

Maternity Protection at the Workplace

(In the light of ILO Convention C-183 (2000) and Recommendation 191)

*By: Naweed Harooni, Programme Coordinator, WABA and
the WABA Women's and Work Task Force Coordination
(Elaine Petitot-Côté, Maryse Arendt, Viana de Maza)*

What is meant by maternity protection at work?

Maternity protection at the workplace is a legal and social recognition of the contribution that women make by having babies while at the same time working for pay. It was established to protect the health of the pregnant and working mother and of her baby. It enables them to combine both their productive and reproductive roles successfully, at the workplace as well as at home. Women's reproductive role is directly related to pregnancy, confinement and to breastfeeding, while their productive role relates to work for pay in either the formal or the informal economies.

Maternity protection means defending women's rights to work .. It also connotes that women work in dignity and benefit from conditions that exclude discrimination and discriminatory practices based on their sex and their reproductive role. Maternity protection also signifies that mothers and babies are entitled to safety at work and to healthy surroundings at the workplace. Moreover, it stands for allowing new mothers to take a paid maternity leave from work that is long enough to ensure their own health and rest and also the healthy beginnings of their child – enough time to bond with their child, establish a sound breastfeeding routine and follow WHA recommendations concerning 6 months of exclusive breastfeeding. It also means that the replacement pay is high enough to ensure a decent standard of living. Also, being entitled to a leave implies being assured that her job awaits her upon her return from maternity leave. And of course, , maternity protection also means that women have the right to work in an environment that facilitates breastfeeding when they return to work and thus are entitled to breastfeeding breaks, breastfeeding facilities and crèches at the place of work as put down in recommendation 191.

The International Labour Organization (ILO) first recognised the importance of this issue the year of its creation, in 1919, by adopting C-3 on maternity protection. In 1952, a second ILO maternity protection convention was adopted (C103) reinforced by a recommendation (R-95), and in 2000 a third (C-183), also followed by a recommendation (R-191).

By the end of 2013 a total of 103 countries had ratified at least one of the ILO conventions on maternity protection - 28 having specifically ratified C-183 (2000) amongst other ILO conventions specifically concerning the protection of workers in the informal economy, C-184(2001) which covers

safety and health in agriculture and C-189(2011) which deals with the decent work conditions of domestic workers, are of significance.

What is the link with breastfeeding?

As more and more women are working outside of their homes (by obligation or by choice), it is essential to protect them during pregnancy, immediately after birth and upon returning to work, all the more so if they are breastfeeding their infants.

Since 2001 the World Health Assembly (WHA) recommends that mothers exclusively breastfeed their children for 6 months, and continue thereafter to breastfeed at least until 2 years of age, while at the same time introducing timely and adequate complementary foods.

For mothers to be able to cope with their work obligations and the WHA recommendations regarding breastfeeding it is necessary that female workers be well protected.

How is it possible to combine work obligations and breastfeeding recommendations?

One of the solutions is a strong maternity protection law and/or other measures. But what is meant by the term “strong”?

Also, a good maternity law – or other measure - is not enough in itself: a law on paper has to be enacted by the State, known by the workers and employees and trade unions, as well as implemented by the employers. Other measures such as Collective Bargaining Agreements (CBAs) and family-friendly workplace policies, for example, should be designed and implemented too.

How do human rights, and in particular, gender issues, fit into maternity protection?

Since the end of the Second World War, several global **human rights** conventions and covenants have been adopted within the United Nations, some of which refer directly to maternity protection, such as the *Covenant on Economic, Social and Cultural Rights* (ECOSOC, 1966)¹, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1976)² and the *Convention on the Rights of the Child* (CRC, 1989)³. The provisions of these conventions are legally binding for the states that have ratified them.

A **right** is to be understood as something to which the people (the “rights holders”, in this case, female employees of reproductive age) are entitled. A right is not charity, **it is a legal obligation**. The State, termed as the “duty bearer”, is under the obligation to make sure that the workers’ rights are

¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

² <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

³ <http://www.unicef.org/crc/>

available, are respected, realized and enjoyed and that the employers take their responsibility, which is to comply with the law. Of course, rights holders also have obligations to the State and to their employers too.

From a human rights perspective, maternity protection entitles all women of reproductive age to the right to work without discrimination, to work in conditions of security, of dignity and of decency, to equality of opportunity with men, to economic security and non-exploitation, as well as to healthy work conditions for themselves, their child-to-be and their new-born.

Thus, maternity protection is central to realizing **gender equality**. Men and women are entitled to equal opportunities at political, social and economic level. As regards work, we aim for a society without any discrimination relating to:

- the right to work in the first place (women may decide not to work but they should have the right to work in whatever profession they choose to);
- the jobs and job categories women participate in (this means putting an end to “women’s jobs” that are most often insecure, poorly paid and set apart from “men’s jobs”. Also, a majority of working women belong to the informal economy which is the least protected of all sectors);
- the opportunities met to obtain, like men, higher, better-paid posts of responsibility and to move upwards on the professional ladder (women in general are herded into the non- or poorly-qualified jobs, they lack specialization, expertise, training and are generally confronted with obstacles);
- the salary women obtain in comparison to that of their male counterparts: “equal salaries for the same job” do not seem to exist in any part of the world today; this lack of equality translates the fact that women are less considered than men socially.

Regarding maternity protection at the workplace, gender equality also means:

- the right to live free of discrimination and harassment, to work in dignity and to benefit from decent working conditions;
- protective provisions for all working women during pregnancy, confinement and lactation – and more generally during all of their reproductive age –that include specific differential treatment, ie. provisions protecting them in ways that will enable them, just like their husbands or companions, to having both a decent and healthy profession as well as a healthy and happy family;
- concrete ways for both parents to balance their professional and family responsibilities, for example, by sharing time to care for their infants and young children;
- and lastly, measures that ensure that women’s reproductive function does not marginalise them in the labour market or undermine their economic security.

The ILO has developed a parallel perspective, the **Decent Work Agenda**.

“Decent work” sums up the aspirations of people in their working lives. In recent years, the ILO has developed the **Decent Work Agenda** based on four strategic objectives, with **gender equality** as a cross-cutting objective:

- **Employment** – the principal route out of poverty is productive work.

- **Labour Rights** – without them, men and women will not be empowered to escape from poverty.
- **Social Protection** – women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare.
- **Social Dialogue** – the participation of employers’ and workers’ organizations in shaping government policy for poverty reduction is the key to increasing productivity, avoiding disputes at work, and building cohesive societies.

What are the key elements of maternity protection at work?

As defined in C-183, we consider that there are seven key elements to maternity protection in general. . Our goal is that provisions regarding all of these elements be included as a minimum standard in national legislation on maternity protection and that such legislation then be implemented, enforced for all workers in that country. In the explanations below we quote the relevant articles of C-183(2000)⁴ and R-191(2000)⁵.

1. **Scope: Who is covered?**

Scope (C-183)

Article 2. This Convention applies to all employed women, including those in atypical forms of dependent work.

Although in a given society or nation maternity protection legislation might be *broad* and cover a wide range of sectors of working women, or be very narrow and cover only a few, each country sets its own categories as well as the criteria for eligibility. Generally, national legislation usually covers women who are employed in the *formal economy (both public and private sectors)*, women who have worked for a specified number of months or days, have contributed to the mutual benefit fund or equivalent, and entered into employment through a written contract between employer and employee. As the conditions are numerous and difficult to meet, in reality, worldwide, only a small proportion of working women are covered by maternity protection.

For several years, WABA has engaged in giving top priority to extending maternity protection to the women working in the *informal economy*, such as women running their own small home-based business, preparing and selling foods or other items, sewing garments, stitching footballs, etc. and women in rural settings like those working on farms as day laborers, field hands, domestic workers, etc.

Maternity protection has hardly any meaning for most of these women even where protective legislation exists. It is not only necessary that legislation be included to cover these workers too,

⁴ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C183

⁵ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R191

often the most workers in a given country the least protected and the most vulnerable but that it also be implemented and enforced.

In 2001, C-184(2001) on “Safety and Health in Agriculture” was adopted by ILO to protect men and women working in agriculture. Article 18: *“Measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health.”*

2. Maternity leave

Maternity leave is the period of absence from the job given to allow a working mother to rest and bond with her child as well as to establish a breastfeeding routine. It is a basic element of maternity protection. C-183 stipulates 14 weeks of leave and R-191 recommends a minimum of 18 weeks. Although the mother can decide to shorten her leave, she is under the obligation of taking 6 weeks off immediately *after* having given birth.

According to WHA recommendations adopted in 2001, a mother should exclusively breastfeed her baby for 6 months and continue breastfeeding with appropriate complementary feeding for 2 years and beyond.

How long should the leave be? When should the leave be taken: before, after or before and after confinement? What happens if employers consider the leave too long? Should the “compulsory leave” be longer than 6 weeks. Who should decide when the leave is to be taken? All of these questions need to be reflected upon and answered.

Article 4 of C-183:

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.

R-191 (1.1)

Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.

3. Benefits

Maternity protection benefits include medical care during pregnancy, delivery, pre- and post-natal care, plus income replacement during maternity leave.

Medical benefits

Medical benefits are intended to protect the health of both mother and baby by ensuring that women receive the necessary maternity services during their pregnancy, birth and the period following birth; these may be free or available at low cost.

In a number of countries, some of these costs are covered by the national health insurance plan or social security scheme. Where such coverage is not provided, a proportion of women (or in some cases their husbands) may contribute to local health schemes or private insurances that cover some of their maternity costs.

Women who cannot afford to pay for medical assistance often do not obtain prenatal care, and they may give birth without adequate professional supervision. This is the reality of huge numbers of women worldwide and a reason for maternal or newborn mortality.

Article 6.7 of C-183:

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

Financial benefits

Cash benefits replace some or all of the earnings a mother loses when taking her maternity leave. As stipulated in C-183, the amount of cash benefits should be sufficient to provide a “suitable standard of living for mother and child”. If maternity leave is not accompanied by financial benefits, most women will be unable to take their leave entitlement as they need money to live on a daily basis.

C-183 (art. 6.3) considers that payment should reach at least 2/3 of the woman’s salary and allow mother and child in order to maintain their standard of living; R-191 states that benefits should be 100% of the salary.

This problem is acute in the informal economy where most women earn very low salaries and are generally not included in insurance/social security schemes ensuring them with replacement benefits.

Article 6.1 of C-183:

“Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Article 4 or 5.”

Article 6.2:

“Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”

Art. 6.3:

“Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits”

Who pays?

One way to finance maternity benefits is from a public insurance fund, usually provided through a social security system, e.g., the Employees Provident Fund. However, not all countries can boast such systems, and often employers are requested to finance directly maternity benefits themselves – which they tend to avoid. Because of the expenses involved, or the fear of increased expenses, the question of how to finance maternity benefits is still hotly debated in many countries and is implemented in a manner determined by national laws and practice. In recent years a trend has appeared by which, in an effort to maintain women in the labour market, governments are taking responsibility, rather than the employers, for covering the benefits due to women. In still other countries, financing of benefits is a “mixed system”, that combines both government and employer participation.

Article 6.8 of C-183:

“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.”

4. Health Protection

Although maternity is not an illness, pregnant and lactating mothers are vulnerable and need special measures at the workplace to protect both themselves and their babies from health hazards. This special protection leads, ultimately, to lowering maternal and infant mortality.

The health risks they encounter can be physical or biological; they can include exposure to radiation, to toxic substances, to infectious agents, vibrations, excessive noise levels, work shifts, stress and occupational injuries.

National laws generally protect a pregnant or breastfeeding woman from being obliged to work under such conditions. For example, occupational safety and health regulations compel employers to make the working environment safe for the worker, or to provide another work setting at the same pay during a worker’s pregnancy or period of lactation.

Article 3 of C-183:

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

5. Job protection and Non-discrimination

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

Job protection

This fundamental element of maternity protection is directly linked to maternity leave: if a woman is entitled to a maternity leave, it is also understood that she is ensured to return to her former job at the end of her leave and that she cannot be dismissed during this period.

Laws shall protect women who are pregnant, who return from maternity leave and/or are breastfeeding, not only from being dismissed, but also from being transferred to a lower position, or being passed over for job advancement opportunities.

Article 8 of C-183:

“1-It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

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

Item#5 of R-191:

“The period of leave referred to in Articles 4 and 5 of the Convention should be considered as a period of service for the determination of her rights”

Non-discrimination

Non-discrimination is a principle of human rights, a gender-related issue that means that women who are pregnant or who may become pregnant should be considered for employment on an equal basis with others, whether men or women. It also means giving female workers the same rights to privacy and family life as to male workers.

Employers cannot ask questions related to family planning, request a pregnancy test or a certificate of sterility except in cases where a specific job would be a risk to the pregnancy or to the infant. Most maternity protection laws in most countries do not cover this point specifically. Moreover, during a job interview a prospective employee, especially of young age, generally does not know that these are discriminatory questions nor is she in a position to refuse answering.

Article 9(10(2)) of C-183: “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.”

2. “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.”

6. Breastfeeding breaks

These are paid intervals provided daily by the employer to mothers returning to work at the end of their maternity leave for breastfeeding or expressing milk during the work day.

With maternity leave of only a few months in the best of cases, and WHO recommendations of breastfeeding exclusively for 6 months, it is important for working mothers to find ways to continue breastfeeding after returning to work. There are several solutions such as flexible workdays, flexible work, breastfeeding breaks, etc. The latter are obligatory in C-183.

Since 1919, ILO maternity protection conventions have included breastfeeding - or “nursing” - breaks in their protective legislation. National laws in more than 90 countries provide breastfeeding breaks in some form to breastfeeding mothers (

Article 10 of C-183:

“1-A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.”

“2-These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.”

7. Breastfeeding facilities and crèches

The following elements are not part of C-183 but only of its recommendation, R-191.

Breastfeeding facilities

A breastfeeding facility is a convenient and hygienic space at or near the workplace where a worker can feed her baby or express her milk. It is often assumed that breastfeeding facilities must be complicated to set up, expensive, and hardly worthwhile, given the number of workers likely to use them. The truth is quite different.

At the minimum, a breastfeeding facility can be a small, clean space with a chair, close to the work station. There should be a screen, a curtain, or a door for privacy, access to clean running water, and secure storage space for the milk that has been expressed. More elaborate facilities might include electricity, a refrigerator, a breast pump.

A worker who lacks facilities has to choose between two unhealthy alternatives: weaning her baby too soon, or breastfeeding/expressing milk in non-hygienic conditions at the workplace. In no way should the breastfeeding facility be the lavatory!

R-191, Item #9:

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

Crèches

Besides breastfeeding breaks and breastfeeding facilities that enable mothers to overcome the challenge of sustaining breastfeeding after returning to work, the existence of a crèche (daycare centre or nursery) at or near the workplace is another essential aid. Several countries have adopted laws that require employers to provide a crèche if they have a certain minimum number of employees or female employees.

Other related ILO Conventions

Several other ILO Conventions relate directly to maternity protection standards and it is essential for breastfeeding advocates and others to keep them in mind. Thus, conventions relating to financing of maternity protection e.g. “Social Security Convention (minimum standards)” C-102 (1952)⁶, ratified by 50 countries so far⁷ or to “Occupational Safety and Health at work convention” C-155 (1981)⁸, which 62 countries have ratified⁹ or to “Health and safety of workers in agriculture” C-184, (2001)¹⁰, ratified by 15 countries so far¹¹ or to the working conditions of workers in the informal economy (workers in

⁶ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102/

⁷ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312247

⁸ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312300:NO/

⁹ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312300

¹⁰ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312329:NO

¹¹ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312329

agriculture C-184, (2001), domestic workers convention C-189 (2011)¹² ratified by 14 countries¹³ are important.

Social Security Convention C-102 (1952)

*This convention safeguards workers interests and provides the following benefits in case of contingencies: medical care, unemployment benefits, old age benefits, employment injury benefits, family benefits (maintenance of children), **maternity benefits**, invalidity benefits, survivors benefits and equality of treatment for non-national residents.*

Safety and Health in Agriculture Convention C-184 (2001)

*In general it covers the safety and health protection of almost 1.3 billion workers in agriculture and forestry. The convention covers the following areas: machinery safety and ergonomics, handling and transport of materials, sound management of chemicals, agricultural installations, young workers and hazardous work, temporary and seasonal workers, **women workers**, welfare & accommodation facilities, working time arrangements, coverage against injuries and diseases.*

Domestic Workers Convention C-189 (2011) [Convention concerning decent work for domestic workers]

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, the Domestic workers Convention C-189 was adopted on 16 June 2011 concerning decent work for domestic workers.

This convention is very significant as it covers almost 52 million domestic workers,¹⁴ according to research conducted by ILO in 2010.

Article 14 of this convention touches indirectly the rights of breastfeeding mothers :

“1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.”

Overall Conclusions

¹² http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO/

¹³ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460:NO

¹⁴ http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_200937/lang-en/index.htm?utm_source=twitterfeed&utm_medium=twitter/

At national level, it is important for breastfeeding advocates to understand and promote all of the above seven maternity protection elements as they constitute **together** a relatively strong basis for legislation that aims to protect all working women in a given country.

Moreover, at national, regional and global level, they should advocate for the ratification of ILO Convention C-183 (2000), but also for the ratification of other related conventions such as C-184 (2001) and C-189 (2011) that focus on women working in specific areas of the informal economy (agriculture and domestic work).

However, it is important to take the measure of the difficult task ahead - we still have a considerably long way to go. Few countries have ratified C-183, few countries have strong maternity protection legislation and still fewer have implemented it. But more and more people understand that for the economy to move forward, and for families to cope with their family and work responsibilities, it is necessary to protect all workers, and in particular, women during maternity.

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