

Pregnancy and Equal Treatment in Employment and Vocational Training

A Guide to the obligations and
rights of employers and
working women



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MINISTRY OF LABOUR &
SOCIAL INSURANCE
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INTRODUCTION

The purpose of this Guide is to give information, advice and practical guidance to all interested parties regarding discrimination on grounds of pregnancy, and in particular to working women and their employers.

The Guide informs on the relevant legislation of the Republic of Cyprus, both as to the rights and obligations of the employers and working women and gives guidelines on how to avoid discrimination incidents against pregnant workers. This is achieved by analysing the national legislation, as well as by using some examples of discrimination at work on grounds of pregnancy and relevant Decisions of the Court of Justice of the European Communities as “examples to be avoided”.

The Guide also focuses on giving information and guidelines to employers on how to treat correctly pregnant women at work and on how to implement the principle of equal treatment between the sexes and to promote equality of opportunity for men and women at work.

The text of this Guide does not constitute legal advice. Given that each case should be considered according to its real facts, employers should seek legal advice from a lawyer or apply to agencies that are competent for combating discrimination, for further information and guidelines on how to deal with a certain case of a pregnant worker. The same applies to persons who wish to lodge a complaint about a possible discrimination against them, on grounds of sex, including discrimination on grounds of pregnancy.

I. CYPRUS LEGISLATION

The protection of pregnancy and maternity at work is directly linked to the promotion of the principle of non-discrimination on the grounds of sex. The Republic of Cyprus, having recognised the importance of efficient protection of pregnant workers as a means to promote the institution of the family, but also as a means to promote the equality of opportunities for men and women, has incorporated in its national legislation, the following laws:

- The Protection of Maternity Laws of 1997 to 2011;
- The Equal Treatment for Men and Women in Employment and Vocational Training Laws of 2002 to 2009;
- The Parental Leave and Leave on Grounds of Force Majeure Laws of 2002 to 2010;
- The Protection of Maternity (Safety and Health at Work) Regulations of 2002.

The above Laws and Regulations cover most of the matters related to the protection of pregnant workers during the time of their pregnancy, as well as the period after birth, as specified by law.

For the purposes of this Guide, emphasis will be given to the provisions of the Equal Treatment for Men and Women in Employment and Vocational Training Law of 2002 to 2009 and the Protection of Maternity Laws of 1997 to 2011, the implementation of which falls within the competence of the Department of Labour. Mention will also be made to the Protection of Maternity (Safety and Health at Work) Regulations of 2002, the implementation of which falls within the competence of the Department of Labour Inspection. The Department of Industrial Relations is the competent authority for the implementation of the Parental Leave and Leave on Grounds of Force Majeure Laws. You will find all contact details at the end of this Guide.

The Protection of Maternity Laws and the Equal Treatment for Men and Women in Employment and Vocational Training Laws set out a great

number of obligations for employers and cover a wide range of rights of working women, offering high level of protection to pregnant workers before and after birth.

The Protection of Maternity Law provides for, directly and specifically, the protection of pregnant women at work, ensuring that pregnant workers are entitled to a continuous period away from work (the maternity leave). This period is considered necessary for the protection of the biological state of the pregnant woman and of the embryo on the one part and the protection of the special relationship between the woman and the child during the period after the pregnancy and birth on the other part. Moreover, the same law provides for some additional compulsory facilitations for the needs that occur during a critical period of time after birth.

The Equal Treatment for Men and Women in Employment and Vocational Training Law provides for the protection and promotion of the principle of equality between men and women in employment and vocational training and, within the scope of this objective, it protects working women against any kind of discrimination on grounds of sex. Given that pregnancy is a biological state exclusive to women, any less favourable treatment of pregnant women and women who have recently given birth or are breastfeeding, for reasons of pregnancy, must also be directly connected to their gender. Therefore, according to an established case-law of the Court of Justice of the European Communities, discrimination against a working woman for reasons of pregnancy is a direct discrimination on grounds of sex and it is examined under the provisions of the Equal Treatment for Men and Women in Employment and Vocational Training Laws.

These two laws aim, through effective implementation of their provisions, to fully and efficiently fight discrimination at work on grounds of sex. In particular, under Section 4(5) of the Equal treatment for Men and Women in Employment and Vocational Training Laws, which provides that *«any less favourable treatment of women for reasons of pregnancy or maternity leave within the meaning of the Protection of Maternity Law should be considered as discrimination within the meaning of this Law»*, **the two laws are interdependent.**

The expressed protection of rights, specifically for a pregnant worker (or/and a woman who is about to adopt a child, hereinafter referred to as the “adoptive mother”), is included in the provisions of the **Protection of Maternity Laws of 1997 to 2011**.

THE MAIN PROVISIONS of the above law are as follows:

- Dismissal of a pregnant worker (or/and adoptive mother) is prohibited.
- Right to 18 weeks of maternity leave with the possibility to extend under certain criteria.
- Special rights for breastfeeding and increased responsibilities for the care of the child.
- Protection of rights of pregnant worker (and of adoptive mother) when returning to work.

The said protection is provided to pregnant workers during all stages of pregnancy, starting from the pre-birth period, during maternity leave and the post-birth period, and ending when she returns to work (fig. 1). The same applies in case of adoption, where the adoptive mother is the beneficiary of such protection which is adapted to the needs created by the adoption procedure (fig. 2).

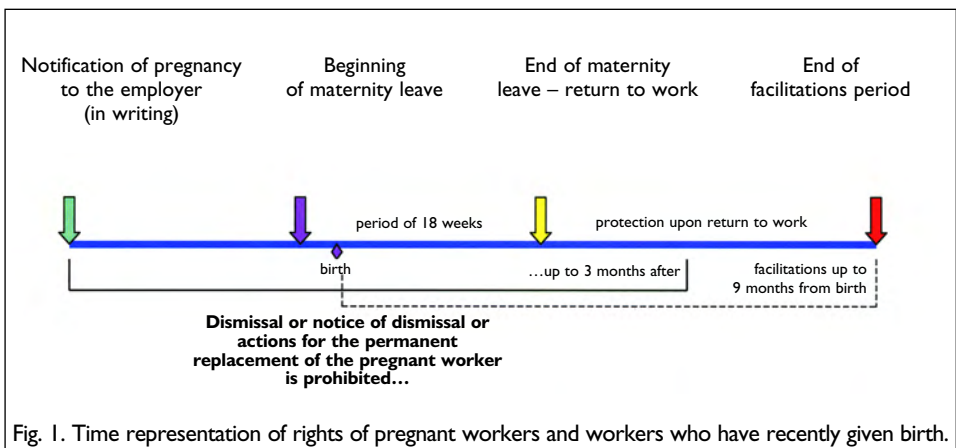
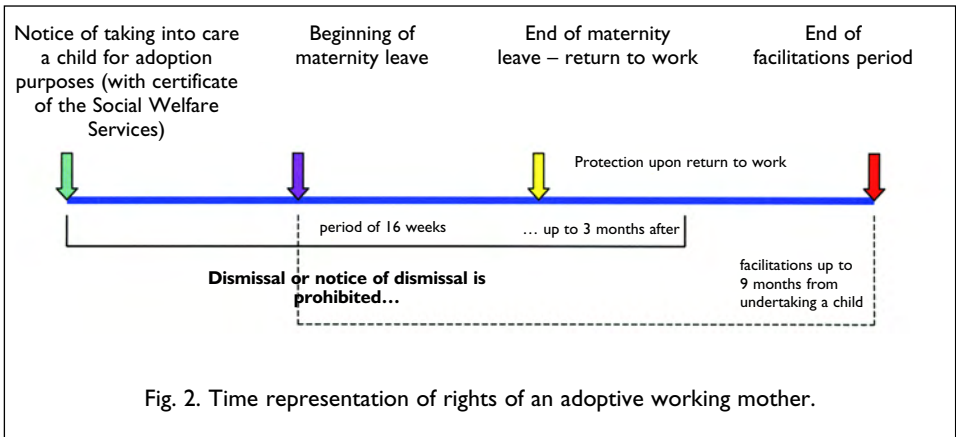


Fig. 1. Time representation of rights of pregnant workers and workers who have recently given birth.



Protection during pre-birth period

According to the Protection of Maternity Laws of 1997 to 2011:

- This Law **ensures** 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 and **provided that** they have notified their employer in time and by producing a medical certificate upon return to work.
- Dismissal or notice of dismissal to a pregnant worker is **prohibited, provided that** the said worker has notified her pregnancy to her employer **in writing**. The term “in writing” includes producing a written letter, email, fax or similar notification and/or a medical certificate stating the fact of the pregnancy. **The said prohibition starts** with the written notification of pregnancy to the employer **and is extended up to 3 months after the end of maternity leave**. During this time, the employer cannot dismiss or give notice for dismissal or go ahead with actions to ensure the permanent replacement of the pregnant worker. The employer may, if deemed necessary, request a medical certificate certifying the pregnancy of the worker and the worker must produce the said medical certificate.

Furthermore, if the employer is informed of the workers pregnancy orally, either by the pregnant worker or through her colleagues or in any other way, or even if he/she did not know of the pregnancy and he/she proceeds with a dismissal, the pregnant worker is entitled, **within 5 working days** of receiving the dismissal or notice for dismissal, to notify her pregnancy to the employer by means of a **valid medical certificate**. Once she does this, then the employer **must repeal the dismissal or notice for dismissal** so as to ensure that she will be afforded the protection from dismissal under the law, as specified above.

- Dismissal or notice of dismissal to a working woman who intends to adopt a child is **prohibited, provided that** the said worker has notified her employer by a certification of the Department of Social Welfare Services that she intends to adopt a child. **The said prohibition** starts with the notification of intention to adopt **and is extended up to 3 months after the end of maternity leave**.
- The employer **may dismiss** a pregnant worker **only** if the specific case falls within the following exceptions:
 - (a) the employee is found guilty of a misdemeanour or her behaviour justifies the severance of the employment relation;
 - (b) the business at which she is employed ceased to exist; and
 - (c) her contract has expired.

It is noted that even if the dismissal of a pregnant worker is considered to fall within the above exceptions of the Law, the employer has to prove the reasons of the dismissal in writing.

Moreover, it is noted that **the non renewal of a pregnant worker's employment contract**, as set out in article 4(1)(c), **should not be based on a reason associated with her condition**. This point comes from an established case-law of the Court of Justice of the European Communities, as well as from the provisions of the Equal treatment for Men and Women in Employment and Vocational Training Laws, as shown below in paragraphs 1.2. and 2. of this Guide.

According to the Protection of Maternity (Safety and Health at Work) Regulations of 2002, the employer should:

- **Have at his possession a written assessment of risks to the safety and health of his employees.** This assessment should mention the risks to the safety and health of pregnant workers, workers who have recently given birth or are breastfeeding or of their children, emanating from their work or their stay in a workplace.
- **To determine and take all necessary preventive and/or protective measures** in order to ensure the safety and health of pregnant workers, workers who have recently given birth or are breastfeeding, as well as of the embryo and/or of their babies. These measures could include the adjustment of the working conditions and/or the working hours.
- In case the avoidance of risks is not technically feasible by adjusting the working conditions and/or the working hours of the worker concerned, **to move** the pregnant worker **to another work without prejudice to her rights.**
- If moving her to another job is not technically and/or objectively feasible, the worker concerned shall be **granted leave** for the whole of the period necessary to protect her safety or health, **without prejudice to her rights and with full payment of her emoluments.**
- In case the pregnant worker performs **night work** and has a medical certificate establishing that she has to avoid such work that could jeopardise her safety and health, **to transfer her to daytime work or/and discharge her completely** from her work for the time period considered necessary, **without prejudice to her rights and with full payment of her emoluments.**

An employer **may not oblige** a pregnant worker or a worker who have recently given birth to perform duties for which the assessment has revealed a risk of exposure to agents (natural, ergonomic, biological or chemical) or working conditions which could jeopardise her safety and health.

(The factors and working conditions to be avoided are indicated in the Annexes of the above Regulations. For further information you may contact the Department of Labour Inspection, which is the competent body for the monitoring of their implementation.)

Protection during maternity leave

According to the Protection of Maternity Laws of 1997 to 2011:

- This Law **ensures** that pregnant workers are entitled to a **maternity leave of 18 weeks in total** (of which 11 are compulsory and are allocated as follows: two before the week of the expected birth and the rest after birth), **provided that** the pregnant worker provides the necessary medical certificate that states the estimated date of delivery.
- The employer **cannot force** the worker concerned to return to her job during the above-mentioned compulsory period.
- As to the non compulsory weeks, the working mother **may choose** whether she will return to her job if she is asked to do so. In case she chooses to take her maternity leave, **the employer may in no case use this decision of hers against her.**
- **In cases of premature labour or in any other case where the infant is hospitalized right after birth for health reasons,** the mother is entitled to additional maternity leave as follows: For the first 21 days that the infant is hospitalized in an incubator, the worker is entitled to an extension of one additional week of maternity leave. If the infant continues to be hospitalized, the worker, for every additional 50% of the 21 days, is entitled to an additional week with a maximum of 6 weeks in total. The worker, in order to be granted leave additional to the 18 weeks, she must provide her employer with a written certification from the hospital and from a doctor of relevant specialty.
- All pregnant workers are entitled to a maternity leave, **regardless of the time** for which they have been working for a specific employer.

Working women who are about to adopt a child under 12 years old are also entitled to a maternity leave. By notice in writing to their employer expressing their intention to undertake the care of a child for adoption purposes, at least 6 weeks before, adoptive mothers are entitled to 16 weeks of maternity leave.

According to the Social Insurance Laws of 1980 to 2009:

- An insured salaried or self-employed woman, as well as a woman who works abroad in the service of a Cypriot employer and is voluntarily insured, **is entitled to a maternity grant** by the Social Insurance Fund, **provided that she fulfils** certain conditions on the contributions.
- **Maternity grant** is equal to **75%** of her insurable earnings over the previous year **increased** proportionally to the number of her dependants. The grant is paid for a period of 18 consecutive weeks starting at least 2 weeks before the week of the expected birth.
- **In order to receive the maternity grant** the working woman should complete and submit the relevant application to the Social Insurance Service **21 days before** the date the maternity leave starts.
- **If the application is submitted after birth**, the period of payment shall be fixed in the basis of the birth date and not the date of expected birth.
- The pregnant worker, **after giving birth**, is also entitled to a **maternity grant from the Social Insurance Fund (in addition to the maternity allowance)**, paid as lump sum, if she or her husband fulfil certain conditions. The application should be submitted within **12 months** from birth and in order to obtain the grant a different application should be submitted.

(For more information on the maternity allowance which is granted during the maternity leave and provided that the worker fulfils certain conditions, please contact the Social Insurance Services. It should also be noted that the Social Insurance legislation will soon be amended so as to cover for a benefit in cases where the maternity leave is extended in cases of premature labour or hospitalization of the infant due to health issues, right after delivery.)

Protection and additional facilitations for women who have recently given birth (and for adoptive mothers) when returning to work:

- For a period of **nine (9) months** from birth, or from the day the maternity leave starts in case of adoption, the working mother **has the right to either interrupt her employment for one hour or go to work one hour later**

or leave work one hour earlier every day. It is noted that this hour is considered and paid as working time.

- **The period of absence** of the working woman who has recently given birth (and of adoptive mother) **may not be used as a reason for altering unfavourably her working conditions.** This means that the employer may not move her to a lower level position from the one she was in before the maternity leave.
- During the absence of the worker, it is ensured that the **period of her absence is considered working time** for seniority purposes and her right to promotion or return to the same or another job of the same nature and remuneration as her job before the maternity leave shall not be unfavourably affected.
- Accordingly, **all benefits related to her work position are secured** (for example 13th salary in full), with the exception of those benefits that are related to the quantity and/or value of the work produced.

Additional protection

The Equal treatment for Men and Women in Employment and Vocational Training Laws of 2002 to 2009, enacted in harmonisation with the relevant European Directives¹, reflect the importance given by the European and Cypriot legislator for **full and efficient protection of the pregnant worker.**

THE OBJECT of this law is to implement the principle of equal treatment for men and women as regards:

- access to vocational orientation, education and training;
- terms and conditions of their provision;
- access to employment and self-employment;
- terms and working conditions and promotion;
- terms and conditions of dismissal; and
- membership of, and involvement in, an organisation of workers or employers.

¹ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment for men and women in matters of employment and occupation (recast).

THE GENERAL RULE is the principle of non discrimination, either directly or indirectly, on grounds of sex, and its provisions aim at implementing the said principle.

According to the provisions of this Law

«the principle of equal treatment» implies that there shall be no discrimination on grounds of sex, either directly or indirectly, by reference in particular to marital or family status, especially as regards matters regulated by this Law.

*«discrimination on grounds of sex» shall mean any direct or indirect discrimination, including sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct and **any less favourable treatment of a woman related to pregnancy, maternity or leave or the consequences of pregnancy, but not including the positive actions,** while any instruction or order on discrimination against individuals on grounds of sex, is considered sex discrimination.*

«direct sex discrimination» implies that one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.

«indirect sex discrimination» exists where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

The definition of the discrimination on grounds of sex, as described above, comprises of the less favourable treatment of a woman due to pregnancy or the consequences of pregnancy or maternity, such as an illness related to the pregnancy. According to an established case-law of the Court of Justice of the European Communities, the said treatment is a direct discrimination on grounds of sex and therefore it shall be examined under the provisions of the said law.

THE SCOPE OF IMPLEMENTATION OF THIS LAW covers the industrial relation between employer and employee both in the **private** and **public** sector,

at all stages, from the notice of intention of its creation through to its termination.

THE PROTECTION OF PREGNANT WORKERS is addressed very seriously by the said Law, and this is established by the strict provisions introduced by **articles 2, 4(4) and (5), 5 and 11**:

According to **article 2**, measures for the protection of women due to pregnancy, childbirth, nursing or maternity do not constitute positive actions. Positive actions, which are not enforced but are simply encouraged under the said law, create an inequality which achieves substantial equality. Yet, in the case of pregnant workers, the protective measures are self-evident and there is no need to include them in the positive actions. Therefore, it is clear that the legislator, by providing for this exception, in reality sets out the obligation of the employer to treat pregnant workers positively, for their protection.

Article 4 protects the same rights of pregnant workers as the Protection of Maternity Laws since it requires that “... *a woman who has taken maternity leave has the right, after expiration of the period of the leave, to return to her job or to a similar position on terms and conditions not less favourable for her and to benefit from any improvement in working conditions to which she would be entitled during her absence*”. Moreover, by virtue of paragraph (5) of the same article, any less favourable treatment of a woman on grounds of pregnancy or maternity leave in the sense of the Protection of Maternity Law, is considered discrimination in the sense of the said Law.

This specific regulation introduced by the said article requires the use of both legislations in order to successfully lodge a complaint about discrimination on grounds of pregnancy. This indicates the rigour spirit of the law regarding discrimination against pregnant workers and in particular the terms and conditions of their employment, since there are two different legislations providing for their protection.

The scope and rigour of the protection of pregnant workers is also shown in **article 5** of the same law which requires that *«the less favourable treatment of a*

person on grounds of sex defies justification», constituting a direct discrimination on grounds of sex and rendering the accused guilty of an offence. Given also that the Court of Justice of the European Communities, according to its established case-law, has decided that the less favourable treatment of a pregnant worker on grounds of pregnancy is a direct discrimination on grounds of sex, we come to the conclusion that under the said article, discrimination on grounds of pregnancy also defies justification.

Finally, under **article 11**, which requires that the less favourable treatment of pregnant women and women who have recently given birth or are breastfeeding, or on maternity leave, **“is presumed to be due to these conditions”**, the protection of the pregnant worker becomes particularly rigorous with the burden of proof shifting from the worker to the employer.

It is noted that the general rule on the shifting of the burden of proof requires that the plaintiff should establish a “prima facie case” before the shifting. This means that the plaintiff has to prove facts from which it may be presumed that there has been a violation, before the Court obliges the respondent to prove that there has been no breach or that the breach had no consequence against the plaintiff.

However, in the case of pregnant workers who are less favourably treated by their employers, the said condition disappears since, according to the wording of article 11, a refutable presumption is created and **the employer is invited to prove that the less favourable treatment of the worker is not due to her pregnancy.**

2. EMPLOYER'S OBLIGATIONS TOWARDS

PREGNANT WORKERS

UNDER CYPRIOT LEGISLATION

According to the provisions of both aforesaid laws, and the established case-law of the Court of Justice of the European Communities, the employer is the main responsible for the protection of his pregnant workers and his legal liability in cases where there is a breach of their provisions, is particularly important.

In this scope, the employer should:

- Take appropriate steps and necessary measures to ensure the implementation of the principle of equality at work and promote the equality of opportunities for all of his employees, irrespective of gender.
- Facilitate the information of his employees on the provisions of the law, their rights emanating therefrom and his obligations towards them.
- Assess risks that may occur and take all the necessary measures to avoid them, including changing the nature of work, the working conditions or hours, even releasing them from work for the appropriate period of time (without prejudice to their rights and with full payment of their emoluments).
- In case the pregnant employee performs night work and this jeopardises her safety and health, to transfer her to daytime work or, if this is not technically feasible, to release her completely from her work duties for the time period considered necessary.

POINTS THAT NEED PARTICULAR ATTENTION FROM EMPLOYERS,

for the prevention of the offence of discrimination on grounds of pregnancy during various stages of their industrial relation with pregnant workers, so that they do not breach the principle of equal treatment for men and women at work, are inter alia the following:

Examples of discrimination on grounds of pregnancy and the relevant decisions of the Court of Justice of the European Communities, which are described

below, are used as “examples to be avoided” for the substantial implementation of the equal treatment for men and women at work.

A. As regards access to employment, vocational education and training

- The employer may not refuse to hire (at any job, permanent or not, irrespective of section or branch of activity and for all seniority scales), or include in a vocational education or training programme a female candidate, only for the reason that she is pregnant or she may be pregnant in the future.

Example I.

Refusal to appoint a pregnant woman

In the Dekker case, a female candidate was selected for the position of instructor at the Training Centre for Young Adults and she was awaiting her appointment. However, when she informed the committee dealing with the applications that she was pregnant the board of management decided not to appoint her, alleging that the Centre would be financially unable to employ a replacement during Mrs Dekker’s maternity leave.

The Court of Justice of the European Communities decided that an employer is in direct contravention of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, if he refuses to enter into a contract of employment with a female candidate whom he considers to be suitable for the job where such refusal is based on the possible adverse consequences for him of employing a pregnant woman. It also clarified that discrimination cannot be justified on grounds relating to the financial loss that an employer who appointed a pregnant woman would suffer for the duration of her maternity leave.

Case C-77/88

Example 2.

Refusal to appoint a pregnant woman

In the *Mahlburg* case, the plaintiff was employed as a nurse at a university heart surgery clinic under a fixed-term contract, for a period of one year. During the validity period of her contract, she applied for two permanent positions that had been internally advertised. The posts were for the surgery department and had to be taken up immediately or as soon as possible and the person would be employed in shifts.

In the meantime she found out that she was pregnant and she informed her employer who transferred her from the operating theatre to other nursing activities which did not involve any risk of infection. Then, the defendant in the main proceedings decided not to appoint Ms *Mahlburg* to either of the posts, citing the reason that she could not perform her duties in the operating theatre during her pregnancy, since the law prohibits employers from employing pregnant women in areas in which they would be exposed to the harmful effects of dangerous substances.

The question referred to the Court was whether the refusal of the employer to employ an applicant in a vacant post, which she is qualified to hold because she is pregnant and cannot, from the outset and for the duration of her pregnancy, be employed in the post is a direct discrimination on grounds of sex.

The Court has observed that, in accordance with an established case-law, only women can be refused employment on grounds of pregnancy and such a refusal therefore constitutes direct discrimination on grounds of sex. In application of this principle the Court clarified that the dismissal of a pregnant worker on grounds of her pregnancy or on grounds connected to the condition of pregnancy may concern women only and, consequently, it constitutes a less favourable treatment on grounds of sex.

The Court has recognised that the refusal of employment was justified since the plaintiff was unable to undertake immediately the duties of this position, concluding, however, that the refusal to appoint a pregnant woman to a post for an indefinite period cannot be justified by the fact that the condition of pregnancy prevents her from being employed in that post. Finally, the Court has observed that the equal treatment for men and women, especially in such cases, is a fundamental principle of the Community legal order and may not be restricted due to financial loss which an employer who appointed a pregnant woman would suffer.

Case C-207/98

- Forms to be completed as part of the recruitment procedure or the procedure for accessing vocational training with any employer (of the private or the public sector), should not contain questions on personal or/and family life of the candidate. Close attention should be given so during the recruitment procedure, employers do not ask the candidates personal questions on their marital status, on whether the candidate is pregnant or if she intends to get pregnant etc. Such questions (either oral or written) may indicate their intention to commit discrimination against these candidates.
- When applying for a position or for vocational education and training, the criteria on which candidates will be selected, should not be subjective (connected to stereotypes on the abilities or/and capabilities of the one or the other gender), but objective and pertaining to the knowledge and experience required for the specific position. Besides, employers should take into consideration that pregnancy is only a temporary condition, whilst, on the contrary, the recruitment or promotion of the most appropriate candidate is a long-term investment, the benefits of which overcome any impediments that may temporarily occur for the business.

B. As regards the renewal of the employment contract

This point should be addressed very carefully, since, according to the Protection of Maternity Laws (see par. 1.1.A of the Guide), the employer may, without any legal consequence, not renew the employment contract of a pregnant worker. However, this cannot be accepted when the case is examined under the Equal Treatment for Men and Women in Employment and Vocational Education Laws, which prohibits the less favourable treatment of a pregnant worker on grounds of pregnancy.

- The non renewal of an employment contract on the grounds of pregnancy is a direct discrimination on grounds of sex, which, technically, amounts to a refusal to engage and, by extension, discrimination on grounds of sex as regards access to employment.

Example 3.

Non-renewal of contract because of the worker's pregnancy

In the Melgar case, the Court of Justice of the European Communities in reply to the question referred for preliminary ruling submitted by a Spanish Court, it interpreted the EU legislation with regard to the offence of discrimination on grounds of pregnancy as follows:

In accordance with Article 10 of Directive 92/85/EC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding,² “Member States are taking the necessary measures to prohibit dismissal of pregnant workers [...] [who are pregnant, have given birth or are breastfeeding] the period from the beginning of their pregnancy to the end of the maternity leave [...] save in exceptional cases not connected with their condition”.

² It is noted that the Republic of Cyprus has incorporated the said Directive in the national legislation.

The Court has observed that the provisions of Article 10 of the said Directive impose on Member States, in particular in their capacity of employer, precise obligations which afford them no margin of discretion in their performance. Moreover, in accordance with Articles 2 and 3 of Directive 76/207/EC³ 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, where non-renewal of a fixed-term contract is motivated by the worker's state of pregnancy, it constitutes direct discrimination on grounds of sex.

Based on the above, the Court ruled that non-renewal of a fixed-term contract, provided that it is proved that this was due to reasons connected with the pregnancy, under certain circumstances, amounts to a refusal to engage and constitutes a direct discrimination on grounds of sex, in violation of the EU law.

Case C-438/99

Such instances of discrimination on grounds of pregnancy as regards access to employment as described above, have also been observed in the Republic of Cyprus and in particular in a case which was investigated by the Equality Authority of the Office of the Commissioner for Administration (Ombudsman), and incorporated in its Annual Report for the year 2006. The said case is described below unedited:

Example 4.

Non-renewal of the employment contract due to pregnancy

The Equality Authority investigated in 2006⁴ a complaint lodged by two temporary public employees the contracts of whom were not renewed because and while they were on maternity leave.

³ The said Directive has also been incorporated in the national legislation of the Republic of Cyprus.

⁴ Annual Report of the Equality Authority (2006), p. 17.

Both women were working on a casual basis in the public sector, the first at the General Hospital of Lemesos since 2002 and the latter at the Ammochostos District Administration since 2003, with their services being extended with consecutive contracts. Not offering new contracts at due time was owed entirely to the fact that they were absent on maternity leave. Both women were rehired after the end of their maternity leave. The investigation brought to light that the way the cases of these two women were dealt with was not an isolated incident but was actually part of the Public Administration and Personnel Department's general policy, which instructed not to extend contracts of services to casual employees who were absent on maternity leave.

In her relevant Report the Ombudsman expressed the opinion that the above policy constitutes direct and unlawful discrimination on the grounds of sex and specifically, sex discrimination that is prohibited by The Equal Treatment of Men and Women in Occupation and Vocational Training Law. [...]

C. As regards the working terms and conditions

- Pregnant women are entitled to the same working terms and conditions as their male and female colleagues who are not pregnant. In other words, the pregnancy of a working woman should not be used as grounds for decisions on less favourable treatment in comparison to her other colleagues.

It is noted that the physical consequences of pregnancy such as fatigue and nausea last, usually, for a short period and they do not severely affect the worker's performance. Pregnancy is different for every woman and decisions cannot be taken based on guesswork in general.

- The right to the same working conditions and terms includes the right of a pregnant worker to enjoy in the same way the benefits or other allowances offered by her work. The examples below refer to the criteria of calculation of a pregnant worker's seniority, as well as to her maternity leave.

Example 5.

Calculation of seniority of a working woman on maternity leave

In the Herrero case, the applicant was employed as a casual servant of the public sector in Spain and after succeeding in a competition for permanent staff she was appointed to the post of administrative assistant by a decision which was published. That decision assigned her to a post which she had to take up within a period of one month. The applicant, who was on a maternity leave at that time, immediately requested that the period for taking up the post be extended until the end of that leave and at the same time she requested that the period of maternity leave be taken into consideration for the purpose of calculating her seniority.

The applicant's employer granted the request for an extension without, however, mentioning the matter of the calculation of her seniority. For this reason the applicant brought an action against her employer before the referring court seeking a ruling that her seniority as an officer be calculated as from the date of her appointment and not as from the date on which she actually took up the post at the end of her maternity leave.

According to the national legislation, the rights to remuneration and to social security benefits do not accrue until the worker has taken up the post. Therefore, the advancement on the basis of seniority is delayed in comparison with that of the other successful applicants from the same competition who did take up their posts on the appointed date.

The Court of Justice of the European Communities decided that the application of provisions concerning the protection of pregnant women cannot result in less favourable treatment regarding their access to employment. Therefore it is not permissible for an employer to refuse to hire a pregnant woman on the grounds that an impediment to work arising on account of the pregnancy would prevent her being employed from the outset and for the duration of the pregnancy in the post of unlimited duration to be filled.

As regards the taking into consideration of a period of maternity leave in respect of attaining a higher grade in the professional hierarchy, the Court has held that a female worker is protected in her employment relationship against any unfavourable treatment on the ground that she is or has been on maternity leave and that a woman who is treated less favourably because of absence on maternity leave suffers discrimination on the grounds of her pregnancy and of that leave. As Community law requires that taking such statutory protective leave should interrupt neither the employment relationship of the woman concerned nor the application of the rights derived from it and should not lead to discrimination against that woman.

According to the above, the Court noted that the national legislation under consideration introduces a direct discrimination on grounds of sex at work.

Case C-294/04

Example 6.

Worker whose period of maternity leave coincides with the period of annual leave

In the Gomez case the period of maternity leave coincided with the period of annual leave for all staff agreed in a collective agreement on annual leave. The question referred to the Court of Justice of the European Communities for a preliminary ruling was whether the principle of equal of treatment and non discrimination of women who are pregnant or breastfeeding means that a worker must be able to take her annual leave during a period other than the period of her maternity leave, if the dates of annual leave, fixed in advance by a collective agreement between the undertaking and the workers' representatives, coincide with those of her maternity leave.

According to the Court of Justice of the European Communities, the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of Community social law from which there can be no derogations, since the worker must normally be entitled to actual rest. Allowing the two periods of leave to overlap would entail one of them being lost, in this case the annual holiday.

Moreover, the purpose of the right to annual leave is different from that of the right to maternity leave. Maternity leave is intended, first, to protect a woman's biological condition during and after pregnancy and, second, to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth.

The court reminded that the principle of equality intends to bring about equality in substance rather than in form. The exercise of rights conferred on women by provisions intended to protect women in relation to pregnancy and maternity cannot be made subject to unfavourable treatment regarding their working conditions.

In view of all foregoing considerations and having recognised the importance of the right of all workers to annual leave, the Court decided that, under the principle of equality for men and women, a worker must be able to take her annual leave during a period other than the period of her maternity leave, including in a case in which the period of maternity leave coincides with the general period of annual leave fixed, by a collective agreement, for the entire workforce.

Case C-342/01

- As it results from the above examples, the employer is obliged to protect the rights of a pregnant worker and within the scope of such obligation the necessary measures should be taken so the pregnant worker reserves her employment, as well as to be assisted in the performance of her duties by taking, where necessary, the appropriate countervailing measures.
- Any change to the detriment of the working conditions of a pregnant worker on grounds of her pregnancy, including dismissal, which will be examined below, constitutes an offence of direct discrimination on grounds of sex.

D. As regards promotion

- As to the promotion procedures, employers should not guess in advance that a woman who at a given moment is pregnant does not wish to be promoted, either because, according to the employer's personal opinion, her responsibilities in personal life do not allow her to perform her duties in a satisfactory way, either because she does not want any additional responsibilities.
- As regards access to employment or vocational education, the criteria on which candidates will be selected, should not be subjective (connected to stereotypes on the abilities or/and capabilities of the one or the other gender), but objective and pertaining to the knowledge and experience required for the specific position.
- Moreover, employers should not reject the promotion of a pregnant worker due to her pregnancy, her condition or childbirth.

Example 7.

Promotion of a pregnant worker

In the Thibault case, the applicant, who was working at the French Social Security Institution, was on maternity leave for a long period, since, beside her right to maternity leave on full pay, she also used her right, under collective agreement, to additional maternity leave on half pay. The applicant was also absent on sick-leave before taking her maternity leave.

According to the regulation of the institution where she was working, the employees' promotion depends on the assessment by the superiors. However, under the same regulation, an employee could be the subject of evaluation by his superiors only if he/she was present at work for at least six months. The applicant, due to the above-mentioned absences, exceeded the said period of time so she could not be assessed. Therefore she was not given a raise. The applicant claimed that the failure of her being assessed, because of her absence on maternity leave, constituted discrimination and that she had as a result lost an opportunity to promotion.

The Court pointed out that the right of each employee to have her performance assessed annually and, consequently, to the possibility of qualifying for promotion consists an integral part of the terms of their employment contract. The principle of non-discrimination requires that a woman who continues to be bound to her employer by her contract of employment during maternity leave should not be deprived of the benefit of working conditions which apply to both men and women and are the result of that employment relationship.

It must therefore be held that a woman who is accorded less favourable treatment regarding her working conditions, in that she is deprived of the right to an annual assessment of her performance and, therefore, of the opportunity to qualify for promotion as a result of absence on account of maternity leave, is discriminated against on grounds of her pregnancy and her maternity leave.

Case C-136/95

E. As regards the terms of dismissal

- Dismissal of a female worker at any time during her pregnancy for absences due to incapacity for work caused by illness resulting from that pregnancy is against Community Law, since, according to this Law, the time of absence during pregnancy cannot be taken into account for calculation of the period justifying her dismissal under national law, on the basis of sickness absences in general.

The special protection for women, introduced by Community Law by prohibiting dismissal, takes into consideration the possibility of the harmful effects which the risk of dismissal may have on the physical and mental state of women who are pregnant, women who have recently given birth or women who are breastfeeding, including the particularly serious risk that pregnant women may be prompted voluntarily to terminate their pregnancy. Therefore, as it results from the content of this Guide, these provisions are particularly strict.

Example 8.

Dismissal of pregnant woman due to pregnancy

In the Webb case, a woman was recruited in replacement of another woman (Stewart) during the latter's maternity leave. The recruitment of Ms. Webb was made before Ms. Stewart goes on maternity leave, in order to train her. However, it was envisaged that Ms. Webb would continue to work following Ms. Stewart's return. A few weeks after Ms. Webb started working in the company she thought that she might be pregnant. Her employer was informed of this indirectly. He then called her in to see him and informed her of his intention to dismiss her. Ms. Webb's pregnancy was confirmed a week later and she was dismissed.

The Court decided that dismissal of a female worker on account of her pregnancy constitutes direct discrimination on grounds of sex and dismissal of a pregnant woman recruited for an indefinite period cannot be justified on grounds relating to her inability to fulfil a fundamental condition of her employment contract, even where the availability of the employee is necessarily, for the employer, a precondition for the proper performance of the employment contract.

And this because the protection afforded by Community law to a pregnant woman cannot be dependent on whether her presence at work during maternity is essential to the proper functioning of the undertaking in which she is employed; any contrary interpretation would render ineffective the provisions of the directive.

Case C-32/93

Example 9.

Dismissal of a pregnant woman - Absences due to illness arising from pregnancy

In the Rentokil case, the applicant was working in a private company as a driver. The contracts of employment included a clause stipulating that, if an employee was absent because of sickness for more than 26 weeks continuously, he or she would be dismissed. The applicant exceeded the above limit of absences, since she was not able to work due to illness arising from her pregnancy, and she was dismissed.

The Court of Justice of the European Communities reminded firstly that dismissal of a female worker during pregnancy for absences due to incapacity for work resulting from her pregnancy is linked to the occurrence of risks inherent in pregnancy and must therefore be regarded as essentially based on the fact of pregnancy. Such a dismissal can affect only women and therefore

constitutes direct discrimination on grounds of sex. The Court also pointed out that pregnancy is a period during which disorders and complications may arise compelling a woman to undergo strict medical supervision and, in some cases, to rest for all or part of her pregnancy. Moreover, dismissal of a female worker during pregnancy for absences due to incapacity for work resulting from her pregnancy is linked to the occurrence of risks inherent in pregnancy and must therefore be regarded as essentially based on the fact of pregnancy. Although, according to the Court, such protection against dismissal must be afforded to women during maternity leave, the principle of non-discrimination, for its part, requires similar protection throughout the period of pregnancy.

The Court decided that dismissal of a female worker during pregnancy for absences due to incapacity for work resulting from her pregnancy is linked to the occurrence of risks inherent in pregnancy and must therefore be regarded as essentially based on the fact of pregnancy. Such dismissal can affect only women and therefore constitutes direct discrimination on grounds of sex.

Case C-394/96

- The severity of the provision on the prohibition of dismissal of pregnant woman is undeniable. According to the decision below of the Court of Justice of European Communities, it is prohibited for an employer to dismiss a pregnant employee even in cases of fixed-term employment contracts and even if the employee failed to inform, at the time of hiring, the employer regarding her pregnancy although she was already aware of it.

Example 10.**Dismissal of a woman on grounds of her pregnancy**

In the Teledanmark case, the applicant, who was recruited under a fixed-term contract, failed to inform the employer that she was pregnant even though she was aware of this when the contract of employment was concluded. When the employer was informed he dismissed her. The employer argued before the Court that pregnancy was not the reason for her dismissal but the fact that she was unable to work during a substantial part of the term of that contract. Moreover, the fact that she failed to inform the employer of her pregnancy, despite knowing that she would be unable to work during a substantial part of the term of the contract owing to her pregnancy, constituted a breach of the duty of good faith required in relations between employees and employers, capable in itself of justifying dismissal. The employer also added that it is only where the contract has been concluded for an indefinite period that refusing to employ a pregnant woman or dismissing her contravenes Community law. In such an employment relationship, it must be presumed that the worker's obligations will continue beyond the maternity leave, so that observance of the principle of equal treatment leads to a fair result.

The Court decided that Community Law precludes the dismissal of pregnant woman where the reason for dismissal is clearly her pregnancy. According to the Court's case-law, neither financial loss incurred by the employer nor the requirements of the proper functioning of his undertaking can justify the dismissal of a pregnant worker, as the employer has to assume the risk of the economic and organisational consequences of the pregnancy of employees.

As to the circumstance that the applicant failed to state that she was pregnant when she was recruited, the Court submits that a worker is not obliged to inform her employer of her condition, since the employer is not entitled to take it into account on recruitment.

Finally, the Court stated that since the dismissal of a worker on account of pregnancy constitutes direct discrimination on grounds of sex, whatever the nature and extent of the economic loss incurred by the employer as a result of her absence because of pregnancy, whether the contract of employment was concluded for a fixed or an indefinite period, has no bearing on the discriminatory character of the dismissal. In either case the employee's inability to perform her contract of employment is due to pregnancy.

Case C-109/00

OTHER EXAMPLES OF EMPLOYER'S UNLAWFUL ACTS which can constitute an offence of direct discrimination on grounds of pregnancy **are among the following:**

- Transfer of a pregnant worker to another department or assignment of different duties due to her pregnancy, on grounds not connected with the protection of her safety and health.
- Dismissal of a female worker at any time during her pregnancy for absences due to incapacity for work caused by illness resulting from that pregnancy.
- Reduction of her duties and assignment to her of a non-important job, due to her pregnancy and without an objective explanation.
- Unjustified refusal to take into consideration the wish of a pregnant worker for different working hours.
- Deducting part of her annual leave to account for her absence after labour, instead of granting her the full period of maternity leave as she is entitled on the basis of the relevant Law.
- Deducting from her salary when she is absent due to prenatal examinations for which she gave adequate warning and provided a doctor's certificate upon her return.
- Exemption of a pregnant worker from activities at work.
- Desparaging or/and insulting remarks as to the appearance or other characteristics connected to pregnancy, of such nature which can constitute harassment on grounds of sex at work.
- Employer's actions or omissions which could jeopardise the pregnant worker's safety and health.
- Exemption of a pregnant worker from procedures of permanency, promotion, vocational training and education on grounds of her pregnancy.
- Failure to take the necessary countervailing measures in order to facilitate the pregnant worker in the exercise of her duties.

It is noted that measures taken to protect a pregnant worker and facilitate her during the exercise of her duties, fall within the employer's legal obligation to promote the principle of equal treatment and opportunities for men and women at work.

EXAMPLES OF COUNTERVAILING MEASURES that can easily be taken in order to achieve the above object and at no particular financial cost to the employer:

- Provision of chairs for professions that may easily be practiced from this position. For instance, chairs should be available for pregnant workers in factories, cash desks, banks etc.
- Flexible working hours. If a pregnant worker is more productive during certain hours per day (ex. after mid-morning), it could be arranged so, where possible, she can work different shifts or make up the working hours in a different way. However, this should be arranged between the pregnant worker and her employer and should not affect her working terms and conditions, her professional opportunities or/and emoluments.
- Moving temporarily the pregnant worker to another sector or department where duties (of physical nature) are more safe and light.
- Possibility to take regular breaks for food and drink.
- Provision of large size uniforms for pregnant workers in case workers wear protective uniforms.
- Provision of help from other colleagues if necessary.
- Temporary provision of parking spots near the workplace.
- Flexibility on behalf of the worker as to the workplace. If, for instance, there are duties that may be exercised at home, the necessary measures should be taken so the said arrangement could be made to the benefit of both parties (the employer and the pregnant worker).

3. PROTECTION AGAINST REPRISAL AND PENALTIES FOR THE VIOLATION OF THE LAWS FOR PROTECTION OF PREGNANT WORKERS, WOMEN WHO HAVE RECENTLY GIVEN BIRTH AND OF ADOPTIVE WORKING MOTHERS

The Equal Treatment for Men and Women in Employment and Vocational Training Laws protect against reprisal by the employers the persons who lodge a complaint for violation of the principle of equal treatment for men and women at work. In particular, the law requests that dismissal or any unfavourable alteration of the working conditions of the person who lodges a complaint, is completely void unless the employer proves that such dismissal or unfavourable alteration is due to a reason irrelevant to the complaint. The same applies to the persons supporting the worker or the person who lodges a complaint for discrimination on grounds of sex.

The offence of discrimination on grounds of sex, including discrimination on grounds of pregnancy, is punished with a fine not exceeding 6.834,41 euro or imprisonment up to six months or/and both penalties, where the act is not subject to a more severe penalty.

Violation of articles 3 (maternity leave), 4, 4A, 4B(l) (c) (prohibition of termination of employment and non-renewal of contract for reasons related to pregnancy), 5 (facilitation for breastfeeding and increased responsibilities for the care of the child), 5A (time off in order to attend ante-natal examinations) and 7 (protection of rights) of the Protection of Maternity Laws is also punished with a fine not exceeding four thousand pounds (€6.834,41).

For more information on matters related to discrimination on grounds of sex in employment, please contact the following competent bodies:

- **Equality Inspectors of the Ministry of Labour and Social Insurance
Department of Labour**

1480 Lefkosia

Tel.: 22400847

Fax: 22400809

(Address: 9, Klimentis Str., Lefkosia)

District Labour Offices:

Lefkosia – Tel.: 22403000

Lemesos – Tel.: 25827350

Larnaka – Tel.: 24805312

Pafos – Tel.: 26821658

- **Committee on Gender Equality in Employment and Vocational Training Law**

Department of Labour

1480 Lefkosia

Tel.: 22400802

Fax: 22400809

- **Equality Authority of the Office of the Commissioner for Administration (Ombudsman)**

1470 Lefkosia

Tel.: 22405507

Fax: 22672881

e-mail: ombudsman@ombudsman.gov.cy

Information on Maternity Allowance and Maternity Grant

- **Department of Social Insurance, Lefkosia**

Tel.: 22401725

Information on Health and Safety at Work

- **District Labour Inspection Offices:**

Lefkosia – Tel.: 22879191

Lemesos – Tel.: 25827200

Larnaka – Tel.: 24805327

Pafos – Tel.: 26822715

Information on Parental Leave and Leave on Grounds of Force Majeure

- **Department of Industrial Relations, Lefkosia**

Tel.: 22451500, 22451501

- **District Industrial Relations Offices**

Lefkosia – Tel.: 22451208

Lemesos – Tel.: 25819252-3

Larnaka – Tel.: 24805401

Pafos – Tel.: 26822620



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