



Directive amending 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 Maternity Leave Directive

Current Legislative Proposal	Decision	Analysis and Proposals
Foreword		<p>The Malta Chamber has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. It has moreover consistently reiterated that such Directives must outlaw less favourable treatment on the grounds of pregnancy or maternity leave and promote favourable working conditions of employment for men and women alike. It is however believed that by reviewing the existing legislation (or 'modernizing' as termed by the Commission), this would have an adverse effect on the ultimate goal of the amendments being proposed, and hence causing discrimination against women. While the Malta Chamber acknowledges that allowing men and women to combine professional and family responsibilities is a key element in tackling the challenge of insufficient market participation of women (even due to the Demographic ageing factor), the Malta Chamber is not in favour of most of the amendments being Proposed. Each amendment is hereby analyzed and constructive proposals to each measure are given.</p>
Maternity Leave to be increased to a minimum of 18 weeks (from current 14 weeks)	Disagree	<p>This would create a larger financial burden on industry. The burden is also magnified with the current credit crunch context, where the industry is not able to sustain any further financial burdens.</p> <p>Women on Maternity Leave do create a skills gap during the 18 week period. Since a local Temporary Workers Agency does not exist, a problem is created when an employer has to replace the skills gap left by the worker leaving on maternity leave. Since 96% of local companies are micro (employing less than ten people), the burden on the company's operations and remaining workforce is further accentuated. In the case of large companies, the magnitude of the replacements is even more drastic. Example, a large company (1433 employees) have 90 employees at one go at any given time who are on parental leave.</p> <p>Additional Financial burdens should be financed by Social Security.</p>
The right to choose when to take the non-compulsory portion of leave (before or after childbirth)	Partially agree	<p>Non-compulsory portion of leave should be taken at the mother's discretion before or after childbirth.</p> <p>Ensure the employer should be notified sufficiently in advance, with the exception of abnormal circumstances. The term 'abnormal circumstances' should be clearly defined.</p>
When birth occurs after due date, pre-natal leave is	Partially Disagree	<p>Agree when extending leave in the interest of women's health in the case of complications during childbirth.</p>

extended to the actual date without a reduction in post-natal leave		<p>This cost should not be loaded on the employer (as sick leave is yet another financial burden fully paid for by the employer)</p> <p>Option of unpaid leave</p>
Preparation of dismissal during maternity leave for a dismissal after a woman's return is prohibited	Disagree	<p>In line with the elimination of inequalities, the dismissal or otherwise of workers who have been on maternity leave up to one year should be based solely on performance as in any other case and at the employer's discretion.</p> <p>The current Directive is sufficient to protect a woman's dismissal during maternity leave, as it clearly states that an employer should duly substantiate the grounds for such dismissal in writing.</p> <p>If a woman is employed and becomes pregnant during the first 6 months and she is found incapable for the job, the employer ends up having to lump the organisation with an incapable employee.</p>
Payment of full salary (corresponding to the last month) whilst on maternity leave although MS may establish a ceiling provided it is not below sick pay rates	Partially Agree	<p>High Payment of maternity leave does have a positive impact on demography in the long term.</p> <p>This financial burden should not be carried solely by the employer, but should be shouldered by the Government as the beneficiary would be the country as a whole.</p> <p>The NI being paid by the employee and the employer should be already accruing for such costs.</p>
Mothers have the right to ask employers for flexible work patterns – the employer is obliged to consider such a request but has no obligation to accept	Agree	<p>Agree with the right to ask an employer to adapt to working patterns to the new family situation, and the employers' obligation to examine the demand.</p> <p>Final decision must not be taken by the Member State but by the employer and employee</p> <p>An employer needs a productive workforce to continue its operations.</p>
Others: Women having the right to return to the same job or equivalent post that was entitles before leave	Partially Agree	<p>A business' operation varies according to the market trends and general climate: the argument is not against giving any improved conditions during her year of absence (as this is already practiced by local employers), but on guaranteeing terms that were applicable before the leave uptake.</p> <p>There might also be the case that if a replacement is found to fill in the void left by the individual during her absence, job rotation might be necessary and hence due to operations, the employer might not be in a position to accommodate such requests.</p> <p>There should be a proviso in case the post becomes redundant</p>
Others: One size fits all approach	Disagree	<p>Over the past years, local institutions have created a set of diversified measures that aim to promote the better reconciliation of professional private and family life, which reflect our local market needs and diversity of traditions and cultures then others different in Europe. The current arrangements in place are specific to our country's labour market challenges and our industrial sectors</p>
Others: Burden of Proof	Agree	<p>There is complete agreement with this amendment</p>

<p>Recommendations and Conclusions</p>		<p>The major concern is that extending leave rights would have an adverse effect on the participation rates in the labour market, and would be unfavourable to the promotion of employing women at the workplace.</p> <p>Such measures will increase costs and hence women would represent a more costly source of labour than men, implying an overall reduction in job offers for women.</p> <p>Combining sufficient and affordable provision of quality childcare services. The need to establish a Temporary Work Agency.</p> <p>Alleviate financial burden through cost sharing with Government, as it is firmly believed that this is a social cost (as is the practice in Belgium and Bulgaria).</p> <p>The Malta Chamber reiterates that it agrees in principle with the promotion of work and private life balance, but it also firmly believe that certain measures would be counterproductive and hence having the opposite effect of what it has being created for.</p>
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