

LEAVE OF PARENTS WITH EMPLOYEE STATUS IN THE CONTEXT OF EUROPEAN LEGISLATION

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The support of the Faculty of Management, Comenius University in Bratislava, Slovakia is gratefully acknowledged.

Abstract: Parental rights concerning childcare are reflected in the area of labor law in the form of maternity leave, paternity leave and parental leave and from the point of view of social security law, the employee is entitled to income compensation in the form of a benefit or allowance after fulfilling certain legal conditions. In the article, the author distinguishes between individual types of leave for biological parents with the status of the employee, points out the degree of their use and the way of taking leave in individual EU countries, and also deals with the financial security of persons during the use of these types of leave. In processing the topic, the author analyzes and compares the legislation of EU countries and uses current data from the Mutual Information System on Social Protection. The aim of the paper is to point out the diversity of legal regulations and to assess the current state of employees' rights in EU countries.

Keywords: parent, maternity leave parent, paternity leave, parental leave, benefits

1 Introduction

Parenthood of working persons is associated with labor law and social law protection. The protection of working mothers and fathers is essential. As reported by Dudić, Z., Dudić, B., Agbaba, B., who analyze the European Social Charter, the right to the protection of an employed woman is important for humanity, especially from a biological point of view, as motherhood usually exhausts a woman and takes a long time.¹ However, we must point out that, in order to treat women and men equally, adequate protection applies not only to the mother but also to the father as the other parent due to the establishment of a close relationship with the child.

During the period of need for childcare, the employee exercises the right to time off from the employer corresponding to the individual phases of this period. In any case, a woman is the first who exercise her right to leave at the end of her pregnancy. Only after the birth of a child can we talk not only about the right to leave for a woman - mother, but also for a man - father. In many cases, the parent remains out of active employment not only for several weeks to months, but sometimes for several years, especially due to follow-up births.

The current trend of starting your own family is based on planning and one of the important aspects of family planning is the economic situation of future parents. The costs associated with the birth and care of a child are constantly increasing. Due to the childcare, the family is often provided with only one income, and therefore the provision of benefits, respectively social security contributions, helps to alleviate this situation. Such financial security is an important source of income, especially for families at an early age of the child. As stated by Hlásna and Horváth, state and society assistance to families with children must be understood as a significant social investment in the future development of society and not as a burden on the state budget.²

In connection with the birth and care of the child, the employee takes time off work. Within the EU countries, 3 basic types of leave for employed parents are identifiable: maternity leave, paternity leave and parental leave. In the following text, the article analyzes individual types of leaves on the basis of analysis and comparison of legislation of EU countries and use

of current data from the Mutual Information System on Social Protection of the EU (MISSOC), last updated on 1 July 2020³.

2 Maternity leave

Maternity leave is time off for employed women - pregnant employee and employed mothers shortly after giving birth. This type of leave is defined as the pre- and post-natal break from work taken by mothers of newly-born children⁴. It is used to prepare for the birth of a child, as well as to care for a newly-born child in the first months of his or her life, and therefore we can say that it includes both prenatal and postnatal periods. Maternity leave protects the health and safety of employed woman and the unborn child during later pregnancy and protects the mother for a certain period after the childbirth. The protection of the employed woman in this form is very important, in connection with the biological and reproductive function of the family and the development of the human population. Pregnancy and motherhood are "due to the indicated social dimension rightly classified as primary and classical social events"⁵ and „as important transitions in the life course of women should not entail the risk of being dismissed or losing earnings.“⁶ As "it is necessary to consider women not only as a subject of labor law, but also as a subject of family life of her own choice"⁷, the existence of a policy of reconciling work and family life is important, as women play not only occupational but also family and social.

The minimum length of maternity leave is governed by COUNCIL DIRECTIVE 92/85/EEC of 19 October 1992 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 (further only „Directive 92/85/EEC“). The continuous period of maternity leave under Directive 92/85/EEC should be at least 14 weeks allocated before and/or after confinement (Article 8 (1)). This minimum duration of maternity leave includes compulsory maternity leave of at least 2 weeks allocated before and/or after confinement (Article 8 (2)). Given that individual EU countries can adjust the length of maternity leave and a way of taking it more favorable, the legal regulation of the maternity leave is different in individual EU Member States, it differs significantly.

Based on a comparison of individual national legal regulations and from data collected from the electronic and central database of the Mutual information system on social protection of the EU, we can state that there are considerable differences in the duration of maternity leave. The maternity leave takes several weeks to months. Bulgaria has the longest maternity leave (58.6 weeks). In the ranking of EU countries, Bulgaria is followed by Greece (43 weeks), Ireland (42 weeks), the Slovak Republic (34 weeks), the Czech Republic (28 weeks), Belgium and Hungary (24 weeks). Other countries have an even shorter maternity leave. Estonia, Luxembourg, Poland and Italy guarantee 20 weeks, Cyprus, Denmark, Lithuania, Romania provide 18 weeks and Finland 17 weeks of maternity leave. Women are entitled to

³ MISSOC. Comparative tables IV. Maternity/Paternity; IX. Family benefits. [online]. update 2020-07-01 [cit. 2020-07-20]. Available at: <https://www.missoc.org/missoc-database/comparative-tables/>

[online]. Available at: <https://www.missoc.org/missoc-database/comparative-tables/>

⁴ Aumayr-Pintar, Ch., Cabrita, J., Fric, K., Torres-Revinga, Y.: *Maternity leave provisions in the EU Member States: Duration and allowances*. Luxembourg: Publications Office of the European Union. As of 13 July 2015. [online]. [cit. 2020-09-20]. Available at: <https://www.eurofound.europa.eu/publications/customised-report/2015/working-conditions-law-and-regulation/maternity-leave-provisions-in-the-eu-member-states-duration-and-allowances>

⁵ Lacko, M., Olšovská, A.: *Materská a rodičovská dovolenka v SR*. In *Pracovní právo 2015 na téma Sledování pracovního a rodinného života*. Právnická fakulta Masarykovy univerzity 2015.

⁶ Hohnerlein, E.M. *Maternity Leave*. In: *The Wiley Blackwell Encyclopedia of Family Studies*. March 2016. DOI:10.1002/9781119085621.wbefs241

⁷ Hamulák, J., Freel, L., Nevičká, D.: *The comparative analysis of women's status in labor relations in modern Slovakia and the Czech Republic* [elektronický dokument] In: *Danube* [elektronický dokument]. - Roč. 11, č. 3 (2020), s. 214-227 [print]. - ISSN (print) 1804-6746.

¹ Dudić, Z., Dudić, B., Agbaba, B. Analysis of the European Social Charter and its importance for the protection of selected groups of working women. *Central European Journal of Labour Law and Personnel Management*, 3 (1), 2020. pp. 7-20. doi: 10.33382/cejllpm.2020.04.01

² Hlásna, S., Horváth, M.: *Komponenty kvality života detí, mládeže a dospelých a právnych aspektov*. Báčsky Petrovec: BPS EKSELENT DOO, 2012. 164 s.

16 weeks of maternity leave in France, the Netherlands, Latvia, Austria and Spain, and 15 weeks belong to women in Slovenia. However, there are also European countries that set a minimum duration of maternity leave, as stated in the Directive 92/85/EEC. The shortest maternity leave is in Croatia, Malta and Germany, which have maintained the minimum duration - 14 weeks, as it is enshrined in the Directive 92/85/EEC. Maternity leave takes in EU countries on average 22 weeks.

Portugal and Sweden have specific legislation. There is no specific legal regulation of the maternity leave and the relevant provisions are incorporated into the system of parental leave. The usual phrase maternity leave and parental leave is replaced by the uniform term parental leave, "in order to avoid differentiation in the provision of time for parents to care for a child in the legislative process itself"⁸. Portugal distinguishes between initial parental leave and extended parental leave. Part of the initial parental leave, which lasts 120-150 days in a row, is the leave reserved for the mother. A woman can voluntarily exhaust a maximum of 30 days before the birth (so-called pregnancy leave) and must exhaust 42 days after the birth (compulsory days). Leave reserved for the mother is in Sweden for a period of 60 days before childbirth (so-called pregnancy leave) and compulsory 90 days after childbirth.

The Directive 92/85/EEC does not regulate the way of taking maternity leave. Based on the analysis of individual national legal regulations, it can be stated that in all EU countries (27 states) the maternity leave is combined. It means that woman can take maternity leave before childbirth and after birth. The 16 EU countries have more compulsory weeks of maternity leave (before and / or after birth) than are enshrined in the Directive 92/85/EEC: Latvia - 4 weeks; the Netherlands, Ireland, Portugal (after childbirth), Spain - 6 weeks; Bulgaria - 6½ weeks; Germany (after childbirth), France - 8 weeks; Belgium, Malta - 10 weeks; Sweden (after childbirth) - 12 weeks; Czech Republic, Croatia, Poland (after childbirth), Slovak Republic - 14 weeks; Italy - 20 weeks. Such a provision of a longer compulsory maternity leave in the national regulations of individual states is positively assessed with regard to greater protection of the employee.

With regard to maternity leave, it should be emphasized that over recent years „many EU countries have made changes to the design of maternity leave provision through the introduction of, and changes to, the parental and paternity leave schemes, and by allowing mothers to transfer part of the maternity leave periods to the other parent“⁹. However, it does not belong to these countries, for example the Slovak Republic, where "women's maternity leave is a non-transferable right in contrast to other foreign legislation"¹⁰

As the EU Directive 92/85/EEC guarantees paid maternity leave at least at the level of sickness benefit in accordance with national legislation and/or national practice, all EU Member States provide paid maternity leave in accordance with the Directive 92/85/EEC. Cash benefits provided during maternity leave are generally high, mostly more than 70% of previous earnings. The twelve EU countries (Denmark, Estonia, France, the Netherlands, Croatia, Luxembourg, Germany, Poland, Portugal, Austria, Slovenia, Spain) explicitly provide the mother with full wage compensation (100%) during the maternity leave. There are also some countries that have a higher compensation in the first few days of maternity leave, lower in the following days and we can include Belgium, Finland, Malta among these countries.

3 Paternity leave

In some countries, in addition to maternity leave, paternity leave is provided. Paternity leave is time off for employed fathers. The reason for the father's absence from work is caring for a newly-born child literally for a few days in the first months after birth. „Maternity leave is generally a short period of leave for the father immediately following childbirth. Its aim is to enable fathers to assist the mother to recover from childbirth, which is also crucial in establishing breastfeeding, take care of the newborn as well as other children, attend to the registration of the birth and other family-related responsibilities. Paternity leave is either provided as a separate leave measure for fathers or included in the "special leave" provisions to which all employees are entitled. In that case, the birth of a child or "family events" are listed among the grounds for taking a specific number of days off, in addition to annual leave.“¹¹ The purpose of paternity leave is to create a greater bond between father and child. The father takes paternity leave in parallel with mother on maternity leave.

Despite the fact that paternity leave is used in the countries of the Union, until 1 August 2019 this type of leave was not enshrined in Union law. The change was brought about by DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (further only „Directive 2019/1158“). Directive 2019/1158 establishes the institute of paternity leave for the first time. EU Member States are required to enshrine in their national rules the institute of paternity leave in their legislation by 2 August 2022. The employed father (irrespective of the worker's marital or family status) has a right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States are entitled to determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways (Article 4).

At present, paternity leave is regulated by the legislation of 24 EU countries. Paternity leave periods are generally much shorter than maternity leave periods, today they range from 2 days (Greece, Malta) to 4 weeks (Lithuania, Austria). The Netherlands, Finland and Spain provide more weeks of paternity leave.

Paternity leave is regulated separately in the national regulations of the EU countries. However, there are also exceptions, e.g. Finland, which is specific, because father-specific leave entitlements are part of the parental leave system rather than a separate right. Finland grants fathers 9 weeks of leave (54 calendar days with the exception of Sundays), of which 1-18 days can be taken by the father after the birth of the child in parallel with the mother (the other days would be taken after the mother's maternity leave).

Only three countries - Croatia, Germany and the Slovak Republic do not have the legislative regulation of paternity leave. These states must fully transpose institute of paternity leave into their national law. As six EU countries provide for shorter paternity leave (less than 10 working days), each of these states will have to adjust the length of paternity leave to at least the minimum in accordance with Directive 2019/1158. This legislative change must be made by 2 August 2022 at the latest.

Taking paternity leave is mostly voluntary, only Portugal and Italy have compulsory paternity leave. The 14 EU countries set a maximum period for the father to take paternity leave. For example, in the Netherlands it is within 4 weeks of the childbirth, in the Czech Republic within 6 weeks of the childbirth, in Belgium, Cyprus and France within 16 weeks of the childbirth, in Ireland and Latvia within 24 weeks of the

⁸ Hamulák, J., Nevická, D.: Švédsky model rodičovskej dovolenky - cesta k rovnoprávnosti? In: Barančová, H. (ed.), *Európsky pílter sociálnych práv a spoločnosť 5.0.* : 1. vyd. - Praha : Nakladatelství Leges, 2018. - S. 248-258 (Teoretik)

⁹ Strang, L., Broeks, M.: Maternity leave policies: trade-offs between labour market demands and health benefits for children. European Commission - Europa EU. 2016. [online]. [cit. 2020-09-23]. Available at: https://www.rand.org/pubs/research_reports/RR1734.html

¹⁰ Lacko, M.: *Materská a rodičovská dovolenka*. Praha: Leges, 2016

¹¹ ILO. *Maternity and paternity at work. Law and practice across the world*. 2014, p. 52. [online]. [cit. 2020-07-13]. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf

childbirth. The legislation of Estonia can be considered specific as it has recently introduced the paternity leave 30 calendar days, which can be taken within the period of 30 days before the estimated date of confinement or up to 3 years after the birth of a child. Some countries allow for flexible paternity leave. The father can take paternity leave intermittently in Belgium, Estonia, the Netherlands, Portugal and Italy.

Directive 2019/1158 guarantees paid paternity leave of at least 10 working days. The amount of benefit must be at least at the level of the sickness benefit. Based on the comparison of national legal regulations and data from MISSOC it can be stated that all EU countries that currently enshrine the institute of paternity leave in their legislation already provide financial support for the father on paternity leave. Due to the short duration of paternity leave, employees often receive higher wage compensation, usually more than 70% of previous earnings. The 12 EU countries (Denmark, Estonia, France, Greece, the Netherlands, Luxembourg, Poland, Portugal, Romania, Slovenia, Spain, Italy) explicitly provide the father with full wage compensation (100%) during paternity leave.

4 Parental leave

The third type of leave for parents is parental leave. Parental leave is time off for employed parents (mother and father) due to the birth of a child for the purpose of caring for him until a certain age. Parental leave often complements special maternity leave and paternity leave and often, but not in all EU countries, follows immediately after maternity leave. Unlike maternity leave, parental leave is not primarily linked to the state of health of the employee who takes it. This type of leave represents time space for the upbringing of a child at an early age and serves to deepen the care of a small child. It should be emphasized that the care of a child is not a matter for one parent, but applies to both parents.

Parental leave is governed by COUNCIL DIRECTIVE 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (further only „Directive 2010/18/EU“) and already mentioned in DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. Directive 2010/18/EU will be repealed on 2 August 2022. The Directive 2019/1158 (Article 5) takes over and amends the institute of parental leave from Directive 2010/18/EU. New directive guarantees each parent an individual right to parental leave of at least 4 months, of which 2 months of parental leave must be non-transferable. The parent should exhaust the parental leave before the child reaches a specified age, up to a maximum of 8 years. The new legislation extends the minimum period of parental leave, which cannot be transferred from one parent to another, from 1 to 2 months. It should be emphasized that the proposal for a directive contained 4 non-transferable months. As we believe that this is a good incentive for parents (especially fathers) to stay with their child on parental leave, this longer length of non-transferable period could have been enshrined. „The purpose of the legislation on parental leave in European Union law is, in addition to the need to ensure the care of the child, to reconcile the parental and employment responsibilities of employees in the position of parents. EU law looks at parental leave not only in connection with the granting of paid leave, in whole or in part, due to the deepening of childcare, but also in connection with the return of an employee to work“¹².

If we take a closer look at the individual EU states, the duration of parental leave and the security of employees during parental leave vary considerably from one country to another. The length

of parental leave and the financial security of employees during parental leave vary considerably from one EU country to another. The length of parental leave in EU countries ranges from a few weeks to several years. Parents in Germany, Spain, Slovakia, the Czech Republic, Hungary and Estonia have the longest parental leave. Parental leave lasts in these countries a maximum of 3 years. The shortest parental leave is 16 weeks in Belgium, Greece, Croatia and Luxembourg. A specific country is Malta, where parental leave does not apply.

In some countries, certain periods of parental leave are reserved only for use by the mother or father ("mother quota" or "father quota"), which cannot be transferred to the other parent (non-transferable months). For example, in Sweden, out of 480 days of parental leave (240 for each parent), 90 days (3 months) are reserved for the mother and 90 days (3 months) for the father. „The potential goals of these policies are greater gender equality, both in the family and in the labour market, a better work-life-balance for families and stronger bonding between father and child.“¹³ In other countries, the total length of parental leave is non-transferable to the other parent (this applies, for example for the Slovak Republic).

The legal regulations of some states also allow the so-called "bonus weeks", if both parents share a certain part of parental leave. For example, in Portugal parental leave is increased by 30 days if each parent has taken 30 days of parental leave.

As individual countries differ significantly in the duration of parental leave, among the professional public, it is debated whether some states do not have too long and some states, on the contrary, too short parental leave. Dearing H. assesses the compliance of European countries' parental leave policies to an ideal model of leave in her article. The author points to the ideal model of parental leave that would best support gender equality in the division of labor. The ideal EGDL model offers a "moderate" duration of 14 months of well-paid leave.¹⁴

In some countries, the parental leave must be taken continuously directly after maternity or paternity leave, in other countries the flexible taking of parental leave is possible. The parent can divide parental leave into several periods when the child is small. This permits the parents to choose to take parental leave as it suits them. For example, in the Slovak Republic, a parent can use up the part of the parental leave that he has not used up until the child's 3 year of age with the consent of the employer up to 5 years of age of the child. We evaluate this possibility positively.¹⁵ Research shows that men and women tend to take their leaves differently: women as continuous leave, even when flexible leave is available, while men more often take it flexibly and in shorter chunks.¹⁶

Although Directive 2010/18/EU does not guarantee financial coverage during parental leave, most EU countries (21 states) grant paid parental leave. Although entitlement to parental leave is an individual right (meaning that each parent has their own entitlement, parental leave is available to both parents), the provision of allowance during parental leave is often based on a family entitlement, which means that only one parent can apply for income support at any time. Parental allowance is:

¹³ Albrecht, C., Fichtl, A. and Redler, P.: *Fathers in Charge? Parental Leave Policies for Fathers in Europe*. ifo DICE Report 1/2017, March, Volume 15, pp. 49-51. [online]. [cit. 2020-08-29]. Available at: <https://www.ifo.de/DocDL/dice-report-2017-1-albrecht-fichtl-redler-march.pdf>

¹⁴ Dearing, H.: How to assess European leave policies regarding their compliance with an ideal leave model. In *Journal of European Social Policy*, 2015. [online]. [cit. 2020-08-20]. Available at: https://www.renner-institut.at/fileadmin/user_upload/images_pdf/fs/veranstaltungen/veranstaltungen_2015/2015-11-17_femmes_globales_Beruf_und_Familie_partnerschaftlich_gestalten/2015-11-17_Dearing_2016_EGDL_Indikator.pdf

¹⁵ Treľová, S., Kulhánek, R.: Maternity and parental leave of employed mothers and fathers in the context of Slovak legislation. In: Education excellence and innovation management through Vision 2020. - Norristown : International business information management association, 2019. - S. 6698-6705. ISBN 978-0-9998551-2-6 [online]. [cit. 2020-07-15]. Available at: <https://ibima.org/accepted-paper/maternity-and-parental-leave-of-employed-mothers-and-fathers-in-the-context-of-slovak-legislation/>

¹⁶ Hegewisch, A., Gornick, J. C.: The impact of work-family policies on women's employment: A review of research from OECD countries, in *Community, Work & Family*, Vol. 4, Issue 2, pp. 119-138.

¹² Komendová, J.: Rodičovská dovolená pohledem práva EU – možnosti vyplývající z revidované rámcové dohody o rodičovské dovolené In *Pracovní právo 2015 na téma Sledování pracovního a rodinného života*. Právnická fakulta Masarykovy univerzity 2015.

- provided as a state benefit (Belgium, Bulgaria, France, the Slovak Republic), or
- linked to a period of previous income (the Czech Republic, Denmark, Estonia, Finland, Croatia, Lithuania, Latvia, Luxembourg, Hungary, Germany, Poland, Portugal, Austria, Romania, Slovenia, Sweden, Italy (17 countries) - usually 60 to 100% of previous income.

As six EU countries (Cyprus, Greece, the Netherlands, Ireland, Malta, Spain) do not provide a contribution at all, these countries will have to change their national legislation due to Directive 2019/1158, which guarantees paid parental leave of at least 2 non-transferable months at an appropriate level.

On the basis of the mentioned above, it can be concluded that „systems of parental leave differ significantly from one country to another. There is considerable variation in terms of eligibility, payment, duration, possible flexibility in usage, the age of the child to be cared for and transferability between parents“¹⁷.

5 Conclusion

The protection of mothers and fathers fulfilling their parental responsibilities is an integral part of legislation at European and national level, guaranteeing the employee an adequate minimum level of protection in relation to her or his maternity or parental responsibilities. Employees (female and male) have employment rights in connection with birth and childcare. These rights represent leave to a woman - mother before and / or after the birth of a child and a man - father after the birth of a child. Motherhood is associated exclusively with a woman, it is related to her pregnancy and subsequent childbirth. The purpose of maternity leave is to provide protection for women in the field of safety and health at work. Unlike maternity protection, parenthood protection is linked to both women and men and is related to the fulfilment of parental responsibilities in reconciling family and working life.

Summarizing of knowledge in area of maternity leave, parental leave and paternity leave can be difficult because of the wide variety of national systems which differ from each other. „There are large differences across countries in terms of the generosity of parental leave, such as the duration of leave, the level of benefits, job protection features, and eligibility.“¹⁸ However, based on a comparison of the legal regulations of the EU countries, we can state that in most EU member states, individual institutes of leave contain 2 elements:

- 1) providing leave in connection with the childbirth and childcare (maternity leave, parental leave, paternity leave); it also includes the protection of the employee's job during the leave (protection from dismissal)
- 2) securing income compensation during the taking time off (maternity leave, parental leave, paternity leave) through the provision of financial contributions (maternity, paternity and parental allowance).¹⁹

A comparison of EU Member States' legislation several years ago showed that countries with longer entitlement to leave provided lower benefits and countries with shorter entitlement to leave provided higher benefits. „In recent decades, many countries modified their maternity and parental leave programmes, changing elements such as length, wage replacement levels, and eligibility criteria“²⁰.

At present, the importance of the participation of both parents in the upbringing of the child is constantly emphasized. A more even distribution of paid leave for family reasons between women and men is to be introduced by Directive 2019/1158, which is currently the last protective legislative measure in EU in this area. It is important that the protection of specific categories of employees, which can also include employed mothers and employed fathers with children, is ensured. However, we point out that although various positive legislative measures are being taken for families with children, including to support the reconciliation of work and family life, positive measures of a non-legislative nature are also needed (compare with Hlásna, Horváth and Köksal)²¹.

Acknowledgements

The support of the Faculty of Management, Comenius University in Bratislava, Slovakia is gratefully acknowledged.

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Primary Paper Section: A

Secondary Paper Section: AG