

NON-DISCRIMINATION ISSUES BETWEEN MEN AND WOMEN IN THE MATTER OF CHILD CARE LEAVE

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Abstract

To give men and women with caring responsibilities a better chance of staying in work, every worker should be entitled to five working days' carer's leave a year. Member States may decide that such leave may be taken in periods of one or more working days, on a case-by-case basis. To take account of different national systems, Member States should be able to allocate carer leave using a reference period other than one year depending on the person who needs care or support or on a case-by-case basis. A continued increase in care needs due to an aging population is expected, and a corresponding increase in the prevalence of age-related impairments is expected. Member States should take into account increasing care needs when developing their care policies, including carer leave.

Key words: man, woman, non-discrimination, child, leave.

Classification: JEL KO, K1

Romania must transpose into national legislation by August 1 and 2, 2022, respectively, two European directives: Directive 2019/1.158/EU and Directive 2019/1.152/EU, which bring significant changes to labor legislation.

Until now, Directive 1.158/2019/EU has been partially transposed through the adoption of GEO no. 57/2022 for the amendment of Law 202/2002 on equal treatment opportunities between women and men, the most notable changes being the introduction of the concepts of "caregiver leave" and "flexible work forms" as well as the fact that protection against discrimination and dismissal is granted for employees who request the exercise of these rights. However, the legislative amendment risks remaining confused and devoid of substance in the absence of harmonization of these new notions through the corresponding amendment of the Labor Code².

Thus, Directive 2019/1.158/EU aims to ensure a balance between the professional and private life of parents and carers of children and supports and complements the action of member states in the field of equality between men and women in terms of opportunities on the labor market and treatment at work, equality between men and women being a basic principle of the European Union.

Similarly, Article 23 of the Charter of Fundamental Rights of the European Union stipulates the obligation to ensure equality between women and men in all areas, including employment, work and remuneration.

Article 33 of the Charter provides for the right to be protected against any dismissal for reasons of maternity, as well as the right to paid maternity leave and parental leave granted following the birth or adoption of a child, in order to reconcile family life and professional life.

Work-life balance policies should contribute to gender equality by promoting women's participation in the labor market, by sharing caring responsibilities equitably between men and women, and by reducing gender disparities in income and remuneration. These policies should take into account demographic changes, including the effects of an aging population.

Work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, particularly due to the increasing prevalence of extended working hours and changing working hours, which has a negative impact on employment of work among women. A major factor contributing to the underrepresentation of women in the labor

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²<https://www.bursa.ro/codul-muncii-va-fi-modificat-semnificativ-in-aceasta-vara-61830743>

market is the difficulty of finding a balance between work and family obligations. When they have children, women typically work fewer hours in paid employment and spend more time performing unpaid caregiving responsibilities¹.

Having a sick or caring relative has also been shown to have a negative impact on women's employment, with some women dropping out of the labor market altogether.

The current national legal framework provides few incentives to encourage men to take on an equal share of caring responsibilities. The imbalance in the conception of work-life balance policies for women and men deepens gender stereotypes and differences in the context of working life and care.

Equal treatment policies should aim to tackle the problem of stereotypes associated with the occupations and roles of both men and women, and the social partners are encouraged to play their key role in informing both workers and employers and in raising their awareness regarding the fight against discrimination.

Moreover, fathers' use of work-life balance schemes, such as leave or flexible working arrangements, have been shown to

to have a positive impact by reducing the relative amount of unpaid family work performed by women and leaving them more time for paid employment.

The equal use of family leave by men and women also depends on other appropriate measures, such as the provision of physically and financially accessible childcare and long-term care services, which are essential to enable parents and other people with caring responsibilities to enter, stay or return to the labor market. Removing economic disincentives can also encourage people who represent the secondary source of family income, mostly women, to participate fully in the labor market.

In order to encourage a more equitable distribution of care responsibilities between women and men and to enable early bonding between fathers and children, the right of fathers to take paternity leave should be introduced or, when and to the extent in which the right of an equivalent second parent is recognized by domestic law. This paternity leave should be taken around the time of the child's birth and should be clearly linked to this event for the purpose of care.

Member States are responsible for determining whether they allow part of the paternity leave to be taken before the birth of the child or whether they require all of the leave to be taken after the birth, the time frame during which the paternity leave must be taken and whether and when conditions allow part-time paternity leave to be taken in alternating periods, for example for a number of consecutive days of leave separated by periods of professional activity, or in other flexible formulas.

Member States have the possibility to specify whether paternity leave is expressed in working days, weeks or other time units, taking into account the fact that ten working days correspond to a period of two calendar weeks.

To take into account the differences between Member States, the right to paternity leave should be granted regardless of marital status or family status as defined by national law.

In our country, most fathers do not use their right to parental leave or transfer a considerable part of it to mothers, so it would be necessary to extend the minimum period of non-transferable parental leave from one to two months from one parent to the other, to encourage fathers to take parental leave while maintaining each parent's right to at least four months of parental leave as set out in Directive 2010/18/EU.

Ensuring that at least two months of parental leave are available exclusively to each parent and cannot be transferred to the other parent is intended to encourage fathers to make use of their right to this leave.

¹ Directive (EU) 2019/1158 of the European Parliament and of the council of 20 June 2019 on the balance between the professional and private life of parents of caregivers and repealing Council Directive 2010/18/EU

It also promotes and facilitates the reintegration of mothers into the labor market after a period of maternity and parental leave.

A minimum of four months of parental leave is guaranteed by law for workers who are parents. Member States are encouraged to grant the right to parental leave to all workers with parental responsibilities, in accordance with national legal systems.

Given that flexibility increases the likelihood that each parent, in particular the father, will make use of the right to parental leave, workers should be able to request parental leave on a full-time or part-time basis. norm, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of professional activity, or in other flexible formulas. The employer should have the possibility to accept or refuse such a request for parental leave on other than full-time basis. Member States should assess the extent to which the conditions and detailed formulas of parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

The period during which workers should be entitled to parental leave should be linked to the age of the child. That age should be set in such a way as to allow both parents to make effective use of their full parental leave entitlement.

To facilitate reintegration into the workplace following a period of parental leave, workers and employers are encouraged to maintain voluntary contact during the period of leave and may agree on any appropriate measures to facilitate reintegration into the workplace. Maintaining such contact and taking such measures is to be decided by the parties concerned, taking into account domestic law, collective agreements or national practices. Workers should be informed about promotion procedures and internal vacancies and should have the opportunity to participate in such procedures and apply for such positions. Studies have shown that Member States that offer a significant share of parental leave to fathers and that provide the worker on parental leave with remuneration or an allowance at a relatively high replacement rate have a higher percentage of fathers taking parental leave and a positive trend in the employment rate among mothers. It is therefore appropriate to allow these schemes to continue, provided they meet certain minimum criteria, instead of providing remuneration or allowance for paternity leave.

To give men and women with caring responsibilities a better chance of staying in work, every worker should be entitled to five working days' carer's leave a year. Member States may decide that such leave may be taken in periods of one or more working days, on a case-by-case basis. To take account of different national systems, Member States should be able to allocate carer leave using a reference period other than one year depending on the person who needs care or support or on a case-by-case basis.

A continued increase in care needs due to an aging population is expected, and a corresponding increase in the prevalence of age-related impairments is expected. Member States should take into account increasing care needs when developing their care policies, including carer leave. Member States are encouraged to grant the right to carer's leave also for other relatives, such as grandparents or brothers or sisters. Member States may require a prior medical certificate attesting to the need for significant care or support for a serious medical reason.

In addition to the right to carer's leave provided for in this Directive, all workers should retain the right to be absent from work, without loss of employment rights already acquired or in the process of being acquired, for reasons of force majeure in unforeseen family emergency situations, as provided for in Directive 2010/18/EU, in accordance with the conditions established by the member states.

All Member States should take the necessary measures to ensure that workers with children up to a certain age, at least eight years old, as well as carers, have the right to request flexible working arrangements for care purposes. The duration of such flexible working arrangements may be subject to reasonable limitations.

Our country should establish a level of remuneration or allowance related to the minimum period of paternity leave at least equivalent to the level of sick leave at the national level. As the right to paternity leave and the right to maternity leave have similar objectives, namely to create a bond between parent and child, Member States are encouraged to provide for pay or allowance for paternity leave equivalent to pay or allowance for maternity leave at national level. When setting the level of remuneration or allowance for the minimum non-transferable period of parental leave, Member States should take into account that taking parental leave often involves a loss of income for the family and that the person who is the primary source of income of the family will be able to make use of their right to parental leave only if that leave is well paid enough to allow a decent standard of living.

Member States shall take the necessary measures to prohibit the dismissal and any preparations for the dismissal of workers on the grounds that they have requested or taken such leave.

Member States shall adopt the regime of sanctions that apply in the event of non-compliance with national provisions adopted pursuant to transposing directives or relevant provisions already in force concerning rights included in the scope and shall take all necessary measures to ensure their application. Sanctions must be effective, proportionate and dissuasive.

Member States shall introduce the necessary measures for the protection of workers, including workers who are employee representatives, against any unfavorable treatment by the employer or against any unfavorable consequences resulting from a complaint lodged within the undertaking or from any legal proceedings with the aim of ensuring compliance with the requirements established in the directives and transposed in the specific national legislation.

Bibliography

- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 regarding the balance between the professional and private life of parents of caregivers and repealing Council Directive 2010/18/EU.