearing age, who still bear the heaviest burden of family responsibilities and whose absence on maternity leave or for even longer periods of parental leave creates organizational problems for employers and in some cases also the financial burden of paying salaries during such leave of absence. These questions are all the more difficult in that they relate to a worker's private life and to ways of protecting it and reconciling it with the demands of working life. (International Labour Office, 1997, p. 50)

Even if not included in the previous Conventions on maternity protection (Nos 3 and 103), the subject of discrimination in employment had already been treated in several long-standing ILO Conventions:

- Convention No. 100 of 1951 concerning equal remuneration requires that rates of remuneration be established without discrimination based on sex. This is one of the Fundamental Human Rights Conventions of the ILO, and has been ratified by 168 member States (April 2010).
- Convention No. 111 of 1958 concerning discrimination in employment and occupation contains a specific definition of discrimination and encourages ILO member States to take measures to eliminate any kind of discrimination with respect to employment and occupation. Although pregnancy and maternity are not specifically included as grounds of discrimination in this Convention, the ILO's Committee of Experts on the Application of Conventions and Recommendations considers that sex-based discrimination also includes that based on marital status or, more specifically, family situation (especially in relation to responsibility for dependent persons), as well as pregnancy and confinement (International Labour Office, 1996). As with Convention No. 100, this is one of the Fundamental Human Rights Conventions of the ILO, ratified by 169 member States.
- Convention No. 122 of 1964 concerning employment policy requires freedom of choice of employment and the fullest possible opportunity for all workers to qualify for, and to use their skills and endowments in jobs for which they are well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. This standard counted 102 ratifications as of April 2010.
- Convention No. 156 of 1981 concerning workers with family responsibilities aims to ensure equality of opportunity and treatment for men and women workers with family responsibilities without being subject to discrimination. This standard has been ratified by 40 member States of the ILO.

When discussing the adoption of Convention No. 183 on maternity protection, most of the ILO member States expressed concern about the struggle of women against discrimination in employment and against inequality of opportunity between men and women. Some of them considered that, although such discrimination may already be prohibited under Convention No. 111, it should be clearly stipulated in Convention No. 183 (International Labour Office, 1999; International Labour Office, 2000). Thus, for the first time, an ILO Convention on maternity protection calls for member States to adopt appropriate measures to prevent discrimination in employment specifically on the grounds of maternity, including access to employment.

This section first looks at legal provisions against discrimination in employment at the national level, with an emphasis on provisions related to maternity. It then considers measures to safeguard the employment of women workers during maternity, such as protection against discriminatory dismissal and maintenance of employment benefits. Information on these issues comes from the Conditions of Work and Employment Database on Maternity Protection, which at present includes data on discriminatory dismissal on 84 countries.

MATERNITY DISCRIMINATION

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(1)]

In all regions, there are countries that have enacted legislation prohibiting discrimination based on sex. However, different methods of protecting workers are used in different countries. For instance, there are countries that protect all workers from discrimination based on sex as concerns access to employment, recruitment, promotion, changes in position, dismissal, retirement and other working conditions.¹⁰⁸ In some cases, these countries have special anti-discrimination provisions that cover women¹⁰⁹ or men.¹¹⁰ Some countries also include specific provisions against discrimination as to maternity in their legislation. In Bosnia and Herzegovina, a person seeking employment or who is employed shall not be discriminated against on the grounds of sex, birth or any other circumstance in respect of recruitment, training, promotion, terms and conditions of employment, cancellation of the contract of employment or other matters arising out of the employment relationship. In Cote d'Ivoire, employers may not take into

¹⁰⁸ In Uruguay, all discrimination which violates the principle of equality of treatment and opportunities for both sexes in all sectors or branches of labour activity is prohibited. This specifically includes, among other things, suspension or dismissal in the event of a change in civil status, pregnancy or nursing. In the Bahamas, discrimination is prohibited on the bases of the sex or marital status of an employee or applicant with respect to pay, offers of employment and opportunities for promotion, training or benefits.

¹⁰⁹ In Argentina, women may sign any type of employment contract and, as a result of collective labour agreements or official regulations, shall not be subjected to any type of discrimination in employment based on sex or marital status, although the latter may change in the course of her employment relationship. In the Philippines, employers cannot discriminate against women on the basis of their sex.

¹¹⁰ In Norway, further provisions may be prescribed as to which types of different treatment are permitted, including provisions regarding affirmative action in favour of men in connection with care of children.

account the pregnancy of a woman to refuse to hire her or to terminate her contract of employment during a trial period.¹¹¹ 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 providing support during maternity is not deemed to be contrary to non-discrimination legislation.¹¹²

It is interesting to note that, 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, 2002a). Developing this principle, some provisions, such as Directive 76/207/EEC on equal treatment, amended by Directive 2002/73/EC, have been adopted. In several of its judgments, the European Court of Justice has considered that refusing to appoint a woman because she is pregnant was direct discrimination on grounds of sex and therefore contrary to Directive 76/207/EEC (Commission of the European Communities, 1999, p. 13). All EU Member States are thus required to respect the provisions about equal treatment and non-discrimination between women and men, taking into account the interpretation of the European Court of Justice.

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.

¹¹¹ In Canada, at the federal level, discrimination on the grounds of sex is prohibited. Where the grounds of discrimination are pregnancy or childbirth, the discrimination is deemed to be on the grounds of sex. In Ontario, the legal right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant; and in Quebec the Charter of Human Rights and Freedom guarantees that every person has a right to full and equal recognition and exercise of her human rights and freedoms, without distinction, exclusion or preference based on pregnancy. In the United States, the Civil Rights Act and its amendment, the Pregnancy Discrimination Act, prohibit an employer with 15 or more employees from refusing to hire or dismissing a pregnant employee because of her pregnancy or pregnancy-related condition. Some US states have laws that cover employers with less than 15 employees. In Afghanistan, it is forbidden to refuse to employ women or reduce their wages because of pregnancy or nursing (feeding) their children.

¹¹² In Norway, different treatment that promotes gender equality is not a contravention of the provision that prohibits direct or indirect differential treatment based on sex. The same applies to special rights and rules regarding measures that are intended to protect women in connection with pregnancy, childbirth and breastfeeding. In Swaziland, no treatment accorded to females as provided in legislation in connection with the birth or expected birth of a child is deemed to be in contravention of the section of the Employment Act which prohibits an employer from discriminating between male and female employees by failing to pay equal pay for equal work. In Korea, measures taken to protect the maternity of working women in their pregnancy, childbirth and child feeding are not to be considered discriminatory. Similar provisions exist in Albania and Tajikistan.

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 countries for which information is available in the database, only 11 countries have concrete provisions banning pregnancy tests.¹¹³ However, according to the Committee of Experts, countries like Chile and Colombia have adopted provisions to prohibit or limit the use of pregnancy tests when used with a discriminatory purpose.¹¹⁴ It should, however, be taken into account that, in some countries, this prohibition is implicit in other legal texts, as in Switzerland, where it is included in the provisions concerning the protection of privacy (International Labour Office, 2000).

PROTECTION FROM DISCRIMINATORY DISMISSAL

Protection against dismissal on the grounds of maternity has always been an important element of the maternity protection standards of the ILO and has evolved in the instruments the Organization has adopted. In the earlier Conventions (Nos 3 and 103), there was an absolute prohibition against employers dismissing a woman worker during pre- or postnatal leave or when she was absent from her work for a longer period as a result of an illness arising out of the pregnancy or confinement that rendered her unfit for work.

In Recommendation No. 95 of 1952, which accompanied Convention No. 103, the same principle remained, but it called for a more extensive period of protection from the date of the notification of the pregnancy to the

¹¹³ Albania, Brazil, El Salvador, France, Macedonia, Portugal, Romania, Slovakia, Slovenia and Venezuela prohibit pregnancy tests as a condition of employment in their labour laws (with some exceptions as specified in Convention No. 183). In Denmark, the prohibition is contained under an EU directive rather than in national law.

¹¹⁴ This information can be found in the ILO's database of international labour standards, ILOLEX, which is a database containing ILO Conventions and Recommendations, ratification information, comments of the Committee of Experts and the Committee on Freedom of Association, representations, complaints, interpretations, General Surveys, and numerous related documents. Available at <http://www.ilo.org/ilolex/english/index.htm>.

employer until at least one month after the end of maternity leave. Furthermore, this Recommendation included some legitimate reasons for dismissal during the protected period, such as a serious fault on the part of the employed woman, the shutting down of the undertaking or the expiry of the contract of employment.

Convention No. 183 provides for a longer period of protection against dismissal than the previous ILO Conventions. It covers pregnancy, the period of leave and a period after returning to work, to be prescribed by national laws. Dismissal is prohibited only when related to pregnancy, birth of a child and its consequences, or nursing. However, the burden of proving that the reasons for dismissal are unrelated to maternity rests on the employer.

Protection against dismissal in national laws

In the vast majority of countries for which information is available in the database, some kind of legislative provision protects employment during maternity, usually prohibition of dismissal during pregnancy and maternity leave, and longer in some cases. However, these prohibitions are more or less flexible, depending on the country. In some, dismissal is prohibited with no exceptions,¹¹⁵ while, in others, it is prohibited on the grounds of maternity, but allowed when unrelated to it.¹¹⁶

Employment protection is also regulated in the EU Directive on pregnant workers, and therefore applicable to the Member States of the European Union. EU Member States are directed to adopt the necessary measures to prohibit dismissal of workers from the beginning of pregnancy to the end of maternity leave, except in cases not connected with their condition and authorized under national legislation or practice. Most EU Member States do provide such protections.

Length of protection against dismissal in national laws

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. [Convention No. 183 Article 8(1)]

¹¹⁵ For example, Brazil, Cambodia, Egypt, France (for maternity leave), Japan, Lesotho, Madagascar, Niger, Nigeria, Paraguay, Peru (within 90 days of confinement), Senegal, Sweden and Uganda.

¹¹⁶ For example, Barbados, Belgium, Bulgaria, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Finland, Ghana, Guatemala, Honduras, Lebanon, Lithuania, Mongolia, New Zealand, Nicaragua, Panama, Papua New Guinea, Singapore, Somalia, Sudan, Swaziland, Venezuela and Viet Nam.

Some countries provide protection against dismissal during the period specified in Convention No. 183 covering pregnancy, leave and a period after returning to work. In Japan, for example, dismissal is prohibited during pregnancy and maternity leave as well as for 30 days after returning from maternity leave. According to the ILO Committee of Experts on the Application of Conventions and Recommendations and the information in the database, however, there is a fairly widespread trend towards further extending the period during which employment is protected, beyond the strict context of maternity leave (International Labour Office, 2004).

In many countries, the duration of employment protection extends well beyond the end of maternity leave, as in Moldova (from pregnancy until the child is 6 years old); in Azerbaijan, Estonia, Lithuania and Mongolia (from pregnancy until the child is 3 years of age); in Portugal (from pregnancy until the child is 2 years old); in Gabon (from pregnancy through 15 months after birth); in Chile and Panama (from pregnancy to one year after the expiry of the maternity leave); in Bolivia, Somalia, Venezuela and Viet Nam (from pregnancy to one year after confinement); and in Argentina (from notification of pregnancy to seven months after confinement). In others, the protection extends through the end of the nursing period. Pregnant women and nursing mothers are protected in Guatemala, Indonesia and Malta, among other countries. Nevertheless, there are still some countries where employment protection is limited to maternity leave and any extensions thereof, as in Botswana, Cambodia, Fiji, Republic of Korea, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malaysia, Niger, Paraguay and Uganda. In a small number of countries, protection is even more limited.¹¹⁷

It is worth noting that in some countries where parental or other kinds of leave are available, employment protection is available not only to the mother but also to other persons. In Chile, if the mother dies, the father of the child can take the remainder of “maternity leave” and be protected against dismissal for one year after the expiry of postnatal leave. In Macedonia, a father can take maternity leave if a mother does not, and he will be protected from dismissal during such leave. In Mongolia, dismissal is prohibited for single fathers with children below 3 years of age. In Estonia, it is prohibited for an employer to terminate an employment contract with a pregnant woman or a person raising a child under 3 years of age. Protection also extends to whoever cares for the child in Russia. In Finland, Germany, Iceland, Italy, Norway, Portugal, Spain and Sweden, prohibition of dismissal also covers employees on different types of leave (maternity, paternity or parental leave). In some countries, such as Venezuela, adoption leave is also covered by prohibitions on dismissal.

¹¹⁷ In Egypt, for example, women are only protected from dismissal during pregnancy. In Thailand, women workers cannot be fired because of pregnancy.

Permissible grounds for dismissal

One of the aims of protective measures is to prevent discrimination on the grounds of maternity. However, according to Convention No. 183, dismissal should be permitted for reasons not linked to maternity. Among the countries where dismissal is allowed during the periods of protection, different grounds can be invoked as legitimate. The following are some of the most common:

- serious fault, gross negligence or violation of work discipline on the part of the employee;¹¹⁸
- valid reasons stipulated in common and labour law or by the Ministry of Labour;¹¹⁹
- the undertaking has ceased to exist;¹²⁰
- expiry of fixed-term contracts or the end of the work for which a woman was engaged;¹²¹
- imprisonment;¹²²
- cause of dismissal predates pregnancy;¹²³
- work for another undertaking while on leave;¹²⁴
- failure to resume work on the expiry of the unpaid leave granted to look after her children.¹²⁵

Burden of proof

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. [Convention No. 183, Article 8(1)]

¹¹⁸ Barbados, Costa Rica, Cuba, France, Guatemala, Guinea, Papua New Guinea and Venezuela.

¹¹⁹ Colombia, Honduras, Germany, Nicaragua, Papua New Guinea, Spain and Venezuela. In Honduras, however, the fact that the output of a woman worker has decreased by reason of her pregnancy shall not be a valid ground for her dismissal.

¹²⁰ Barbados, Belarus, Italy, Korea, Latvia, Mongolia, Russia, Slovakia, Somalia and Viet Nam. In Germany, women can receive maternity benefits from the state if they lose their employment because their company is insolvent.

¹²¹ Barbados, Croatia, France, Luxembourg, Somalia and Tajikistan.

¹²² Cuba, Lao People's Democratic Republic and Papua New Guinea.

¹²³ El Salvador. Even when dismissal is allowed on these grounds, it will not take effect until the end of maternity leave.

¹²⁴ Lebanon.

¹²⁵ Cuba. In Ireland, dismissal is valid if the employee refuses to take another reasonable position instead of her original position.

The rules on the burden of proof should be adapted to offer special protection to women or other employees protected against discriminatory dismissal. In fact, the protection against dismissal would not be as effective if the worker affected had to prove that the reasons were related to maternity or parenthood, particularly when dealing with indirect discrimination, given that securing evidence could be quite difficult for workers. Imposing the burden of proof that dismissal is not based on maternity on the employer strengthens the protection and helps enforce the principle of equal treatment.

In many countries, legal provisions impose the burden of proof on the employer. One of the ways to oblige employers to prove that dismissal is not discriminatory in the national legislation is to lay down a presumption of dismissal based on maternity when it occurs within the protected period.¹²⁶ In several countries, whether the presumption exists or not, the employer is obliged to ask for judicial or administrative authorization before giving notice of dismissal.¹²⁷

Similarly, but providing a wider scope than the provision of Convention No. 183, the European Union adopted Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex. It deals with any complaints of direct or indirect discrimination based on sex, while Article 8 of Convention No. 183 considers only the termination of employment on the grounds of maternity. The EU Directive is intended to enable all persons who consider themselves wronged because the principle of equal treatment has not been applied to have their rights asserted by judicial process after possible recourse to other competent bodies. It shall be for the respondent (the employer, in cases of dismissal) to prove that there has been no breach of the principle of equal treatment (European Community, 1998). This reversal of the general rules of proof is a useful way to strengthen the principle of equal treatment and is applicable in cases related to pregnant workers or those who have recently given birth, are breastfeeding or are on parental leave.

Compensation in case of dismissal

Despite the existing protective measures against discriminatory dismissal, it does occur in practice. When employers do not comply with the ban on discriminatory dismissal, compensation is provided in many countries. In Albania, Argentina and Ecuador, for example, the compensation is equal

¹²⁶ This presumption exists in Albania, Argentina, Bahamas, Colombia, Finland, Honduras, Mauritania, Norway, Sri Lanka and Zambia.

¹²⁷ Judicial authorization is required in Austria, Chile, Guatemala and Panama. In Bulgaria, Colombia, Equatorial Guinea, Honduras, Portugal, Slovenia (for dismissals due to negligence) and Venezuela, authorization from the labour inspector is necessary. A non-specified authority shall give its authorization in the Dominican Republic, Ecuador and the Seychelles.

to one year's remuneration; in Denmark, the employer can be fined and forced to pay between 39 and 78 weeks of compensation, depending on the job; in the Dominican Republic, it is five months' ordinary salary; in Belgium, six months of gross remuneration; in Colombia and Honduras, 60 days' wages; and in Tunisia, the employer has to pay damages to the worker as a result of dismissal. In Lao People's Democratic Republic, employers who violate the prohibitions on dismissal may be forced to pay damages and compensation to the employee, as well as reinstate him or her. In Zambia, employers who fire a worker within six months after delivery are guilty of an offence and subject to unspecified penalties.

Guaranteed right to return to work or equivalent position

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. [Convention No. 183, Article 8(2)]

The guaranteed right to return to work is often included in legislation alongside the prohibition of discriminatory dismissal. For example, in South Africa, dismissal includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract of employment.

The right to return should be implicit in the entitlement to leave, as it is a temporary interruption of employment. However, in many countries, special provisions regulating the return to work are laid down. In some of them, the right to return includes the right to return to the same or an equivalent post, paid at the same rate as at the time the woman went on maternity leave.¹²⁸ In other countries, provisions do not seem to be that specific, as they do not explicitly take into account all aspects mentioned in Article 8(2). Some of the contents of provisions found in several countries include:

- The right to hold the post the woman occupied prior to her leave (possibility of a similar post and payment not specified): Cote d'Ivoire, Cuba, Guinea, Lithuania, Mexico (if worker returns within one year), Moldova, New Zealand (if leave is four weeks or less), Russia, Uruguay and Uzbekistan.
- The post the worker will occupy after leave shall be the same or an equivalent (payment not specified): Australia, Costa Rica, Croatia, Iceland, Italy, Mongolia and Swaziland.

¹²⁸ For example, Bahamas, Barbados, Canada (Ontario), Cyprus, France, Malta, Swaziland and Uganda. In the United States, employees generally have the right to return to the same or equivalent job with the same pay and other benefits. However, under limited circumstances where restoring employment would cause the employer substantial economic hardship, employers may refuse to reinstate certain highly paid "key" employees.

- The right to hold the post she occupied prior to her leave, paid at the same rate (possibility of an equivalent post not specified): Belarus, Canada (Federal and Quebec), Iran, Mauritania, Nicaragua, Panama, Poland and Tanzania.
- In a few countries, on the other hand, there are provisions which allow women who do not wish or are unable to return to work to resign without notice for some period after childbirth without having to pay compensation for breach of contract.¹²⁹

In some cases, provisions guaranteeing the right to return to work cover not only maternity but also other types of leave.¹³⁰ For example, in Belarus, Belgium, Canada (Ontario and Quebec), Cuba, Iceland and Spain, the right to return to work is also guaranteed to workers at the end of parental leave.¹³¹

The right to return to work has also been addressed at the European level in Directive 76/207/EEC on equal treatment. In its Article 2(7), return to work must be guaranteed not only to women, but also to workers on paternity, parental or adoption leave (European Community, 2002b).

MAINTAINING EMPLOYMENT BENEFITS

The period of leave referred to in Articles 4 and 5 of the Convention should be considered as period of service for determination of her rights. (Recommendation No. 191, Paragraph 5)

Whatever the importance of a woman wage-earner's right to be reinstated in her previous work, and however effectively it may be recognized and applied, it is not in itself enough to prevent women's procreative role from becoming an obstacle to the realisation of equality of opportunity and treatment. For this, it must be ensured that a woman's absence on maternity leave and the extension of that leave does not result in the loss or reduction of entitlements and benefits under the terms of the employment contract, which would only exacerbate the often considerable differences between men and women wage-earners. (International Labour Office, 1997, p. 57)

¹²⁹ Cameroon, Madagascar, Mauritania, Niger and Senegal.

¹³⁰ In Japan, there are even provisions that extend the right to return to former employees. There, employers must give preference in recruiting to former employees who left their jobs because of pregnancy, childcare or family responsibilities.

¹³¹ In the United Kingdom, workers have the right to return to the same job after maternity leave. After parental leave or paternity leave of four or more weeks, workers have the right to return to the same or equivalent job.

In the legislation of several of the countries analysed, the period of leave is considered to be a period of service with regard to the determination of employment rights. The entitlement to continue in the same work without loss of seniority rights is applicable in Barbados, Cyprus, Equatorial Guinea, Spain, Swaziland and the United Kingdom.¹³² In Zimbabwe, it is specified that pension, health and disability benefits, and seniority continue to accrue during the entire leave period.¹³³ Maternity leave counts as full service in Belgium, Iran, Ireland, Tajikistan and Uzbekistan. In Libyan Arab Jamahiriya and Panama, workers retain their employment rights during leave. In Sweden, workers may not suffer any reduction in benefits connected with their employment or any prejudice regarding conditions of employment when they claim or exercise a right to maternity, paternity, adoption or parental leave. In France and Hungary, workers are entitled to any wage adjustments that are granted during their leave.

¹³² In the United Kingdom, all contractual benefits continue during the first 26 weeks of leave (the normal leave period). After 26 weeks (the extended leave period), only some benefits continue.

¹³³ In Germany, benefits accrue as if uninterrupted during maternity and parental leave if a woman returns to work within one year of giving birth.

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent 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. (Convention No. 183, Article 3)

There are risks at the workplace that may affect the health of the woman and her child during pregnancy and breastfeeding. Measures to protect the pregnant or nursing woman from such risks include adaptations to the working conditions, for example with regard to the arrangement of working time, as well as avoidance of risks related to dangerous or unhealthy work. With the adoption of Convention No. 183, the right to health protection for pregnant or nursing women was recognized in a maternity protection Convention.

Breastfeeding has major benefits for both the mother and the child (see, for example, World Health Organization and UNICEF, 2005; Paul, 2004). The right to continue breastfeeding upon return to work with access to facilities for nursing under adequate hygienic conditions is thus important for the health of the mother and especially for that of her child. The first part of this section will treat legislation on the arrangement of working time as a means of protection for pregnant or nursing women. The second part concerns the avoidance of dangerous and unhealthy work. Finally, the provision of breastfeeding breaks when returning to work after maternity leave will be discussed. The section is based on information from the database, including 111 countries.

ARRANGEMENT OF WORKING TIME

An important issue for the health of pregnant workers is working time. In Recommendation No. 191, this aspect is treated in relation to maternity protection. Several ILO member States have enacted provisions protecting pregnant and nursing women from the fatigue associated with night work and overtime work. Some countries also afford time off for medical examinations during pregnancy.

Night work and overtime

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. [Recommendation No. 191, Paragraph 6(4)]

The adoption of Recommendation No. 191 of 2000 meant a policy change as to the protection of pregnant or nursing women concerning night work. The earlier Recommendation (No. 95 of 1952) stated that night work and overtime should be prohibited for pregnant and nursing women. This approach is in line with the Night Work (Women) Convention (Revised), 1948 (No. 89), which states that women shall not be employed during the night in industrial undertakings.¹³⁴ In contrast, the most recent Convention respecting night work (No.171 of 1990) does not ban night work for women, but provides “measures of protection for all night workers including many of those aspects of special concern for women”, such as “special measures of maternity protection and safety” (International Labour Office, 2001, pp. 21–22). Recommendation No. 191 specifies that a woman should not be obliged to perform night work if it is incompatible with her pregnancy or nursing, as determined by a medical certificate. In this way, the current Recommendation takes into account the needs of the individual to a greater extent.

In some countries analysed in the database, there is a general prohibition of night work covering all women.¹³⁵ In several cases, the interdiction only applies to certain economic sectors, for example industry,¹³⁶ and there may also be exceptions to the interdiction. For example, in Swaziland,

¹³⁴ A Protocol was adopted in 1990 to “ease prohibitions where some form of restriction aimed only at women was considered to be still valid” (International Labour Office, 2001, p. 21), and thus introduce 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.

¹³⁵ For example, Bolivia, Sri Lanka and the Philippines. In Algeria and Libyan Arab Jamahiriya, women are prohibited from working at night, with exceptions authorized by the labour inspector.

¹³⁶ This is the case in Colombia, Costa Rica, Croatia and Lao People’s Democratic Republic.

employers may not employ any female in any industrial undertaking between 22:00 and 06:00, unless they obtain a certificate from the Labour Commissioner. Exceptions are possible in cases of emergency, for persons at managerial level and for persons in family undertakings.

In other countries, night work is not allowed for pregnant and/or nursing women.¹³⁷ This kind of interdiction is often limited to the later part of pregnancy¹³⁸ and for some time after childbirth.¹³⁹ In some countries, night work is prohibited during a certain part of pregnancy and some time after the confinement, with a possibility of extending the interdiction to other periods of the pregnancy on the basis of a medical certificate.¹⁴⁰

In some countries, night work for pregnant and/or nursing women is prohibited only if there is a risk to the health of the woman or the child.¹⁴¹ The legislation in other countries resembles the ILO policy stated in Recommendation No. 191 in that they do not oblige pregnant or nursing women to work during night time.¹⁴²

¹³⁷ In Mexico, during the periods of pregnancy and nursing, working mothers may not perform night work in industrial, commercial or services establishments after 22:00; in Chile, night work is prohibited for pregnant women; and, in Colombia and Honduras, it is unlawful to employ a pregnant woman on night work for longer than five hours. In Austria, pregnant and nursing women are prohibited from working at night. In Albania and Thailand, only pregnant women are prohibited from night work.

¹³⁸ 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.

¹³⁹ In the Seychelles, a female worker may not be employed between the hours of 22:00 and 05:00 from her sixth month of pregnancy and up to three months after her confinement. In Hungary, night work is prohibited from pregnancy until the child is 1 year old for women or single fathers (as well as for all workers if their schedule is shown to be detrimental to their health). In Azerbaijan and Belarus, night work is prohibited from pregnancy until a child is 3 years old.

¹⁴⁰ In Belgium, night work between 20:00 and 06:00 is prohibited for pregnant women during the eight weeks before the expected date of birth, and on the basis of a medical certificate, at any other time up to four weeks immediately after the end of maternity leave. In Tunisia, women should not work between 22.00 and 06.00 for a period of at least 16 weeks before and after confinement. This prohibition also applies during other periods of pregnancy and after confinement if the woman produces a medical certificate. The chief labour inspector may authorize night work, after medical advice, if the woman requests so in writing and when her health and that of her child are not endangered.

¹⁴¹ In Paraguay, a pregnant woman may not undertake night work in industrial, commercial or service establishments after 22:00 if there is a risk to the health of the woman or the unborn child. In Ireland, night work is prohibited from pregnancy through 14 weeks after birth on a doctor's order. Similar restrictions exist in Indonesia, Luxembourg, Spain and the United Kingdom.

¹⁴² In Estonia, pregnant women shall not be required to work during night time (22:00-06:00). Similar provisions also exist in Lesotho and Panama. In France, pregnant women or new mothers can request reassignment to daytime work. In Lithuania, pregnant and nursing mothers may only work at night with their consent. In Japan, mothers can request no night work if they are caring for a child under school age.

The requirements respecting night work of the EU Directive on pregnant workers are similar to the provisions in Recommendation No. 191. According to the Directive, pregnant women and women who have recently given birth or who are breastfeeding should not be obliged to perform night work during pregnancy and for a period following childbirth, on production of a medical certificate stating that this is necessary for the safety or health of the worker concerned. There should instead be a possibility for them to transfer to daytime work or, where such transfer is not feasible, take leave from work or extend the maternity leave [European Economic Community, 1992, Article 7(1-2)].

As mentioned above, Recommendation No. 95 required a prohibition of overtime for pregnant and nursing women. On the other hand, there is no provision in Recommendation No. 191 concerning overtime. Several countries in the database still restrict overtime for women. Some countries forbid overtime work for pregnant women,¹⁴³ while others provide that pregnant women shall not be required to work overtime.¹⁴⁴ Sometimes the restriction also applies to all women,¹⁴⁵ nursing mothers,¹⁴⁶ for mothers with children under a certain age¹⁴⁷ or for overtime work that involves a risk to the health of the woman.¹⁴⁸

¹⁴³ For example, Belgium, Chile, Equatorial Guinea, Mexico, Panama and Poland. In the Republic of Korea, overtime is prohibited for pregnant women and limited to two hours for new mothers with children under the age of 1. In Afghanistan, overtime is prohibited for pregnant women and women with children under age 2. In addition, pregnant women's hours must be reduced to 35 per week.

¹⁴⁴ For example, Cuba, Estonia and Japan. In Tajikistan, pregnant women, and women and single fathers with children under age 3 shall not work overtime or on weekends or holidays or be sent on business trips. Those with children between ages 3 and 14 can only work overtime or be sent on business trips with their consent.

¹⁴⁵ In Libyan Arab Jamahiriya, women are prohibited from working more than 48 hours per week. In Mauritania, overtime is prohibited for women in industrial and commercial establishments.

¹⁴⁶ In Viet Nam, a female employee from her seventh month of pregnancy or who is nursing her child under the age of 12 months may not work overtime. Pregnant and nursing mothers are also prohibited from working overtime in Austria, Belgium and Mexico.

¹⁴⁷ In Mongolia, pregnant women, women with children under 8 years of age, and single fathers with children under 16 years of age may only work overtime or go on business trips (or work at night) with their consent. In Tajikistan, pregnant women, and women and single fathers with children under age 3 shall not work overtime or on weekends or holidays or be sent on business trips. Those with children between ages 3 and 14 can only work overtime or be sent on business trips with their consent.

¹⁴⁸ In Paraguay, a pregnant or nursing woman shall not undertake overtime if there is a risk to the health of the woman or the unborn child.

Time off for medical examinations

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. [Recommendation No. 191, Paragraph 6(6)]

Regular health monitoring during pregnancy can be an effective means of preventing abnormalities or complications at birth (International Labour Office, 1994; Paul, 2004). Many of the countries analysed provide for time off during pregnancy to undergo medical examinations, although this type of leave is uncommon in Africa, Asia, Latin America and the Middle East.¹⁴⁹ In Viet Nam, pregnant women are entitled to five paid days of leave for prenatal visits. In Cuba, for example, during her pregnancy and for up to 34 weeks before her confinement, a woman worker is entitled to six days or 12 half days of paid leave to receive medical and dental treatment. During the child's first year, a woman worker is entitled to one day of paid leave every month to attend a paediatric clinic.¹⁵⁰

In some countries, time off is only granted if the prenatal examinations cannot take place outside working hours.¹⁵¹ This is what is called for in the EU Directive on pregnant workers. According to the Directive, EU Member States must take the necessary measures to ensure that pregnant workers are entitled to time off, without loss of pay, in order to attend antenatal examinations, if such examinations have to take place during working hours (European Economic Community, 1992, Article 9).

DANGEROUS OR UNHEALTHY WORK

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. [Recommendation No. 191, Paragraph 6(1)]

¹⁴⁹ In several countries in these regions, however, a birth grant is paid, contingent on completion of prenatal visits.

¹⁵⁰ Similar provisions also exist in Estonia and Japan. In Brazil, pregnant women can take time off for six medical consultations. In Israel, pregnant women are entitled to 40 hours of time off for medical examinations. Paid leave for medical examinations is also available to pregnant women in, among other countries, Denmark, Germany, Ireland, Malta and the Netherlands.

¹⁵¹ For example, Austria, Belgium, Bulgaria, Finland, Norway, Slovakia and Spain.

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.*

[Recommendation No. 191, Paragraph 6(2)]

With respect to protection from dangerous and unhealthy work, Recommendation No. 191 moves towards a position adapted to the needs of the individual by requiring an assessment of workplace risks for the safety and health of pregnant or nursing women and their children (see Paul, 2004, for guidance on risk assessment). If a significant risk is established at the workplace, measures should be taken to provide an alternative to such work. The earlier Recommendation called for a complete prohibition of employment of a woman on work prejudicial to her health or that of her child during pregnancy and up to at least three months after confinement.

Under the legislation of some countries, an assessment must be carried out to establish if the work involves a risk to the health of the mother or child or of all women.¹⁵² In South Africa, there is a legal requirement for employers to conduct risk assessments in relation to the work of pregnant and nursing employees.¹⁵³ In Russia, employers are required to create safe working conditions for all women, as confirmed by medical expertise. On the other hand, several countries are more in line with the previous instrument on maternity protection, prohibiting the employment of pregnant

¹⁵² Broad provisions to protect the health of all workers exist in Australia, Indonesia, the Lao People's Democratic Republic and the Philippines.

¹⁵³ Additionally, in Belgium, in order to establish the necessary measures to protect an employee, the employer, in collaboration with an occupational health physician and the public service of security and hygiene, must assess the nature, degree and duration of risk factors arising from conditions of work and their incidence in pregnant or nursing women workers. Similar assessments are also required in Denmark and Hungary.

women on posts classified as dangerous.¹⁵⁴ This kind of prohibition sometimes extends to all women.¹⁵⁵

As suggested by Recommendation No. 191, measures should be taken when work involves risks and an alternative to the work should be provided. Many of the countries analysed provide for measures in order to protect pregnant or nursing women from workplace risks. Iceland is an example of a country that seems to comply with Recommendation No. 191 for the adaptation of working conditions. If the safety and health of a pregnant woman, a woman who has recently given birth or a woman who is breastfeeding is considered in danger, according to a special assessment, her employer must make the necessary arrangements to ensure the woman's safety by temporarily changing her conditions and/or working hours. In France, employers must assess any risks in the workplace that might influence workers' safety or health and define measures to be taken. For pregnant and breastfeeding women, the occupational health practitioner's medical supervision is reinforced. If a pregnant or new mother is exposed to risk, her employer is required to transfer her temporarily to a safer position.

Transfer to another, safer position is the most common measure required when the work involves a significant risk to the pregnant or nursing woman or to her child.¹⁵⁶ Some countries specify that such a transfer should not entail loss in benefits or pay.¹⁵⁷

¹⁵⁴ In Cuba, women of childbearing age may not be employed in activities or posts affecting the reproductive function or the normal course of pregnancy. In Japan, pregnant women or women within one year after confinement may not be engaged in underground work or in work which may be harmful to pregnancy, childbirth or nursing, such as jobs involving the handling of heavy weights or jobs in a place where harmful gases are emitted. In Cameroon and Cote d'Ivoire, women can request an inspector to see if the work is suitable. The following countries also restrict pregnant women and/or new mothers from doing dangerous or unhealthy work: Albania, Dominican Republic, Republic of Korea, Macedonia, Mexico and Tanzania.

¹⁵⁵ In Costa Rica, it is prohibited to employ women to carry out work that is either physically or morally unhealthy, heavy or dangerous. In Burkina Faso, all women are prohibited from work that is likely to affect reproductive functions. Women are also prohibited from some or all dangerous or harmful work in Colombia, Guinea (work in underground mines), Lao People's Democratic Republic and Tajikistan.

¹⁵⁶ In the Dominican Republic, where as a result of pregnancy or childbirth the work performed by a woman is harmful to her health or that of her child and a medical practitioner certifies this fact, the employer must provide a change of work. In Algeria, pregnant workers who occupy a post involving exposure to ionizing radiation should be transferred to a different job. Similar provisions removing pregnant and breastfeeding mothers from dangerous or unhealthy work exist in Belgium, Cuba, Finland, Iceland, Japan, Mongolia, Nicaragua and Thailand.

¹⁵⁷ This is the case, for example, in Belarus, Bolivia, Bosnia and Herzegovina, Burkina Faso, Chile, Gabon, Iceland, Iran, Italy, the Seychelles, South Africa, Uzbekistan and Viet Nam. In Lao People's Democratic Republic, an employee who is transferred for these reasons is entitled to her former pay for three months, after which she receives the pay for the new post.

Some countries provide the right to paid leave if other alternatives, such as an adaptation of working conditions or a transfer, are not feasible.¹⁵⁸ In Estonia and Slovakia, for example, pregnant women have the right to request a temporary alleviation of working conditions or a temporary transfer to another position, based on a doctor's certificate. Any difference in wages between these two posts is compensated for by social security. In Luxembourg, women who must take paid leave because there is no alternative job possible 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 65 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, Ireland and the Seychelles, workers may take sick leave when there is no alternate job possible.

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)]

Concerning the woman's right to return to the same or an equivalent job when it is safe for her to do so, information is available in only a small fraction of countries. In Canada (Quebec), at the end of the period of re-assignment or work stoppage due to a health risk, a woman must be reinstated in her regular job and receive the benefits she would have been entitled to had she remained in it.¹⁵⁹

Many countries provide for the protection of pregnant and, in some cases, nursing women and their children with respect to dangerous or unhealthy work. According to Recommendation No. 191, measures should in particular be taken in respect of the following risks:

- (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.*

[Recommendation No. 191, Paragraph 6(3)]

¹⁵⁸ For example, Croatia, Dominican Republic, Finland, Lithuania, Sweden and Uruguay. In Israel, paid leave is available if this type of leave lasts over 30 days.

¹⁵⁹ In Belgium, the worker must be reinstated in her previous job under the same conditions as before as soon as the reason for the prohibition, the reduction of hours of work or the transfer to other duties has ended. In Iceland, the job change is also temporary.

With regard to arduous work, such as manual lifting, or carrying, pushing or pulling loads, many countries specify that this is prohibited for all women workers,¹⁶⁰ for pregnant women¹⁶¹ or during the latter part of pregnancy.¹⁶² In other cases, prohibition continues for a period following the resumption of work after birth, especially if the mother is nursing.¹⁶³

A large number of countries provide protection from work involving exposure to biological, chemical or physical agents.¹⁶⁴ Countries vary in the types of these agents to which they limit exposure and the individuals they protect. In Sweden, pregnant mothers are to be protected from exposure to lead. In Viet Nam, all women are to be protected from work with “toxic substances” that might affect reproduction. In Burkina Faso, all women are also prohibited from working in workplaces that are engaged in, among other processes, manufacture of or painting with a base of white lead, work in places where flesh, remains and waste from slaughtered animals are stored, manufacture of alkaline chlorides, or treatment of fruit against insects with nitrogen trichloride or with acetylene or ethylene.

The scope of protection related to radiation also varies significantly from country to country. When this is provided, the legislation often pro-

¹⁶⁰ In Mongolia, women are prohibited from lifting and carrying weights heavier than those approved by government regulations. In Afghanistan, women and youths may not be employed in work that is physically arduous. Provisions protecting women from arduous work also exist in Croatia, Libyan Arab Jamahiriya and Tajikistan.

¹⁶¹ These countries include Bolivia, Colombia, El Salvador, Honduras, Mexico, Russia and Thailand.

¹⁶² In Viet Nam, a female employee performing strenuous work must be transferred to lighter work with no reduction in pay from her seventh month of pregnancy. In Mauritius, a woman working in the salt manufacturing industry is not required to lift or carry baskets of salt from her seventh month of pregnancy. There are also restrictions on arduous work for pregnant women in Swaziland and Paraguay (three months prior to the expected date of confinement).

¹⁶³ In Niger, pregnant women and women who have returned to work after birth within the previous three weeks, may not carry, push or pull any load whatsoever. There are restrictions on arduous work for pregnant women and nursing or new mothers in Albania, Austria, Azerbaijan (until the child is 3 years old), Belgium, Central African Republic, Germany, Guinea, Ireland (until the child is 10 weeks old), Italy (until the child is 7 months old), Madagascar and Senegal.

¹⁶⁴ In Belgium, pregnant women and nursing mothers may not be exposed to chemical agents, such as lead and mercury, or to biological hazards, such as certain bacteria and viruses. In addition, they may not work in jobs in which they may be exposed to ionizing radiations. Other countries that protect pregnant women and/or nursing mothers from biological, chemical and physical agents include Austria, Denmark, France, Ireland, Malta, Moldova (pregnant women only) and Slovakia.

vides protection for women of childbearing age as well as increased protection for pregnant women or nursing mothers.¹⁶⁵

Concerning work requiring special equilibrium, protection for pregnant women is specifically provided in a small number of countries in the database. In Colombia, pregnant women may not do any work that requires them to have considerable capacity for balance, such as working up ladders or handling heavy machinery, or work that involves dangerous procedures. Austria, Croatia and Poland have similar restrictions on work involving heights or scaffolding for pregnant women and/or nursing mothers. In Thailand, this is prohibited for all women.

Some countries provide protection with regard to work involving physical strain due to prolonged periods of sitting or standing, extreme temperatures or vibration. For these risks, the provisions of the countries analysed cover pregnant workers.¹⁶⁶

In the European Union, the protection from dangerous and unhealthy work for pregnant and breastfeeding workers provided by the Directive on pregnant workers is very detailed. In most respects, it requires the same protective procedures as the ILO's current standards on maternity protection.¹⁶⁷

BREASTFEEDING

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.
[Convention No. 183, Article 10(1)]

¹⁶⁵ In Mexico, limits are set on the levels of radiation to which women of childbearing age, pregnant women and nursing mothers may be exposed. In addition, pregnant women shall not perform work involving the handling, transport or storage of teratogenic or mutagenic substances, or where xylene or benzene are used. Limits are set on the level of radiation to which women of child-bearing age, pregnant women and nursing mothers may be exposed. In Japan, low dose limits are set for women for the exposure of the abdomen to radiation, excluding women who are unable to become pregnant. A lower dose is set for women when pregnancy is confirmed. Tunisia and Argentina also have lower limits for pregnant women's exposure to radiation. General protections from radiation for pregnant women and/or nursing mothers are also present in Ireland, Israel (only pregnant women), Poland, Slovakia, Spain and Russia (pregnant women only).

¹⁶⁶ In Mexico, pregnant women may not perform work involving abnormal atmospheric pressure or conditions in which the environmental temperature is altered, work producing vibration, or work involving standing for long periods. In Belgium, pregnant women may not be exposed to temperatures higher than 30°C. The following countries also restrict pregnant women's ability to work in jobs involving physical strain: Chile, France, Germany, Israel, Lao People's Democratic Republic (through six months after confinement), Latvia, Mauritius, Paraguay (beginning three months before the expected date of confinement), Romania and Thailand.

¹⁶⁷ For detailed information on the provisions of the Directive, see European Economic Community 1992, Articles 4-6.

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. [Convention No. 183, Article 10(2)]

Since the first Convention on maternity protection (No. 3 of 1919), nursing breaks for breastfeeding mothers during working hours have been part of the international standards on maternity protection. However, the provisions differ. Convention No. 3 stated that a nursing mother should be allowed 30 minutes twice a day during her working hours for this purpose, while both Convention No. 103 of 1952 and Convention No. 183 of 2000 leave it to national laws and regulations to decide the number and duration of nursing breaks, as long as at least one break is provided. Convention No. 183 also introduced the possibility of transforming daily breaks into a daily reduction of hours of work.

The World Health Organization recommends exclusive breastfeeding for babies until the age of 6 months, and continued breastfeeding, with appropriate complementary foods, for children of up to 2 years of age or beyond (World Health Organization, 2001). Breastfeeding contributes to the health of both mother and child and is particularly important in circumstances where unsafe water can be a risk for the baby.

Breastfeeding breaks

Legislation in at least 92 countries provides for breastfeeding breaks, in addition to regular breaks, for nursing mothers (Paul, 2004). The time allowed is often at least one hour, usually divided into two breaks of 30 minutes each.¹⁶⁸ Sometimes the breaks are more frequent,¹⁶⁹ in which case a number

¹⁶⁸ Two 30-minute breaks are available in Argentina, Botswana, Colombia, Egypt, El Salvador, Guatemala, Honduras, Japan, Republic of Korea, Libyan Arab Jamahiriya, Mexico, Nigeria, Norway, Papua New Guinea, Paraguay, Poland, Tunisia and Venezuela. The following countries provide one hour (or more, where noted) for breastfeeding breaks, with no information on whether or how the time is to be divided: Burkina Faso (1.5 hours), Cameroon, Cuba, Ghana, Lesotho, Madagascar, Senegal and Tanzania (2 hours). In the Netherlands, nursing mothers are entitled to breaks as often as needed (up to one-quarter of the working time) until their child is 9 months old.

¹⁶⁹ In Azerbaijan (until the child is 18 months), Belarus (until the child is 3), Estonia, Iran, Lithuania, and Moldova (until the child is 3) nursing mothers are entitled to take a 30-minute break every three hours.

of countries provide for less than 30 minutes.¹⁷⁰ A small number of countries allow multiple breaks of over 30 minutes.¹⁷¹

In some countries, the number of nursing breaks depends on the working hours. This is the case in Belgium, where a woman who works a minimum of four hours a day has the right to one break of 30 minutes. If she works at least 7.5 hours a day, she can take two nursing breaks of 30 minutes each. In Italy, nursing mothers who work less than six hours per day are entitled to a one-hour nursing break; nursing women who work more than six hours per day are entitled to two one-hour breaks per day. In others, the number of breaks or their length depends on the age of the child. In Hungary, for example, nursing mothers are entitled to two hours of breaks in the first six months after birth, then one hour's break until the ninth month. Similarly, in Gabon and Mongolia, nursing mothers are entitled to two hours of breaks for the first six months (in Gabon, beginning at the time of return to work; in Mongolia, from birth), then one hour until the twelfth month.

In some cases, the nursing woman can choose how to distribute the total duration of the daily breastfeeding breaks.¹⁷² In Cambodia and Zimbabwe, for example, nursing mothers can take their allowed time as either a one-hour break or as two 30-minute breaks. In Russia and Tajikistan, mothers can choose to combine their allowed breaks and take the allowed time at the beginning or end of the day. In Ireland, nursing mothers can choose to take the allowed breaks or reduce their working hours for 26 weeks after confinement.

Both Convention No. 103 and Convention No. 183 stipulate that interruptions of work for the purpose of nursing are to be counted as working time and remunerated accordingly. This is usually the case in the countries analysed that have these kinds of provisions (legislation in more than two-thirds of the countries in the database which provide for breastfeeding breaks explicitly provides for payment during the breaks).¹⁷³ Even in some coun-

¹⁷⁰ In Nicaragua, the provision is 15 minutes every three hours. In the Dominican Republic, nursing mothers can take three 20-minute breaks per day until their child is 1 year old.

¹⁷¹ In Bulgaria, nursing mothers who work more than seven hours a day are entitled to two one-hour breaks until their child is 8 months old. In Romania, Portugal, and Somalia, nursing mothers are entitled to two one-hour breaks until their child is 1 year old.

¹⁷² In Costa Rica, the provision is 15 minutes every three hours or, if preferred, 30 minutes twice during the working day, unless a medical certificate states that only a shorter period of time is required. In Mauritius, women are entitled to a paid break of one hour, or two paid breaks of 30 minutes each, per day. In Chile, on the other hand, women are entitled to two 30-minute breaks until a child is 2, and they may not refuse this entitlement.

¹⁷³ Breastfeeding breaks are not always paid at the same rate as normal working time. In Switzerland, breaks are paid at 100 per cent of wages if taken at work. If a woman chooses to take the break time at home, the leave is paid at 50 per cent. In Croatia, compensation for breastfeeding also differs from normal compensation.

tries in which maternity leave is unpaid, breastfeeding breaks are nevertheless paid as normal working time.¹⁷⁴ In contrast, in Norway, which provides for a substantial period of maternity/parental leave, the time off for nursing mothers is an unpaid right. In other countries, remuneration is to be handled through collective bargaining.¹⁷⁵ Some countries provide for payment under the social security regime, thus avoiding a direct cost to the employer. This is the case in Belgium, where nursing breaks are unpaid by the employer, because the execution of the contract of employment is suspended during nursing breaks. Instead, 82 per cent of the remuneration is paid by sick and indemnity insurance schemes.¹⁷⁶

In some countries, the duration of the entitlement is not specified.¹⁷⁷ In nearly all of the countries in the database that provide for breastfeeding breaks and give a time limit, the entitlement extends until the child reaches at least the age of 6 months.¹⁷⁸ In several countries, the period for which breaks must be provided extends until the child is 18 months to 2 years or more.¹⁷⁹

In Convention No. 183, breaks are a right available only to breastfeeding women. In some countries, however, the scope of eligibility appears to be broader. For example, in Estonia, a person raising a child under 18 months of age is granted additional breaks of at least 30 minutes each for feeding the child at least every three hours. In Mongolia, women employees and single fathers with a child are entitled to additional breaks for child-care or feeding. In Italy, fathers can take the allowed breastfeeding breaks if mothers do not. In Uzbekistan, whoever cares for the child can take the allowed breaks. In Portugal, the breaks can be split between mothers and fathers.

¹⁷⁴ This is the case in Lesotho, where a woman is entitled to paid breaks of up to one hour a day for six months immediately after she returns to work after maternity leave. In Papua New Guinea, a female employee is entitled to two nursing breaks of 30 minutes each, counted as working hours without implying a reduction in wage.

¹⁷⁵ This is the case, for example, in Japan (International Labour Office, 1997).

¹⁷⁶ In Estonia, the breaks for feeding a child are included in working time and payment of average wages continues from the state budget funds.

¹⁷⁷ The following countries are among those that provide breastfeeding leave, but do not give a time limit: Costa Rica, Equatorial Guinea, Republic of Korea, Mexico, Nigeria, Norway, Papua New Guinea, Sweden and Tanzania.

¹⁷⁸ In Ireland, the entitlement to breastfeeding breaks ends 26 weeks after confinement. In Botswana, Colombia, Mauritius and Zimbabwe, the entitlement expires when the child reaches 6 months of age; in Belgium, seven months; in Ecuador, nine months; in Guatemala, 10 months; in Argentina, Cambodia, the Dominican Republic, Japan, Mongolia, Niger, Somalia, Tunisia and Viet Nam, 12 months; in Central African Republic, Guinea, Madagascar and Senegal, 15 months; in Estonia, 18 months; in Chile, Egypt and Iran, 2 years.

¹⁷⁹ Azerbaijan, Belarus, Chile, Egypt, Estonia, Iran, Latvia, Libyan Arab Jamahiriya, Moldova, Russia and Uzbekistan.

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. (Recommendation No. 191, Paragraph 7)

There are examples of countries where longer and/or more frequent breaks are granted in the case of particular needs. In Colombia, the employer is bound to grant rest periods more often than the usual two breaks of 30 minutes each, if the female employee produces a medical certificate indicating the reasons why she requires more frequent breaks. In Estonia, the duration of a break granted for feeding two or more children of up to 18 months of age shall be at least one hour, instead of the normal duration of 30 minutes.¹⁸⁰ In some countries, nursing breaks may also be extended if there are no nursing facilities at the workplace.¹⁸¹

Daily reduction of working hours

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. (Recommendation No. 191, Paragraph 8)

Convention No. 183 offers the possibility to member States to choose whether breastfeeding women should be provided with a right to daily breaks or to a daily reduction of hours of work. In many countries, nursing breaks can be converted into a reduction of working time to allow for late arrival or early departure from the workplace. This is the case in Chile, where a women worker, during the nursing period, may either come to work an hour later than normal or leave an hour earlier.¹⁸² In Ecuador, in enterprises or

¹⁸⁰ Similar provisions that increase the length of breastfeeding breaks when nursing mothers have more than one young child exist in Azerbaijan and Moldova.

¹⁸¹ In Venezuela, if there is no nursery at the workplace, the breaks shall each be an hour long instead of 30 minutes, which is the normal duration. In Italy, breaks are reduced from one hour to half an hour each when there are breastfeeding facilities at the workplace.

¹⁸² Similar provisions are available in Cyprus, Estonia, Lithuania, Norway and Russia. In Mongolia, pregnant women or nursing mothers are entitled to work reduced hours on the basis of a medical certificate. In Spain, women can take one hour in two breaks for nine months after birth or they may take one half-hour off their normal working hours. Or, if they choose and it is allowed in a collective agreement, women can take all of the allowed breastfeeding leave at once. In Uruguay, civil servants can request that their working hours be reduced by half during the nursing period.

workplaces where there is no nursery, a nursing mother's hours of work for the first nine months after her confinement are six a day.¹⁸³

Nursing facilities

Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace. (Recommendation No. 191, Paragraph 9)

Recommendation No. 191 suggests that provision be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace. Concerning the financing of such facilities, as formulated, Paragraph 9 of the Recommendation leaves open the question whether such facilities should be established through public or private means (International Labour Office, 1999). In compliance with Recommendation No. 191, provisions on nursing facilities are present in the legislation of around one-third of the countries in the database, although the provisions vary in the amount of detail they provide. In Slovenia, employers are required to provide suitable rooms with beds for pregnant women and nursing mothers. In Colombia, every employer must establish, in premises adjacent to those where the mother works, a room for nursing or a suitable place for the care of children.¹⁸⁴

In the earlier Recommendation No. 95, facilities for nursing mothers were suggested to include the provision of facilities for nursing or day care, financed or at least subsidized by the community or compulsory social insurance. In practice, however, national provisions for such facilities have usually put the entire cost on the employer. In Cambodia, for instance, managers of enterprises employing a minimum of 100 women or girls must set up, within their establishments or nearby, a nursing room and a day-care centre. If the company is not able to set up a day-care centre on its premises for children over 18 months of age, female workers can place their children in any day-care centre, with the charges to be paid by the employer. Similarly, in Brazil, employers with more than 30 women employees must provide a day nursery or else (under a collective agreement) provide reimbursement for childcare for nursing mothers.¹⁸⁵

¹⁸³ These shall be fixed or distributed in the manner described by collective agreement, in the work rules or by agreement between the parties.

¹⁸⁴ Similar provisions exist in Belgium, Costa Rica, Latvia, the Netherlands, Nicaragua, Niger and the Philippines.

¹⁸⁵ Similar provisions exist in Guatemala, Honduras, Paraguay, Venezuela and Viet Nam (although employers are not able to pay for offsite childcare instead of establishing a childcare facility in the first four of these countries).

Provisions on nursing facilities and facilities for daycare often apply if the enterprise employs a minimum number of women. In Madagascar, for example, a special nursing room must be provided in or near enterprises employing more than 25 women.¹⁸⁶ The concern with this kind of provision is that it may offer an incentive for employers not to hire women. In Ecuador, on the other hand, the provision applies to companies employing 50 employees (men and women) or more.¹⁸⁷

An additional concern is that, even if the facilities needed for a nursing room are minimal, workplaces often lack adequate hygienic conditions for breastfeeding. As a result, nursing mothers may be forced to choose between weaning their infants earlier than recommended or using the facilities available, even if these are not satisfactory (International Labour Office, 1997). A recent trend has been to have workplace facilities for expressing and keeping milk which can later be fed to the baby.

¹⁸⁶ In Chile, establishments with 20 or more women workers shall have rooms adjoining and independent of the workplace, where women workers may go to breastfeed children younger than 2 years and leave these children while they are at work. In Cameroon, employers with more than 50 permanent employees must provide a nursing room near the place of work. In Sri Lanka, employers with more than an unspecified number of women workers must establish a crèche for their employees' children under age 5.

¹⁸⁷ In permanent places of employment having 50 employees or more, the employer shall set up, in or near the enterprise or work centre, a nursery where the employees' children may be left. In France, employers with more than 100 employees can be asked to install special breastfeeding rooms. In Libyan Arab Jamahiriya, employers with 50 or more employees must provide childcare facilities.

Today, 18 ILO member States have ratified Convention No. 183, while 63 are party to at least one of the three Maternity Protection Conventions, and nearly all countries have adopted legislative provisions concerning maternity protection and work. In fact, many countries that are not official parties to Convention No. 183 respect some of the key aspects of the Convention. For example, 85 countries currently provide a statutory minimum of 14 weeks of maternity leave.

In general, maternity protection standards have been improving over time. At present, more countries provide payment during maternity leave than in 1994, and the number of countries relying exclusively on employers to provide cash maternity benefits has decreased. However, in order to provide optimal maternity protection, more countries should seek to include all the aspects of Convention No. 183 in their legislation.

There are a number of areas where maternity protections could be strengthened. For example, maternity protection is not available to some working women because many countries exclude certain categories of workers, such as domestic and agricultural workers, from maternity protection provisions. Access to protection for all working women, including those in non-standard forms of work, without any kind of discrimination, should be a priority for ILO member States.

Expanding the types of leave available to parents is another area where greater attention is needed. A number of countries already provide paternity leave and parental leave, usually during the early years of a child's life. Access to these types of leave can help workers reconcile work and family life and, if available to both fathers and mothers, can be effective tools for promoting gender equality.

BIBLIOGRAPHY

- Abe, M.; Hamamoto, C.; Shigeto, T. 2003. *Reconciling work and family: Issues and policies in Japan*, Conditions of Work and Employment Series No. 5 (Geneva, ILO).
- Australian Bureau of Statistics. 2005. "Employment arrangements: Casual employees", in: *Australian Social Trends, 2005*. Available at: <http://tinyurl.com/yld56sq> [17April 2009].
- Charlesworth, S.; Campbell, I.; Probert, B. 2002. *Balancing work and family responsibilities: Policy implementation options*. A report for the Victorian Department of Premier and Cabinet and Department of Innovation, Industry and Regional Development (Melbourne, RMIT University).
- Colombia. *Ley 755 del 23 de julio de 2002, artículo 1*. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2002/ley_0755_2002.html [31 Oct. 2009].
- Commission of the European Communities. 1999. *Report from the Commission on the implementation of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding* (Brussels). Available at: <http://eur-lexlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0100:FIN:EN:PDF> [31 Oct. 2009].
- Drew, E. 2004. *Parental leave in Council of Europe member states*. Available online at: [http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2004\)14%20FINAL_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2004)14%20FINAL_E.pdf) [31 Oct. 2009].
- European Community (EC). 1996. "Council Directive 96/34/EC of June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC", in *Official Journal*, No. L145, 19 June, pp. 4–9.
- . 1998. "Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex", in *Official Journal*, No. L014, 20 January, pp. 6–8.

- 2000. “Resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council of 29 June 2000 on the balanced participation of women and men in family and working life”, in: *Official Journal*, No. C218, 31 July, p. 5.
 - 2002a. *Consolidated version of the Treaty establishing the European Community*. Available at: <http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/12002E.html> [31 Oct. 2009].
 - 2002b. “Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, amended by the Directive 2002/73/EC of the European Parliament and the Council of 23 September 2002”, in: *Official Journal*, No. L269, 5 October, pp. 15–20.
 - 2007. *Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (8) (9) (10) (11)* (consolidated text). Available at: <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1971/R/01971R1408-20070102-en.pdf> [31 Oct. 2009].
- European Economic Community (EEC). 1992. *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0085:EN:HTML> [31 Oct. 2009].
- Einarsdóttir, P.; Pétursdóttir, G.M. 2004. *Culture, custom and caring: Men's and women's possibilities to parental leave* (Akureyri, Centre for Gender Equality and Centre for Women's and Gender Studies). Available at: http://www.jafnretti.is/D10/_Files/CCC_FinalReport.pdf [31 Oct. 2009].
- European Industrial Relations Observatory On-line (EIRO). 2004. *Family-related leave and industrial relations*. Available at: <http://www.eiro.eurofound.eu.int/2004/03/study/tn0403101s.html> [31 Oct. 2009].
- Federation of Uganda Employers. 2002. *A report on terms and conditions of employment in Uganda* (Kampala).
- Germany, Federal Ministry of Health and Social Security n.d. *Protection of working mothers*. Previously available at: http://www.bmgs.bund.de/downloads/03_Mutterschutz.pdf [August 2004].
- Hein, C. 2005. *Reconciling work and family responsibilities: Practical ideas from global experience* (Geneva, ILO).
- Heymann, J. 2000. *The widening gap* (New York, Basic Books).
- International Labour Office (ILO). 1994, Geneva. “Maternity and work”, in *Conditions of Work Digest*, Vol. 13.
- 1996. *Equality in employment and occupation*, Report III (Part 4B), International Labour Conference, 83rd Session, Geneva, 1996 (Geneva).

- 1997. *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report V(1), International Labour Conference, 87th Session, Geneva, 1999 (Geneva).
- 1999. *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report V(2), International Labour Conference, 87th Session, Geneva, 1999 (Geneva).
- 2000. *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report IV(2A), International Labour Conference, 88th Session, Geneva, 2000 (Geneva).
- 2001. *Night work of women in industry*, Report III (Part 1B), International Labour Conference, 89th Session, Geneva, 2001 (Geneva).
- 2004. *Report of the Committee of Experts on the application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 92nd Session, Geneva, 2004 (Geneva).
- 2008. *Observation made by the CEACR to Ecuador concerning the Maternity Protection Convention, 1952 (No. 103), 2008/79th Session*. See APPLIS database available at:
<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> [3 Nov. 2009].
- 2009a. ILO Database of Conditions of Work and Employment Laws on Maternity Protection. Available at:
<http://www.ilo.org/dyn/travail/travmain.home> [10 Dec. 2009].
- 2009b. *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, 2010, Available at:
http://www.ilo.org/public/english/protection/condtrav/pdf/dw_eng.pdf [3 Nov. 2009].
- Japan Statistics Bureau. 2009. “Labor”, in: *Statistical handbook of Japan*. Available at: <http://www.stat.go.jp/english/data/handbook/pdf/c12cont.pdf> [3 Nov. 2009].
- Namibian Social Security Commission. 2009. *Maternity sick and death benefit fund*. Available at:
http://www.ssc.org.na/index.php?option=com_content&view=article&id=47 [17 Apr. 2009].
- Organisation for Economic Co-operation and Development (OECD). 2002. *Babies and bosses: Reconciling work and family life: Vol. 1 Australia, Denmark and the Netherlands* (Paris).
- 2003. *Babies and bosses: Reconciling work and family life: Vol. 2 Austria, Ireland and Japan* (Paris).
- 2008. *Economic survey of Japan 2008: Reforming the labour market to cope with increasing dualism and population ageing*. Available at:
http://www.oecd.org/document/23/0,3343,en_2649_34321_40375191_1_1_1_1,00.html [17 April 2009].

- Paul, J. 2004. *Healthy beginnings: Guidance on safe maternity at work* (Geneva, ILO).
- Ramirez-Machado, J.M. 2003. *Domestic work, conditions of work and employment: A legal perspective*, Conditions of Work and Employment Series No. 7 (Geneva, ILO).
- United Nations (UN). 2009. *Millennium Development Goals report*. Available at: http://www.un.org/millenniumgoals/pdf/MDG_Report_2009_ENG.pdf [31 Oct. 2009].
- United Nations Children's Fund (UNICEF). 2005. *Innocenti declaration on the protection, promotion and support of breastfeeding*. Available at: http://www.unicef.org/nutrition/index_24807.html [31 Oct. 2009].
- World Health Organization (WHO). 2001. *Resolution WHA54.2 of 18 May 2001: Infant and young child nutrition*. Available at: http://apps.who.int/gb/archive/pdf_files/WHA54/ea54r2.pdf [31 Oct. 2009].

ANNEX I: KEY NATIONAL PROVISIONS FOR MATERNITY PROTECTION BY REGION

Africa

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Algeria	14 weeks	100%	Social security	Mandatory	✓		
Angola	3 months	100%	Mixed (if necessary, employer tops up social security)	No information			
Benin	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory			
Botswana	12 weeks	25% or 50% for each day of absence	Employer liability	Mandatory			
Burkina Faso	14 weeks	100%	Mixed (if necessary, employer tops up social security)	Mandatory	✓		
Burundi	12 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory			
Cameroon	14 weeks	100%	Social security	Mandatory	✓		
Central African Republic	14 weeks	50%	Social security	Mandatory	✓		
Chad	14 weeks	100%	Social security	Mandatory			
Comoros	14 weeks	100%	Employer liability	Mandatory			
Congo	15 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory			
Cote d'Ivoire	14 weeks	100%	Social security	Mandatory	✓		
Democratic Republic of Congo	14 weeks	Two-thirds	Employer liability	Mandatory			
Djibouti	14 weeks	100%	Mixed (50% social security; 50% employer)	No information			

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Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Egypt	3 months	100%	Mixed (75% social security; 25% employer)	Mandatory			
Equatorial Guinea	12 weeks	75%	Social security	Mandatory		√	
Eritrea	60 days	Paid, but no information on how much	Employer liability	No information			
Ethiopia	90 days	100%	Employer liability	Mandatory			
Gabon	14 weeks	100%	Social security	Mandatory	√		
Gambia	12 weeks	100%	Employer liability	No information			
Ghana	12 weeks	100%	Employer liability	No information		√	
Guinea	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory	√		
Guinea-Bissau	60 days	100%	Mixed (if necessary employer pays difference between social security and earnings)	No information			
Kenya	3 months	100%	Employer liability	Mandatory			
Lesotho	12 weeks	No obligation for employers to pay	Unpaid	N/A			
Libyan Arab Jamahiriya	50 days	50% (100% for self-employed women)	Employer liability (social security for self-employed women)	Mandatory	√	√	
Madagascar	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory			
Malawi	8 weeks	100%	Employer liability	No information			
Mali	14 weeks	100%	Social security	Mandatory			√
Mauritania	14 weeks	100%	Social security	Mandatory	√		
Mauritius	12 weeks	100%	Employer liability	Mandatory			
Morocco	14 weeks	100%	Social security	Mandatory			
Mozambique	60 days	100%	Employer liability	No information			
Namibia	12 weeks	100%	Social security	No information			
Niger	14 weeks	50%	Social security	Mandatory			

Annex I: Key national provisions for maternity protection by region

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Nigeria	12 weeks	50%	Employer liability	Mandatory			
Rwanda	12 weeks	100% first six weeks; 20% remainder	Employer liability	Mandatory			
Sao Tome and Principe	60 days	100%	Social security ¹	Mandatory			
Senegal	14 weeks	100%	Social security	Mandatory			
Seychelles	14 weeks	Flat monthly rate for 12 weeks	Mixed	Mandatory			
Somalia	14 weeks	50%	Employer liability	Mandatory			
South Africa	4 months	Up to 60% depending on income	Social security	Mandatory			
Sudan	8 weeks	100%	Employer liability	Mandatory			
Swaziland	12 weeks	Unpaid	N/A	N/A			
Tanzania, United Republic of	84 days	100%	Social security	Mandatory			
Togo	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory			
Tunisia	30 days	Two-thirds	Social security	Mandatory			
Uganda	60 working days	100% for 1 month	Employer liability	Mandatory			
Zambia	12 weeks	100%	Employer liability	Mandatory		√	
Zimbabwe	98 days	100%	Employer liability	Mandatory			

Asia (East, South-East, Pacific, South)

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Afghanistan	90 days	100%	Employer liability	Mandatory			
Bangladesh	16 weeks	100%	Employer liability	Mandatory			
Cambodia	90 days	50%	Employer liability	Mandatory			
China	90 days	100%	Social security	Mandatory			
Fiji	84 days	Flat rate	Employer liability	Mandatory			
India	12 weeks	100%	Social security ¹	Mandatory			

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Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Indonesia	3 months	100%	Employer liability	Mandatory			
Kiribati	12 weeks	25%	Employer liability	No information			
Korea, Republic of	90 days	100%	Mixed (2/3 employer; 1/3 social security) ²	Mandatory			
Lao People's Democratic Republic	90 days	100%	Social security ¹	Mandatory ³			
Malaysia	60 days	100%	Employer liability	Mandatory			
Mongolia	120 days	70%	Social security	Mandatory		√	
Myanmar	12 weeks	Two-thirds	Social security	Mandatory			
Nepal	52 days	100%	Employer liability	Mandatory			
Pakistan	12 weeks	100%	Employer liability	Mandatory			
Papua New Guinea	As necessary for hospitalization before confinement and 6 weeks after	Unpaid	N/A	N/A		√	
Philippines	60 days	100%	Social security	Mandatory			
Singapore	16 weeks	100% for first and second child	Mixed (8 weeks employer and 8 weeks government). Government for the third and subsequent confinement	Mandatory			
Solomon Islands	12 weeks	25%	Employer liability	Mandatory			
Sri Lanka	12 weeks for 1st and 2nd child	6/7 or 100% ⁴	Employer liability	Mandatory		√	
Thailand	90 days	45 days paid 100% by employer, then 45 days paid 50% by social security	Mixed (2/3 employer; 1/3 social security)	Mandatory			
Vanuatu	12 weeks	50%	Employer liability	Mandatory			
Viet Nam	4 to 6 months ⁷	100%	Social security	Mandatory			

Annex I: Key national provisions for maternity protection by region

Central and South-Eastern Europe (Non-EU) and CIS

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Albania	365 days	80% prior to birth through 150 days after; 50% for remainder	Social security	Mandatory			√
Azerbaijan	126 days	100%	Social security	Mandatory		√	
Belarus	126 days	100%	Social security	Mandatory		D**	√
Bosnia and Herzegovina	365 days	50% to 100% ⁸	Social security and State (employer reimbursed for initial payment)	No information	√	√	
Croatia	45 days before birth to one year after birth	100% until 6 months after birth, then fixed amount	Social security (health insurance fund, for 6 month, then State)	Mandatory	√	√	
Kazakhstan	126 days	100%	Employer liability	Mandatory			
Kyrgyzstan	126 days	100% first 10 working days; 10 times the benchmark indicator (min. wage level) for remainder	State (employer pays the benefits, but is reimbursed by the State)	Mandatory		√	
The former Yugoslav Republic of Macedonia	No information	No information	No information	No information	√	√	
Moldova, Republic of	126 days	100%	Social security	Mandatory		D**	√
Montenegro	365 days from birth	100%	Employer liability	No information	√	√	
Russian Federation	140 days	100% up to a ceiling	Social security	Mandatory		√	
Serbia	365 days for 1 st and 2 nd child	100%	Social security	Mandatory	√	√	
Tajikistan	140 days	100%	Social security	No information		√	
Turkey	16 weeks	Two-thirds	Social security	Mandatory			
Ukraine	126 days	100%	Social security	Mandatory		√	
Uzbekistan	126 days	100%	Social security	Mandatory		√	

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Developed Economies and European Union

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Australia	52 weeks	Unpaid	N/A	N/A			
Austria	16 weeks	100%	Social security	Mandatory		D**	✓
Belgium	15 weeks	82% first 30 days; 75% up to a ceiling for remaining period	Social security	Mandatory			
Bulgaria	227 days	90%	Social security	Mandatory	✓		✓
Canada	17 weeks (federal)	55% for 15 weeks up to a ceiling	Social security	Mandatory			
Cyprus	18 weeks	75%	Social security	Mandatory			✓
Czech Republic	28 weeks	69%	Social security	Mandatory			
Denmark	18 weeks	100%	Mixed (employer and local government)	Mandatory			
Estonia	140 days	100%	Social security	Mandatory			
Finland	105 working days	70% up to a ceiling plus 40% of additional amount, plus 25% of additional amount	Social security	Mandatory			
France	16 weeks	100% up to a ceiling	Social security	Mandatory	✓		
Germany	14 weeks	100%	Mixed (social security up to a ceiling and employer)	Mandatory	✓		
Greece	119 days	100%	Social security and State	Mandatory	✓	✓	
Hungary	24 weeks	70%	Social security	Mandatory	✓	D**	✓
Iceland	3 months	80%	Social security and State universal flat rate for non qualifying women	Mandatory			
Ireland	26 weeks paid (plus 16 weeks unpaid)	80% up to a ceiling	Social security	Mandatory			

Annex I: Key national provisions for maternity protection by region

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Israel	12 weeks	100% up to a ceiling for 14 weeks	Social security	Mandatory			
Italy	5 months	80%	Social security	Mandatory	✓	D**	✓
Japan	14 weeks	60%	Social security	Mandatory			
Latvia	112 days	100%	Social security	Mandatory	✓		✓
Lithuania	126 days	100%	Social security	Mandatory			✓
Luxembourg	16 weeks	100%	Social security	Mandatory	✓	D**	✓
Malta	14 weeks	100%	Employer liability	Mandatory			
Netherlands	16 weeks	100% up to a ceiling	Social security	Mandatory		D**	✓
New Zealand	14 weeks	100% up to a ceiling	State (Universal)	Mandatory			
Norway	36 (or 46) weeks ⁹	100% (or 80% for 46 weeks)	Social security	Mandatory			
Poland	20 weeks	100%	Social security	Mandatory		✓	
Portugal	120 (or 150) days	100% (or 80% for 150 days)	Social security	Mandatory		✓	
Romania	126 days	85%	Social security	Mandatory	✓		✓
San Marino	5 months	100%	Social security	Mandatory		✓	
Slovakia	28 weeks	55%	Social security	Mandatory			✓
Slovenia	105 days	100% up to a ceiling	Social security	Mandatory	D**	D**	✓
Spain	16 weeks	100%	Social security	Mandatory	✓	✓	
Sweden	14 weeks	80%	Social security	Mandatory			
Switzerland	14 weeks	80% up to a ceiling	Social security and mandatory private insurance (50% employer; 50% employee)	Mandatory			
United Kingdom	52 weeks	6 weeks paid at 90%; lower of 90%; flat rate for weeks 7–39; weeks 40–52 unpaid	Mixed (employer reimbursed for 92% by the State)	Mandatory			
United States	12 weeks (federal)	Unpaid	No national programme	N/A			

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Latin America and the Caribbean

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Antigua and Barbuda	13 weeks	100% for 6 weeks; 60% for 7 weeks	Mixed (60% social security; 40% employer for first 6 weeks)	Mandatory			
Argentina	90 days	100%	Social security	Mandatory	✓		
Bahamas	12 weeks	100%	Mixed (2/3 social security for 13 weeks; 1/3 employer for 12 weeks)	Mandatory		✓	
Barbados	12 weeks	100%	Social security	Mandatory			
Belize	14 weeks	100%	Social security ¹	Mandatory		D**	✓
Bolivia, Plurinational State of	60 days	100% of minimum wage plus 70% of the difference between minimum wage and regular earnings	Social security	Mandatory		✓	
Brazil	120 days	100%	Social security	Mandatory	D*	✓	
Chile	18 weeks	100% up to a ceiling	Social security	Mandatory	D*	✓	
Colombia	12 weeks	100%	Social security	Mandatory	✓		
Costa Rica	4 months	100%	Mixed (50% social security; 50% employer) ¹	Mandatory			
Cuba	18 weeks	100%	Social security	Mandatory	✓	D**	✓
Dominica	12 weeks	60%	Mixed	Mandatory			
Dominican Republic	12 weeks	100%	Mixed (50% social security; 50% employer) ¹	Mandatory			
Ecuador	12 weeks	100%	Mixed (75% social security; 25% employer)	Mandatory		✓	
El Salvador	12 weeks	75%	Social security ¹	Mandatory			
Grenada	3 months	105% for 2 months; 65% for last month	Mixed (65% social security for 12 weeks; 40% employer for 2 months)	Mandatory			
Guatemala	84 days	100%	Mixed (2/3 social security; 1/3 employer) ¹	Mandatory		✓	
Guyana	13 weeks	70%	Social security	Mandatory			
Haiti	12 weeks	100% for 6 weeks	Employer liability	No information			

Annex I: Key national provisions for maternity protection by region

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Honduras	10 weeks	100% for 84 days ⁵	Social security ⁶	Mandatory			
Jamaica	12 weeks	100% for 8 weeks	Employer liability	Mandatory			
Mexico	12 weeks	100%	Social security ¹	Mandatory			
Nicaragua	12 weeks	100%	Mixed (60% social security; 40% employer) ¹	Mandatory	✓		
Panama	14 weeks	100%	Mixed ⁶	Mandatory	✓		
Peru	90 days	100%	Social security	Mandatory			
Paraguay	12 weeks	50% for 9 weeks	Social security	Mandatory			
Saint Kitts and Nevis	13 weeks	65%	Social security	Mandatory			
Saint Lucia	3 months	65%	Social security	Mandatory			
Saint Vincent and the Grenadines	13 weeks	65%	Social security	Mandatory			
Trinidad and Tobago	13 weeks	100% for 1 month and 50% for 2 months paid by employer plus a sum depending on earnings from social security	Mixed	Mandatory			
Uruguay	12 weeks	100%	Social security	Mandatory	D*	✓	
Venezuela, Bolivarian Republic of	18 weeks	100%	Social security	Mandatory	✓	D	

Middle East

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Bahrain	60 days	100% for 45 days; then unpaid	Employer liability	No information			
Iran, Islamic Republic of	90 days or 4 months if breast-feeding	Two-thirds	Social security	Mandatory			
Iraq	62 days	100%	Social security	No information			

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Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C18
Jordan	10 weeks	100%	Employer liability	No information			
Kuwait	70 days	100%	Employer liability	No information			
Lebanon	7 weeks	100%	Employer liability	Mandatory			
Qatar	50 days	100%	Employer liability	No information			
Saudi Arabia	10 weeks	50% or 100% depending on duration of employment	Employer liability	Mandatory			
Syrian Arab Republic	120 days (for first child)	100%	Employer liability	No information			
United Arab Emirates	45 days	100%	Employer liability	No information			
Yemen	60 days	100%	Employer liability	No information			

D=Denounced; D*= Denounced, C.103 ratified; D**= Denounced, C.183 ratified; N/A= not applicable.

Note: The length of maternity leave as included in this Annex refers to the normal general duration of maternity leave as provided for by legislation at the national level. Unless otherwise specified, the duration of maternity leave in days is intended as 'consecutive' or 'calendar' days.

1. If a woman is not covered by social insurance but is otherwise qualified for maternity leave, her employer is responsible for the full payment of her cash maternity benefits.
2. For employees of enterprises meeting the criteria of the Enforcement Decree of the Employment Insurance Act, the Employment Insurance Fund pays the whole maternity leave period.
3. Only some areas of the country are covered.
4. 6/7 for employees covered by the Maternity Benefits Ordinance; 100% for those covered by the Shops and Offices Employees Act.
5. The Labour Code (31 March 2003) provides 10 weeks' maternity leave, while according to the General Regulation of Social Security Act (15 February 2005) maternity benefits are paid for 84 days by social security.
6. Employer makes up the difference between social security or mandatory individual account payments and wages.
7. 4 to 6 months depending on the working conditions and nature of the work.
8. 100% (Republic of Srpska); 50-80%, depending upon the various cantonal regulations (Federation of Bosnia and Herzegovina).
9. Norway has a system of paid maternity, paternity and parental leave of 56 weeks or 46 weeks altogether (paid respectively at 80% or 100% of previous earnings). For the purpose of determining the length of maternity leave, the 10 weeks of paid leave exclusively reserved for the father have been left out of consideration. The mother may use the remainder of 46 or 36 weeks, of which 9 weeks are exclusively reserved for her.

Sources

All information in the table is based on the "ILO Database of Conditions of Work and Employment Laws - Maternity Protection", available at: <http://www.ilo.org/dyn/travail/travmain.home> and ISSA information, except the information on Bosnia and Herzegovina.

The information on Bosnia and Herzegovina is from: ILOLEX, CEACR Individual Direct Request concerning Maternity Protection Convention (Revised), 1952 (No.103), Bosnia and Herzegovina (ratification: 1993), Submitted: 2009. Available at: <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

ANNEX II:
SUMMARY OF INFORMATION AVAILABLE IN ILO
DATABASE FOR EACH COUNTRY, BY REGION

Africa	Asia (East, South-East, Pacific, South)	Central and South-Eastern Europe (Non-EU) and CIS	Developed Economies and European Union	Latin America and the Caribbean	Middle East
Algeria	Afghanistan	Albania	Australia	Antigua and Barbuda*	Bahrain*
Angola*	Bangladesh*	Azerbaijan	Austria	Argentina	Iran, Islamic Republic of
Benin*	Cambodia	Belarus	Belgium	Bahamas	Iraq*
Botswana	China*	Bosnia and Herzegovina*	Bulgaria	Barbados	Jordan*
Burkina Faso	Fiji	Croatia	Canada	Belize	Kuwait*
Burundi*	India*	Kazakhstan*	Cyprus	Bolivia, Plurinational State of	Lebanon
Cameroon	Indonesia	Kyrgyzstan*	Czech Republic*	Brazil	Qatar*
Central African Republic	Kiribati*	Moldova, Republic of*	Denmark	Chile	Saudi Arabia*
Chad*	Korea, Republic of	Russian Federation	Estonia	Colombia	Syrian Arab Republic*
Comoros*	Lao People's Democratic Republic	Serbia *	Finland	Costa Rica	United Arab Emirates*
Congo*	Malaysia	Tajikistan	France	Cuba	Yemen*
Cote d'Ivoire	Mongolia	Turkey*	Germany	Dominica*	
Democratic Republic of Congo*	Myanmar	Ukraine*	Greece*	Dominican Republic	
Djibouti*	Nepal*	Uzbekistan	Hungary	Ecuador	
Egypt	Pakistan*		Iceland	El Salvador	
Equatorial Guinea	Papua New Guinea		Ireland	Grenada*	

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Africa	Asia (East, South-East, Pacific, South)	Central and South-Eastern Europe (Non-EU) and CIS	Developed Economies and European Union	Latin America and the Caribbean	Middle East
Eritrea*	Philippines		Israel	Guatemala	
Ethiopia*	Singapore		Italy	Guyana*	
Gabon	Solomon Islands*		Japan	Haiti*	
Gambia*	Sri Lanka		Latvia	Honduras	
Ghana	Thailand		Lithuania	Jamaica*	
Guinea	Vanuatu		Luxembourg	Mexico	
Guinea-Bissau*	Viet Nam		Malta	Nicaragua	
Kenya*			Netherlands	Panama	
Lesotho			New Zealand	Paraguay	
Libyan Arab Jamahiriya			Norway	Peru	
Madagascar			Poland*	Saint Kitts and Nevis*	
Malawi*			Portugal	Saint Lucia*	
Mali			Romania	Saint Vincent and the Grenadines*	
Mauritania			San Marino*	Trinidad and Tobago*	
Mauritius			Slovakia	Uruguay	
Morocco*			Slovenia	Venezuela, Bolivarian Republic of	
Mozambique*			Spain		
Namibia			Sweden		
Niger			Switzerland		
Nigeria			United Kingdom		
Rwanda*			United States		
Sao Tome and Principe*					
Senegal					
Seychelles					
Somalia					
South Africa					

Annex II: Summary of information available in ILO database for each country, by region

Africa	Asia (East, South-East, Pacific, South)	Central and South-Eastern Europe (Non-EU) and CIS	Developed Economies and European Union	Latin America and the Caribbean	Middle East
Sudan					
Swaziland					
Tanzania, United Republic of					
Togo*					
Tunisia					
Uganda					
Zambia					
Zimbabwe					

Note: For countries marked with an asterisk (*), information is available only on the duration of maternity leave, cash benefits and the source of funding.

Chapters 1 and 2 are based on the full set of countries listed here. Chapters 3 to 5 are based on the subset of 111 countries for which full information is available, and excludes the 56 countries with only 3 pieces of information (asterisked).

