

Parenthood leave technical meetings

Comments from the staff representation members of the Diversity and Inclusion Working Group on the slide deck presented by the administration on 16th May 2024

3rd June 2024

1. Parenthood leave proposal

The regulations related to the birth of a child, or to the entry of a child into a family are currently defined under maternity leave, special leave for the birth of a child (effectively paternity leave in the majority of cases), and adoption leave. In order to broaden the eligibility for leave to include other manners by which children are welcomed into a family, such as surrogacy or legal guardianship, the Office proposes to abolish the current maternity, special, and adoption leave regulations and replace them all with an umbrella leave called “Parenthood leave”.

While the expansion of eligibility of leave for additional families is absolutely supported by the Staff representation, the approach taken in terms of regulation amendment, specifically abolition of “maternity leave”, is not considered the correct one.

The reasons for this opinion are as follows;

- Maternity leave is the terminology used in all national legislation known to us and is therefore the terminology expected by staff members. Ensuring the regulations are clear and easily understood is imperative and avoids unnecessary legal challenges. Furthermore, the legislation related to maternity leave drafted for national laws and in EU directives is backed up by vast research, knowledge, and expertise, as well as time resources. As such, we believe taking advantage of the work already done by these institutions is the best approach to drafting regulations for the EPO.
- Maternity leave is of a minimum duration to protect the health and recovery of the mother during pregnancy as well as during and after childbirth, in addition to creating provisions for the caring responsibilities. Pregnancy, childbirth, and breastfeeding are not recognised within the terminology “primary caregiver”. In addition, use of the term “primary caregiver” specifically for the mother and “secondary caregiver” for the father enforces stereotypical roles of provision of care, when this may not be the experience of all couples. Thus, the use of the terms primary caregiver and secondary caregiver for all cases is considered regressive, which is counter to the goal of improving diversity and inclusion.

Therefore, we consider that a more appropriate approach to amending the regulations is to maintain the “Maternity leave”, and to amend the “Adoption leave” such that it is expanded to include the additional situations where children are welcomed into a family.

2. Breastfeeding considered as working time

In October 2010, the European Parliament passed a proposal for amendment of the [EU Council Directive 92/85/EEC](#) 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. The following was added to the directive;

Time off for breastfeeding

1. A mother who is breastfeeding her child shall be entitled to a period of leave for that purpose that shall be taken in two separate periods, each of which shall be of one hour, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment.

2. *In the case of multiple births, the leave referred to in paragraph 1 shall be increased by 30 minutes for each additional child.*
3. *In the case of part-time work, the leave referred to in paragraph 1 shall be reduced in proportion to the normal working hours, but shall not be less than 30 minutes.*
4. *In the case referred to in paragraph 3, the leave shall be taken for a period not exceeding one hour and, where applicable, for a second period to cover the remaining duration, unless another arrangement has been agreed with the employer.*

By 2011, every European Union member state had integrated time-off for breastfeeding into their national legislation. The table on page 4 shows the laws in some of the member states, which are also summarised in the table below for the case of an employee working 8 hours per day with 1 child breastfeeding. However, breastfeeding breaks are still notably lacking from our regulations. The delay in adding protection for breastfeeding mothers is now excessively overdue. Therefore, we request that time for breastfeeding be added to the regulations such that no loss of pay or other privileges is imposed, so that the time is considered working time, and such that the time given for breastfeeding must not be made up by the employees.

	Time/8hr day for 1 child	Salary	Period
Germany	1 hr	100%	No limit
Netherlands	2 hr	100%	0.75 year
Austria	1.5 hr	100%	No limit
France	1 hr		1 year
Italy	2 hr	100%	1 year
Spain	1 hr	100%	0.75 year
Belgium	1 hr	82%	0.75 year
Ireland	1 hr	100%	2 years
Portugal	2 hr	100%	No limit

3. Parental leave during probationary period

According to Circular 22, rule 2: (v)

Staff in job groups 5 or 6 are not entitled to parental leave during the first three months of their probationary period. Staff in job groups 1 to 4 are not entitled to parental leave during the first six months of their probationary period. Parental leave, being non-active status, suspends the probationary period, which resumes at the end of the leave. (vi) Parental leave may not be granted during any period of extended probation in accordance with Article 13(2) of the Service Regulations.

In addition, despite not being regulated, it is HR practice that maternity leave interrupts the probationary period. This has the effect that colleagues who give birth before the end of their first 3 or 6 months (depending on job group) of their probationary period cannot take parental leave immediately after the end of their maternity leave. This policy has caused considerable distress to some colleagues. Indeed, if these colleagues wish to stay at home with their newborn after the end of their maternity leave, they are obliged to take annual leave and/or unpaid leave, the latter being subject to managerial discretion thus not necessarily granted, and having implications for social security. They are eligible for parental leave only after they return

to work at the Office and reach the 3 or 6 months period. In this context, it is important to note that in Germany a baby must be 3 months old to be eligible for childcare facilities (experts suggest a minimum age of 6 months). The colleagues are faced with needing to return to work for a short period in order complete the 3 or 6 month period, which is not an optimal situation.

Regarding the practice of HR that probation is put on hold, this could be reconsidered as to whether is it in the interests of the staff. The practice can be considered as a way to allow the colleagues on maternity leave to have time to prove their competence. On the other hand, extension of the probationary period can be considered as putting extra stress on the new parents who have to deal with the difficulties of caring for a newborn while also contending with the uncertainty of the probationary period.

4. Caesarean section births

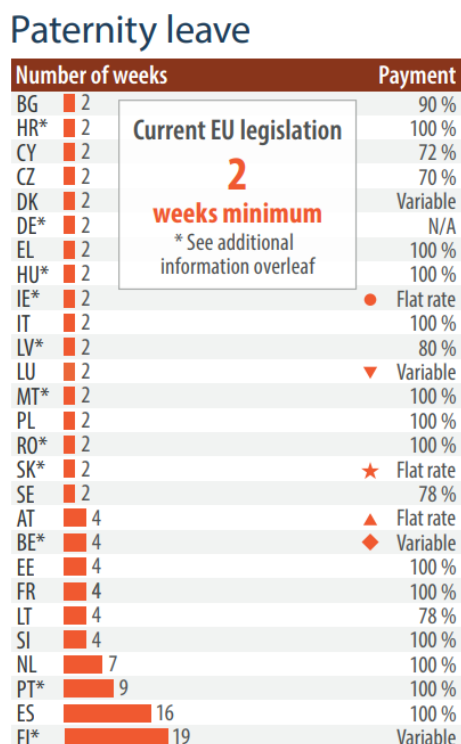
Our regulations designate at least 20 weeks of maternity leave, which is increased to 24 weeks in the following cases;

- premature birth
- multiple children being welcomed
- a disabled child
- where the primary caregiver giving birth has already given birth to two or more viable children, or
- when the household already cares for at least two children

For caesarean section births, additional rest and recovery is required, which could also be recognised as an additional reason for the extension of the maternity leave to 24 weeks. The national law in Austria recognises caesarean section births as one of the reasons to increase the period of maternity leave.

5. Paternity leave

Special leave for the birth of a child, which is equivalent to paternity leave in most cases, is defined as 10 days at the EPO. The [infographic](#) below, compiled by the European Parliament, shows the duration of paternity leave (excluding provisions for parental leave) of EU member states. The EPO's provision is equivalent to the minimum available in the member states, and lower than Austria, Belgium, Estonia, France, Lithuania, Slovenia, Netherlands, Portugal, Spain and Finland.



	Right to nursing breaks or daily reduction of hours of work	Remuneration of nursing breaks	Source for hours	Source for remuneration
Germany	Upon their request, nursing workers must be given time off required for nursing. This time will amount to at least 30 minutes twice a day, or 1 hour once a day. In case of a consecutive working time of more than 8 hours, the worker, at her request, must be given 45 minutes twice a day or, if no nursing facilities are available near the workplace, at least 90 minutes once a day. The working time counts as consecutive if it is not interrupted by a rest period of at least 2 hours. In individual cases, the supervisory authority can take additional measures with regard to the amount, organization and duration of the nursing breaks.	No loss of wages may occur as a result of nursing breaks. The nursing breaks may not be made up for by working extra before or after and nursing breaks may not be counted against the rest breaks prescribed by the Working Time Act or other legal provisions.	Maternity Protection Act §7(1),(3)	Maternity Protection Act §7(2)
Netherlands	For the first 9 months of her child's life, the female worker is entitled to interrupt her work to nurse or pump breastmilk, enjoying the necessary quiet and seclusion. Breaks for this purpose take place as often and for as long as required, though together amounting to at most 1/4 of the working time per work period. The determination of the time and length of the breaks is made by the female worker after consultation with the employer.	The breaks count as working time and the female worker will receive wages for the periods of the breaks.	Working Time Act §4:8.1-3	Working Time Act §4:8.1-3
Austria	When returning to work, employees who are breastfeeding have to inform the employer that they are breastfeeding and have to produce a corresponding certificate issued by a physician or a parent-child centre (Mutterberatungsstelle) at the employers request. Upon request, employees who are breastfeeding shall be given the required time off to breastfeed their infants. This shall be 45 minutes on days when the employee works for more than four and a half hours; if the employee works for eight or more hours, the time off for breastfeeding shall be split into two breaks of 45 minutes each upon request or, if there is no breastfeeding facility in the vicinity of the place of work, a period of ninety minutes shall be granted for breastfeeding. The competent administrative authority pursuant to Section 36 may instruct the employer to split the time off for breastfeeding in a certain way in accordance with Paras. 1 and 2, if special circumstances demand so in individual cases.	The time off for breastfeeding must be granted without loss of pay. The time off for breastfeeding must neither be made up for by the employees who are breastfeeding nor must it be deducted from the other rest periods defined by law or collective agreement.	Maternity Protection Act §4a(1), 9(1)(3)	Maternity Protection Act §9(2)
France	During one year following the date of birth breastfeeding mothers are entitled to breastfeeding breaks of one hour per day during working hours. The breastfeeding breaks are divided into two 30-minutes breaks, one in the morning and one in the afternoon. The time of the break should be determined by agreement between the worker and the employer. In case no agreement is reached, it should be in the middle of each half of the working day.	Subject to collective conventions	Labour Code § L1225-30	https://www.service-public.fr/particuliers/vos-droits/F1769#:~:text=Convention%20collective%2C%20accord%20collectif%2C%20accord,%C3%A0%20partir%20de%20sa%20naissance
Italy	During the first year of age of the child, working mothers can take two daily breaks during their working day, or one if the working time is less than six hours daily. These breaks are of one hour each and the woman can go out of the company. The father is entitled to the same daily reduction of hours of work in case the child is raised by the father only, if the working mother does not benefit of the daily breaks, if the mother is not employed, or in case of death or grave disease of the mother.	Nursing breaks are considered as effective working periods, the salary remains the same level.	Legislative Decree No. 151 of 2001 §39	Legislative Decree No. 151 of 2001 §39
Spain	Women workers are entitled to a break of one hour, which may be divided into two breaks to nurse their child until 9 months of age. The duration of the break will be increased proportionally in the event of multiple births. They may reduce their normal working hours by 30 minutes instead of taking the breaks. The worker may as well take the accumulated time reduction entitlement as full working days in accordance with the terms laid down in a collective agreement or in an individual agreement based on the former. The father is also entitled to these breaks or to reduce his working hours by 30 minutes.	Nursing breaks are paid.	Royal Decree No. 1/1995 enacting the Worker's Charter Art.37(4)	Royal Decree No. 1/1995 enacting the Worker's Charter Art.37(4)
Belgium	Nursing women have the right to one or two half an hour nursing breaks depending on her working hours. If the woman works a minimum of 4 hours a day she has the right to one break. If she works at least 7 1/2 hours a day she can take two nursing breaks. Women covered have the right to nursing breaks during the nine months after the birth of the child.	During nursing breaks the execution of the contract of employment is suspended and unpaid by the employer. However, 82% of the gross remuneration is paid by the sick and indemnity insurance scheme	Royal Decree Rendering compulsory Collective Agreement N° 80 Arts.5, 6 The website of the Belgian Federal Public Service Employment, Labour and Social Dialogue.	Royal Decree Rendering compulsory Collective Agreement N° 80 Art.3 Royal Decree to Execute the Act Respecting Compulsory Sickness and Indemnity Insurance Scheme Art.223 quarter
Ireland	An employee who is breastfeeding shall be entitled, without loss of pay, at the option of her employer to either 1 hour off from her work each day for the purpose of breastfeeding or a reduction of her working hours by 1 hour each day up to 26 weeks after confinement. The breastfeeding break may be taken in the form of one break of 60 minutes, two breaks of 30 minutes each, three breaks of 20 minutes each, or in such other manner as to number and duration of breaks as may be agreed by her and her employer. Time off from work, or a reduction in working hours, for breastfeeding is calculated on a pro rata basis for a part-time employee.	Breastfeeding breaks shall not lead to a loss of pay.	Maternity Protection Act §15B Maternity Protection (Protection of Mothers who are Breastfeeding) Regulations 2004 §2-4	
Portugal	Nursing mothers are entitled to paid nursing/breastfeeding breaks of up to one hour twice a day (plus half an hour for the second and each subsequent child). In case of bottle-feeding and in the event of absence of nursing facilities within the workplace, female and male workers are entitled to nursing breaks until the child is one year of age. The right to nursing breaks may be taken by any of them or split between both workers.	Does not determine loss of any rights and is considered as effective provision of work. No loss of pay	Labour Code §47(1,2,3,4)	https://www.dgaep.gov.pt/stap/infoPage.cfm?objid=489188f2-ba63-4313-aa86-5327dd9d4be1