



International  
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# Maternity and paternity at work

## Law and practice across the world

*The struggle for equality is intimately linked to the struggle for social justice in the world of work.*

Guy Ryder, ILO Director-General,  
International Women's Day 2014

### Overview

Safe maternity and health care for mother and infant survival is at the core of life itself. It is also central to decent work and productivity for women and gender equality at work. Maternity protection is therefore a fundamental labour right enshrined in key universal human rights treaties. The International Labour Organization (ILO) has made the provision for child welfare and maternity protection a primary concern since its very inception in 1919. Today, virtually all countries have adopted legislative provisions on maternity protection at work. Recent ILO data on 185 countries and territories show that 34 per cent fully meet the requirements of ILO Maternity Protection Convention, 2000 (No. 183), and Recommendation, 2000 (No. 191) on three key aspects: they provide for at least 14 weeks of leave at a rate of at least two-thirds of previous earnings, paid by social insurance or public funds.

Despite this progress, the large majority of women workers in the world – around 830 million – do not have adequate maternity protection. Almost 80 per

cent of these workers are in Africa and Asia. Discrimination against women in relation to maternity is a pervasive problem throughout the world. Where legislation exists, ensuring it is effectively implemented remains a persistent challenge.

The basis of this policy brief is *Maternity and paternity at work*,<sup>1</sup> a report by the ILO on national legislative provisions covering maternity protection, including the extent to which national laws conform to Convention No. 183 and the Workers with Family Responsibilities Convention, 1981 (No. 156). The report updates two previous editions (2005 and 2010) and compares national laws in 185 countries and territories with the most recent ILO standards. It uses data on national legislation collected by the ILO since 1994.

This policy brief presents the key findings from the report on maternity leave, paternity and parental leave, health protection at work, employment protection and non-discrimination, breastfeeding arrangements and childcare. It outlines the ILO framework on maternity and paternity at work and concludes with recommendations on policy design and implementation.

## ILO framework and context

Throughout its history, the ILO's concerns regarding maternity protection have remained the same – to preserve the health of the mother and her newborn; to enable women to combine successfully their reproductive and productive roles; to prevent unequal treatment at work due to their reproductive role; and to promote the principle of equality of opportunity and treatment between women and men. The ILO has adopted three maternity protection Conventions: in 1919, 1952, and the most recent in 2000, the Maternity Protection Convention (No. 183). They stipulate protective measures for pregnant women and for women who have recently given birth, including the prevention of exposure to health and safety hazards during and after pregnancy, entitlement to paid maternity leave, maternal and child health care and breastfeeding breaks, protection against discrimination and dismissal in relation to maternity, and a guaranteed right to return to work after maternity leave.

Sixty-six countries are party to at least one of the three maternity protection Conventions, but the influence of ILO standards extends well beyond ratifications.<sup>2</sup> Not only does almost every country now have some maternity protection legislation, many others also have measures to support workers with family responsibilities, including fathers. This is occurring within a context of broader social developments, including the rise in women's paid work, the growth in non-standard work (part-time, temporary or casual), population ageing and changes in family patterns. The global economic crisis has in some countries exacerbated pre-existing gender inequalities and highlighted the need to reconfigure both men's and women's work.<sup>3</sup>

## Maternity leave

### KEY POINTS

- There has been a gradual global shift towards maternity leave periods that meet or exceed the ILO standard of 14 weeks: the majority of countries now provide leave duration in line with Convention No. 183. No country has cut maternity leave duration since 1994.
- Only three<sup>4</sup> of 185 countries and territories studied provide no statutory cash benefits during maternity leave. More than 100 countries now finance benefits through social security, reducing employers' liability. However, analysis showed that benefits in more than half were neither financially adequate nor sufficiently long-lasting.
- Expanding coverage in law and in practice is critical for the approximately 830 million women workers who are not adequately covered in practice, mainly in developing countries.

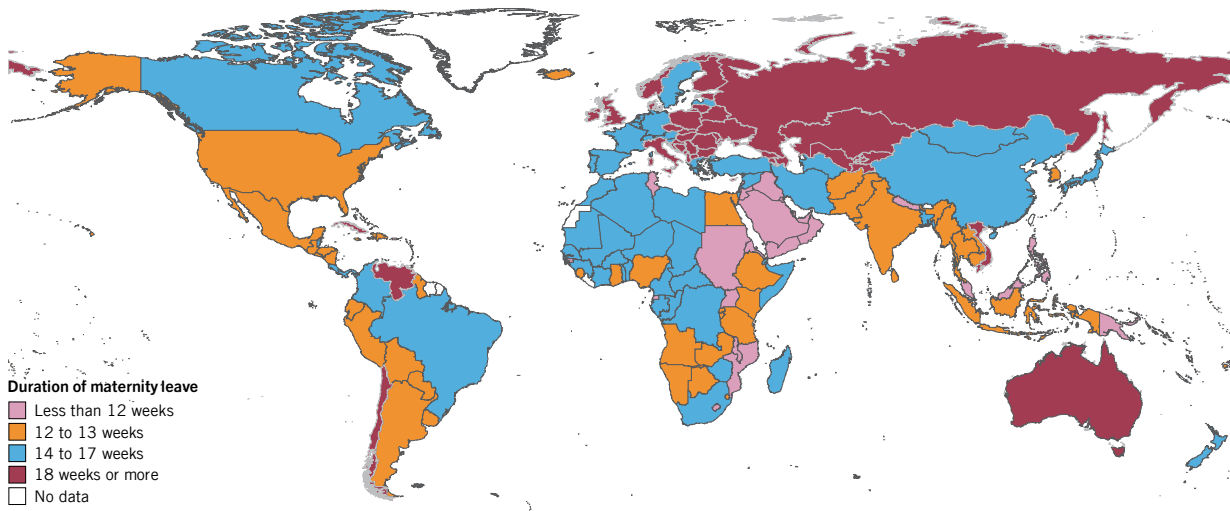
### Duration of leave: A gradual positive shift

The most recent ILO standard on duration of maternity leave<sup>5</sup> mandates a minimum leave period of 14 weeks, up from 12 weeks in the previous Conventions. Recommendation No. 191 encourages ILO member States to increase the period of maternity leave “to at least 18 weeks”.<sup>6</sup>

The length of leave is critical in enabling mothers to recover from childbirth and return to work while providing adequate care to their children. When leave is too short, mothers may not feel ready to return to work and drop out of the workforce. However, very long leave periods, or parental leave mostly taken up by women, especially without job protection, may also damage women's attachment to and advancement in paid work, resulting in wage penalties.

Among the 185 countries and territories studied:

- 53 per cent (98 countries) meet the ILO standard of at least 14 weeks' leave;
- 42 of those countries meet or exceed the suggested 18 weeks' leave;
- 60 countries provide 12 to 13 weeks' leave – less than the duration in Convention No. 183, but consistent with previous Conventions;
- only 15 per cent (27 countries) provide less than 12 weeks.

**Map 1. Statutory duration of maternity leave, 2013 (185 countries and territories)**

Source: ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase>.

The longest average statutory durations of maternity leave are in Eastern Europe and Central Asia (almost 27 weeks), and the Developed Economies (21 weeks). The shortest regional average is in the Middle East (9.2 weeks).

Trend data<sup>7</sup> from 1994 to 2013 show that no single country has reduced its statutory duration of maternity leave. In 1994, 38 per cent of countries provided at least 14 weeks' leave. By 2013, among this same set of countries, 51 per cent provided at least 14 weeks' leave.

### Cash benefits: A mixed picture

To be in conformity with Convention No. 183, the cash benefit paid during maternity leave should be at least two-thirds of a woman's previous earnings – or a comparable amount if other methods are used to determine cash benefits – for a minimum of 14 weeks. The overall guiding principle is that the level of benefits should ensure “that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living”.<sup>8</sup>

Countries use a variety of methods for fixing the level of cash maternity benefits. Some do not pay benefits for the full duration of leave; some reduce the level of benefits during leave; others provide statutory pay only to some categories of workers. From a subset of 167 comparable countries, the report found:

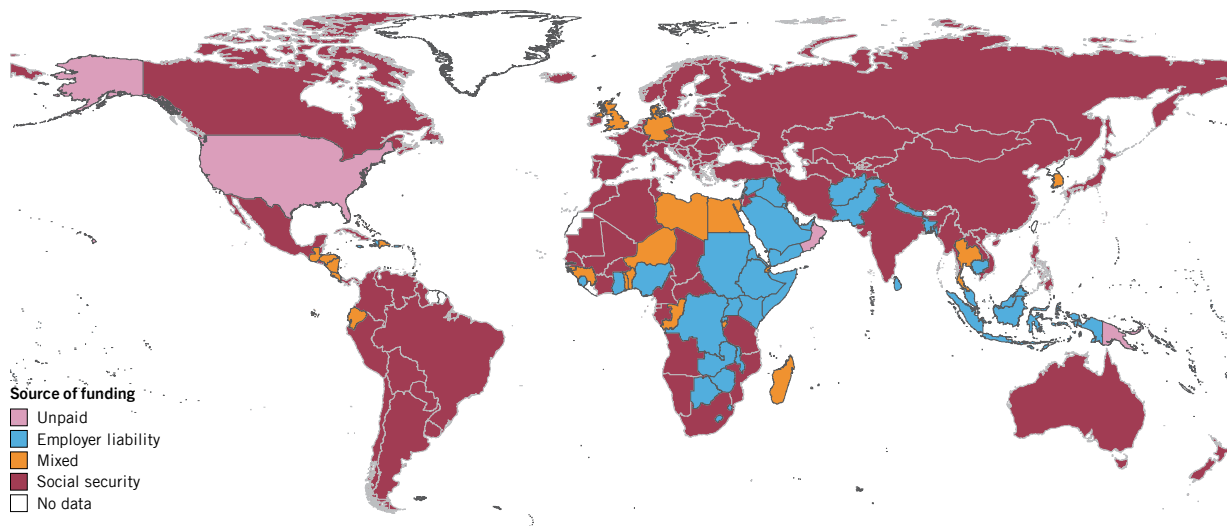
- 45 per cent (74 countries) provide cash benefits of at least two-thirds of earnings for at least 14 weeks – an overall increase of 3 per cent since the last ILO review in 2010;<sup>9</sup>
- among these, 61 countries provide 100 per cent of previous earnings for at least 14 weeks;
- in 93 countries (around 55 per cent) maternity leave is unpaid, paid at less than two-thirds of previous earnings, or paid for a period of less than 14 weeks.

The most common types of funding for maternity leave cash benefits are: employment-related social insurance (contributory scheme); the employer, through the direct payment of maternity benefits (so-called “employer liability”); or some mix of the two.<sup>10</sup> Among the 185 countries and territories surveyed:

- 58 per cent (107 countries) provide for cash benefits through national social security schemes;
- in 24 per cent (45 countries), benefits are paid solely by the employer;
- in 16 per cent (30 countries), employers and social security systems share the cost of maternity cash benefits;
- benefits are not paid in three countries (2 per cent).

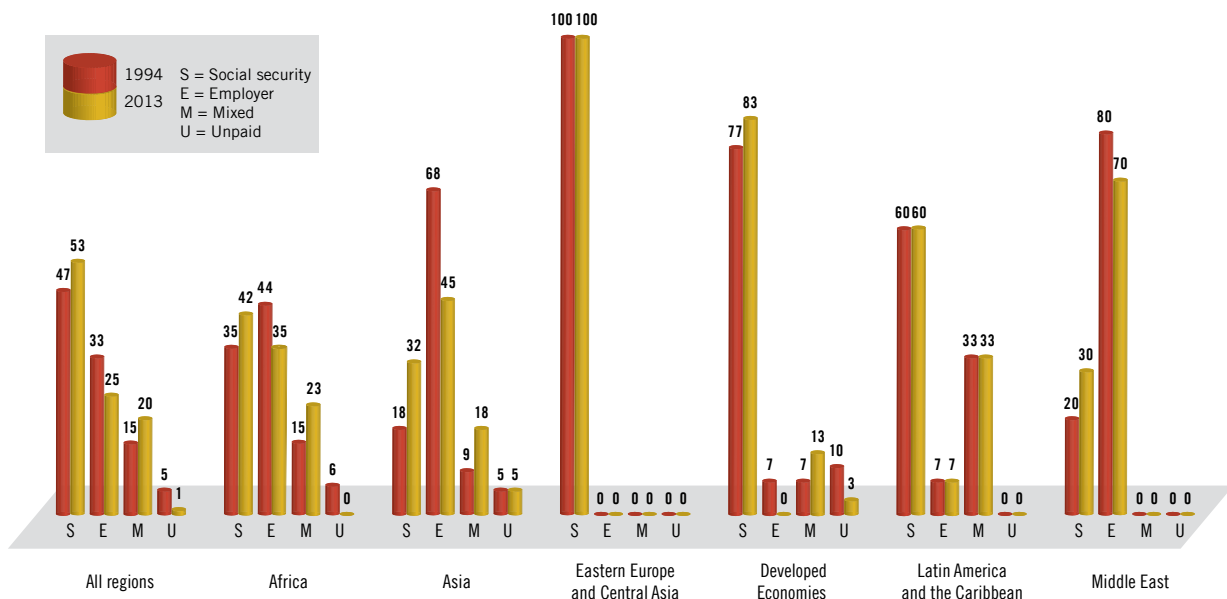
Eastern European and Central Asian countries rely entirely on social security systems, as do 88 per cent of Developed Economies. Employer liability systems are

**Map 2. Source of funding of maternity leave cash benefits, 2013 (185 countries and territories)**



Source: ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase>.

**Figure 1. Source of funding of maternity leave cash benefits, 1994 and 2013 (144 countries) (%)**



Source: *Conditions of work digest: Maternity and work* (ILO, 1994); ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase>.

more common in Africa, Asia and the Middle East, where challenges in setting up maternity branches of social security systems are considerable (Map 2).

Research shows that employer liability schemes work against the interests of women workers by placing the financial burden on employers and creating a possible source of discrimination against women.<sup>11</sup> Employers

may be reluctant to hire, retain or promote pregnant workers or women with family responsibilities, or may find reasons to discharge pregnant employees to avoid paying the costs of wage replacement during maternity leave and other (potential or actual) costs linked to their replacement. In many cases, this simply means not hiring women of childbearing age. This is despite

the existence of a recognized “business case” for work-family measures that are shown to foster better performance and commitment, and can result in lower absenteeism, skill preservation and a boost to the image of socially responsible companies.<sup>12</sup>

Despite the ongoing reliance on employer liability systems in some regions, trend data show that since 1994 there has been a general shift away from this method towards collective systems in which social insurance or public funds alone, or in conjunction with employers, provide maternity leave benefits. The percentage of countries that finance cash benefits through employer liability systems fell from 33 to 25 per cent, while those that provide unpaid leave dropped from 5 to 1 per cent (Figure 1).

Supporting member States to shift progressively from employer liability to social security systems is a priority of ILO technical assistance. Activities to this end include: evidence-based awareness-raising of the benefits of maternity protection, and the need to create fiscal space to finance it; technical expertise in the review and drafting of legislation; and preparation of financial and actuarial feasibility studies. For instance, Ghana, Lesotho, Mozambique, Occupied Palestinian Territory, Sri Lanka, Rwanda and Zambia are benefiting from such assistance. Finding further ways to foster this shift should be a priority of policy action.

**Scope of coverage in law and in practice: Expansion is critical**

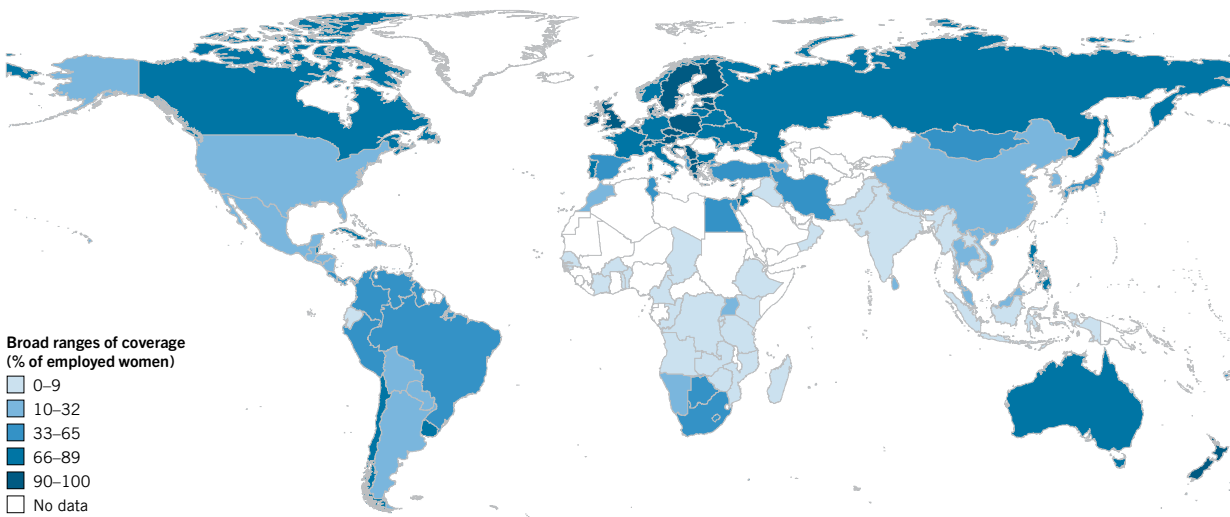
There is a distinction between how many workers are covered by maternity protection in law and how many actually benefit in practice. A disparity between the two arises depending on how laws are implemented and enforced. Coverage gaps are linked to women’s lack of awareness of legal entitlements and their benefits, insufficient contributory capacity, the gaps of social security systems, inadequate enforcement, discriminatory practices, informality and social exclusion.

ILO estimates of the numbers covered reveal that 40.6 per cent of employed women have a statutory right to maternity leave. But only 34.4 per cent of the total are legally entitled to cash benefits during maternity leave on a mandatory basis. A large majority of women workers are still not adequately protected in practice for income loss during maternity.

Regional differences are striking (Map 3).

- Almost 80 per cent of the 830 million women workers unprotected are in Africa and Asia. These are the regions where employer liability schemes are more prevalent, informal work is predominant and maternal and child mortality ratios are still very high.
- Only around 330 million women (28.4 per cent of employed women worldwide) are effectively protected – that is, they would receive cash benefits in the event of childbirth.

**Map 3. Percentage of women workers contributing to a maternity cash benefits scheme or otherwise protected for income loss during maternity, 2010 (117 countries)**



Source: ILO estimates based on data from official sources.

- Among these women workers, 38 per cent are in the Developed Economies compared to less than 10 per cent in Africa and Asia.
- In only 21 countries – mostly in Europe – more than 90 per cent of employed women would be entitled to receive some form of income support for having a child.

Many countries specify the categories of workers not covered by paid maternity leave. Broadly these include: workers in self-employment (in particular, own-account and contributing family workers); domestic workers (the ILO estimates 15.6 million women domestic workers do not have legal rights to maternity protection); agricultural workers; non-standard workers (part-time, temporary or casual workers); women in small and medium-sized enterprises (SMEs) and migrant workers.

At least 27 countries explicitly exclude agricultural workers by law. An ILO survey in two rural areas of Senegal found that 26 per cent of women farmers work until the day of childbirth, a practice found also in Asian countries such as Nepal. The exclusion of women in non-standard employment is not specific to developing countries. In Japan, part-time workers are legally excluded from social security coverage of maternity benefits, as are casual workers in Canada.

There have been positive changes. Legislation in an ever-increasing number of countries offers protection to the unprotected categories of women workers mentioned above as set out in ILO Conventions. For instance, in at least 54 countries, domestic workers are covered by maternity leave legislation on the same conditions as other workers, in line with Article 14 of the ILO Domestic Workers Convention, 2011 (No. 189). Since 2010, individual micro-entrepreneurs in Brazil can now register for and access medical care, paid maternity leave and other benefits, through a single social security contribution, thus formalizing an estimated 3 million workers.

However, given the substantial numbers of women in informal or non-standard employment, lack of access to maternity protection remains a very serious concern. The ILO considers that access to social security is a fundamental human right and a public responsibility. Efforts to expand its scope and improve access to social health protection are urgently needed. ILO research suggests a minimum package of social security

benefits is not only affordable and feasible in even the poorest countries, but it is conducive to social and economic development. There are also various options for expanding fiscal space for maternity benefits as part of broader strategies to extend social security for all.

## Paternity and parental leave

### KEY POINTS

- Paternity leave provisions are becoming more common and reflect evolving views of fatherhood. A statutory right to paternity leave is found in 78 of the 167 countries with information available. Leave is paid in the majority of these (70), underlining the trend for greater involvement of fathers around childbirth.
- Parental leave provisions were found in 66 of 169 countries studied, predominantly in the Developed Economies, Eastern Europe and Central Asia, and only rarely in other regions.
- Parental leave is typically offered as a shared entitlement, mainly taken by women. Take-up rates among men are low, especially where leave is unpaid.

### Paternity leave: Towards more fathers' involvement

Paternity leave is usually a short period of leave for the father to take immediately following childbirth to help care for the child and assist the mother. Research suggests links between fathers' leave, men's take-up of family responsibilities and child development. Fathers who take leave, especially those taking two weeks or more immediately after childbirth, are more likely to be involved with their young children.<sup>13</sup> This can have positive effects for gender equality in the home and at work and may indicate shifts in relationships and perceptions of parenting roles and prevailing stereotypes.

No ILO standard exists concerning paternity leave. However, the Resolution concerning gender equality at the heart of decent work adopted by the International Labour Conference in 2009 recognizes that work-family reconciliation measures concern both men and women. The Resolution calls for governments to develop adequate policies for a better balance of work and family responsibilities, to include paternity and/or parental leave, with incentives for men to use them.<sup>14</sup>

Leave provisions for fathers are most common in the Developed Economies, Africa and Eastern Europe and Central Asia. The length of paternity leave varies, although only five countries (Finland, Iceland, Lithuania, Portugal and Slovenia) offer leave periods of longer than two weeks. In almost all countries that offer paternity leave, fathers may choose whether to take up the right. Only Chile, Italy and Portugal make paternity leave compulsory.

In 1994, statutory paternity leave provisions existed in 40 of the 141 countries for which data were available at the ILO. By 2013, legislation on paternity leave existed in 78 countries of the total with available information (167). The regions with the largest increases in provision since 1994 are Eastern Europe and Central Asia, the Developed Economies and Latin America and the Caribbean (Figure 2).

Paternity leave is paid in 70 countries (89 per cent) out of 78 where there is entitlement. Among those:

- employer liability is prevalent in 45 countries (57 per cent), 24 of which are in Africa;
- social security is found in only 22 countries (28 per cent), predominantly among Developed Economies (15 out of 24 countries);
- mixed systems are present in three countries.

As with maternity leave, risk pooling through social insurance or public funds can help mitigate potential discrimination or disadvantages against men with family responsibilities at work and can boost fathers’

take-up rates. Enshrining a statutory right to paid paternity leave in national legislation would signal the value that society puts on the care work of women and men and would help advance gender equality.

### Parental leave: A difficult balancing act

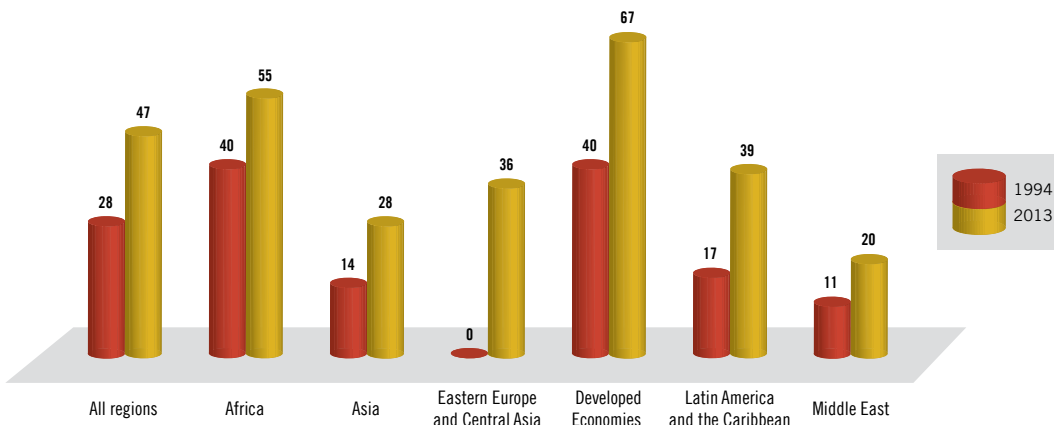
Parental leave is a period of longer-term leave available to either or both parents, to allow them to look after an infant or young child, usually after maternity or paternity leave expires. Provisions on parental leave are contained in Recommendation No. 191 (accompanying Convention No. 183) and Recommendation No. 165 (accompanying Convention No. 156). Both leave the duration, payment and other aspects to be determined at a national level.

There is considerable variation in systems of parental leave concerning eligibility, payment, duration, flexibility in use, age of the child cared for and transferability between parents. Broadly, parental leave is longer than maternity leave, but payment is often lower or non-existent. In several countries, collective bargaining agreements replace or extend legislated provision on leave policies for parents.

Parental leave provisions were found in 66 of the 169 countries with available information, mostly in Developed Economies, Eastern Europe and Central Asia. The regional breakdown showed that:

- nearly all the Developed Economies (35 out of 36) offer a period of parental leave;<sup>15</sup>

**Figure 2. Provision of statutory paternity leave, by region, 1994 (141 countries) and 2013 (167 countries) (%)**



Source: ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase> and the *Conditions of work digest: Maternity and work* (ILO, 1994).

- all 16 of the Eastern European and Central Asian countries offer a period of parental leave;
- in Africa, only Burkina Faso, Chad, Egypt, Guinea and Morocco offer a type of long-term parental leave, all unpaid;
- in the Middle East, Bahrain, Iraq, Jordan, the Syrian Arab Republic and Kuwait offer unpaid parental leave – only for mothers;
- just three of 25 Asian countries analysed (Mongolia, Republic of Korea and the Philippines) provide for parental leave;
- only Chile and Cuba among the 31 Latin American and Caribbean countries analysed provide for parental leave.

Parental leave is paid in more than half the countries where it is provided (36 out of 66), all of which are among the Developed Economies, Eastern Europe and Central Asia, except Chile and Cuba. Only 18 of these offer cash benefits equivalent to two-thirds or more of a worker's previous earnings, while the remaining countries offer lower levels of support, including flat rate

benefits. Where leave is paid, it is usually funded by social security systems and general taxation, especially where the amount is not income-related.

In general, women are most likely to take parental leave following maternity leave, particularly where there is a shared entitlement between parents. This trend can weaken women's footing in the labour market and exacerbate gender inequalities both in the workplace and in the division of labour at home. Efforts to incentivize men to take up parental leave have included making allocations individual, non-transferable or compulsory and providing incentives and adequate compensation during leave. High take-up rates are strongly related to the level of compensation for lost earnings while on leave and availability of job protection.<sup>16</sup> Overall, evidence suggests that workers prefer better-paid leave for both women and men during shorter periods, followed by family-friendly working arrangements and quality, affordable childcare services responsive to the needs of both working parents and children, rather than extended leave periods with little compensation.<sup>17</sup>

### Box 1. How the global economic crisis has affected leave entitlements

Perhaps contrary to expectations, the global economic crisis, which started in 2008, brought positive change in addition to cuts to public spending on work-family policies. Some Developed Economies hardest hit by the crisis cut support to families or postponed announced reforms as part of fiscal consolidation drives. Estonia, Hungary, Latvia, Lithuania and Romania reduced the duration of leaves or the level of benefits in direct response to the crisis, some temporarily, although not all.<sup>1</sup>

However, many countries increased support to families during the crisis. Measures included access to early education, tax credits, and increases in duration, scope and levels of benefits for maternity or parental leave. Australia, France, Germany, Poland and Slovakia are among countries enacting such measures. China extended maternity leave from 90 to 98 days in 2011 and Chile shifted postnatal parental leave for women from 18 to 30 weeks (with a leave transfer option

for fathers). As part of a programme of measures to help families, El Salvador boosted income compensation from 75 to 100 per cent during the 12-week maternity leave for working mothers registered with the Salvadorian Social Security Institute. This operated as a countercyclical measure, simultaneously preventing the living conditions of these women and their families from deteriorating, while supporting unpaid care work.<sup>2</sup>

There were positive developments in paternity and parental leave schemes intended to increase men's take-up rates. Australia introduced paid paternity leave (14 days) in 2013. In Norway, the paternity quota of parental leave was extended from 12 to 14 weeks. Not only do these schemes underline the trend towards greater involvement of men in family responsibilities, they also explore the possibility of overcoming economic turmoil by promoting women in the labour force through better work-family measures.

<sup>1</sup> A.H. Gauthier: *The impact of the economic crisis on family policies in the European Union* (Brussels, European Union, 2010).

<sup>2</sup> A. Espino: "Gender Dimensions of the Global Economic and Financial Crisis in Central America and the Dominican Republic", in *Feminist Economics* (2013, Vol. 19, No.3), pp. 267–288.

## Other maternity protection components

### KEY POINTS

- All but 20 of the 165 countries with available information had explicit prohibitions against discrimination during pregnancy, leave and/or an additional prescribed period.<sup>18</sup> Yet, maternity discrimination persists around the world, according to various sources.
- More than two-thirds of countries have statutory measures on dangerous or unhealthy work that affects pregnant or nursing women. The majority provide protective measures as an alternative to hazardous work.
- At least 75 per cent of countries with available data had legislation providing for nursing breaks. Trends were consistent across all regions, although 24 per cent of countries still have no national laws on the issue.

### Employment protection and non-discrimination: Challenges persist

ILO standards on maternity protection call both for the protection of women's employment during maternity, maternity leave and a period following the return to work, and for measures to ensure that maternity is not a source of discrimination in employment. Convention No. 183 notes that discrimination can also occur in recruitment and hiring, negatively affecting women in search of employment.

Determining the extent of dismissals and employment discrimination on the basis of maternity is very difficult. Surveys on the matter are rare. However, information from court cases, equal opportunity bodies, trade unions and other sources indicate that discrimination is a continuing problem throughout the world. For example, a European Union country review showed a considerable level of maternity-based discrimination across its Member States – in a region where countries have adequate anti-discrimination laws. Tactics to pressure pregnant workers and new mothers to resign, such as harassment, were reported in Romania, Spain and Lithuania. In Croatia, Greece, Italy and Portugal, there are reports of widespread use of “blank resignations” – undated resignation letters that workers are forced to sign upon hiring, then used

to dismiss them if they become pregnant, have a long-term illness or family responsibilities. Reports suggest that some of these tactics intensified during the global economic crisis.<sup>19</sup>

Notwithstanding, legislation exists in 145 of the 165 countries with available information that prohibits discrimination on the grounds of maternity. Convention No. 183 sets out various measures to bolster the strength of this protection against discrimination, and many countries employ these.

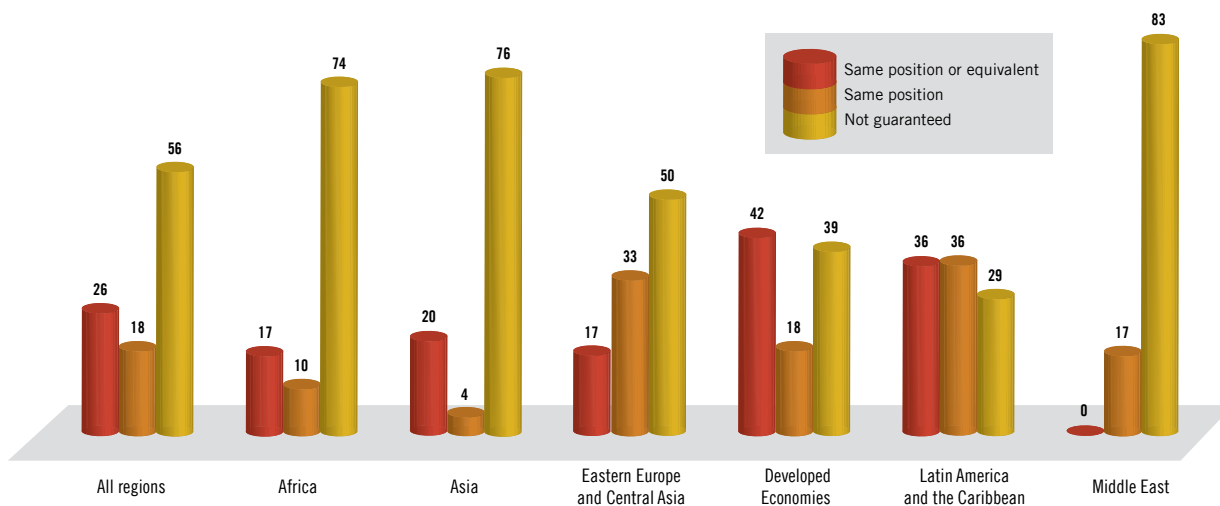
**The guaranteed right to return to work** to “the same position or an equivalent position paid at the same rate” is an essential protective mechanism.<sup>20</sup> Of the 146 countries with available information, 64 give legal guarantees for a woman to return to the same post or an equivalent one after maternity leave. However, the majority (82 countries) do not guarantee the right to return to work (Figure 3).

Convention No. 183 also calls for **protection during a period following a woman's return to work** after maternity leave but leaves it to national laws or regulations to define that duration. At least 56 countries specify the time period covered by this protection, which in many cases extends well beyond the expiry of maternity leave.

**Burden of proof** is another protective measure. Convention No. 183 stipulates that the burden for proving that reasons for dismissal are unrelated to pregnancy, childbirth or nursing “shall rest on the employer”.<sup>21</sup> Among the 144 countries for which information was available, 38 per cent (54 countries) have legal provisions that impose the burden of proof on the employers. Sixty per cent of countries (86) do not specify a burden of proof, while in the remaining countries the burden of proof is on the worker.

**“Non-discrimination in relation to maternity”** refers to the right of all women not to be treated less favourably in a work situation – including access to employment – because of their sex, or due to circumstances arising from their reproductive function. Convention No. 156 extends protection to workers with family responsibilities, both men and women.<sup>22</sup>

Countries in all regions have enacted legislation prohibiting discrimination on the basis of sex but there are variations in how the grounds for discrimination are specified. Of the 155 countries with available information, 114 had legislation prohibiting discrimination

**Figure 3. Right to return to work, 2013 (146 countries) (%)**

Source: ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase>.

in employment (which typically includes access to employment, recruitment, promotion, changes in position, dismissal, retirement and other working conditions) on the basis of “sex” alone or “sex” in addition to other grounds indirectly linked to maternity or pregnancy. “Maternity” or “pregnancy” was explicitly given as prohibited grounds for discrimination in 43 countries.

Convention No. 183 specifically **prohibits requiring women to take pregnancy tests** at the time they apply for employment, with a few exceptions related to work-based risks to health. However, the explicit prohibition of pregnancy tests does not seem to be widespread in labour legislation. Among the 141 countries with available information, 47 set out explicit or implicit provisions banning pregnancy tests.

The ILO calls for bans on pregnancy tests to be expressly established in national law and practice. It urges policy-makers to design clearer policies on non-discrimination related specifically to a woman’s reproductive function and to workers with family responsibilities.

### Health protection at the workplace: Blanket bans

ILO standards set out broad frameworks for a preventive occupational safety and health culture.<sup>23</sup> A gender-responsive approach to prevention and protection recognizes that promoting safe and healthy workplaces is relevant to both men and women. Gender-specific interventions, for pregnant and breastfeeding workers, are also needed.

**Arrangement of working time** as a means of health protection for pregnant or nursing workers is important. Several ILO member States have provisions covering night work, overtime and time off for medical examinations during pregnancy.

Recommendation No. 191 states that a woman should not be obliged to perform **night work** if incompatible with her pregnancy or nursing, as determined by a medical certificate. Among the 151 countries with available data:

- 49 specify no restrictions or regulations for night work in their legislation;<sup>24</sup>
- 20 do not prohibit night work, but pregnant (and sometimes all) women are not obliged to work at night;<sup>25</sup>
- 81 countries<sup>26</sup> do prohibit night work in law. There is a general prohibition of night work covering all women in 30 of these, especially in Africa, Asia and the Middle East.

There is no provision in Recommendation No. 191 concerning **overtime** but some countries forbid it for pregnant women (e.g. Belgium, Chile, Equatorial Guinea, Mexico). Others state that pregnant women shall not be required to work overtime (e.g. Cuba, Estonia and Japan). The restriction sometimes applies to nursing mothers, women with young children or in cases where overtime involves a risk to health.

**Time off for prenatal health care** is vital for detecting and preventing complications in pregnancy and for helping pregnant women know their HIV status. They can then benefit from prevention, treatment, counseling, care and support to minimize the risk of mother-to-child transmission. This entitlement is not widely provided for, despite the World Health Organization (WHO) recommendations of at least four prenatal visits. It is particularly uncommon in Africa, Asia and Latin America and is non-existent in the Middle East.

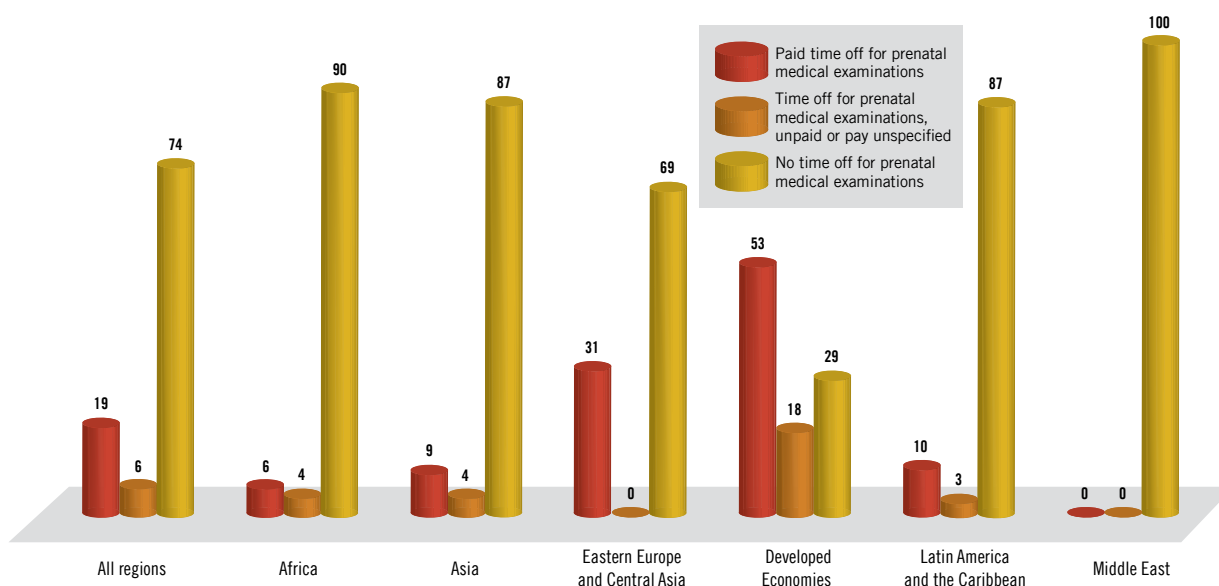
Workplaces can play a key role in enabling women’s access to prenatal examinations, in so doing recognizing its importance for maternal and child health as well as families’ economic stability. Of the 156 countries with information available:

- 116 countries do not provide for time off for prenatal health care;
- 40 countries provide time off as a right, 30 of which specify that this time off is paid (Figure 4).

**Provisions on hazardous or unhealthy work** for women during maternity are an important part of health protection at work. Convention No. 183 sets out the right of pregnant or nursing women not to be obliged to perform work that is hazardous, unhealthy or harmful to their health or that of their unborn or newborn child. Recommendation No. 191 promotes the assessment of workplace risks, especially where conditions involve arduous manual work, exposure to hazardous biological, chemical or physical agents, situations requiring special equilibrium, or standing or sitting for prolonged periods, in extreme temperatures or close to vibration.

There are statutory measures on dangerous or unhealthy work affecting pregnant or nursing women in 111 out of 160 countries with available information; 78 (49 per cent) set out explicit prohibitions against such work. Almost half of those with explicit bans forbid all women from working under certain conditions classed as dangerous. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) warns ratifying countries against blanket bans on dangerous work as well as night work and overtime, however laudable they seem in terms of concern for health. Such bans are contrary to the principle of equality of opportunity and treatment in employment and occupation and contribute

**Figure 4. Time off for prenatal medical examinations, 2013 (156 countries) (%)**



Source: ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase>.

to gender-based discrimination at work. The CEACR considers that maternity requires differential treatment to achieve genuine equality, with a distinction made between measures strictly protecting maternity and protective measures applicable to women’s employment, based on stereotypes of women’s professional abilities and roles in society.<sup>27</sup>

Recommendation No. 191 suggests that **protective measures** should be taken when a workplace risk is established. Such measures include the elimination of risk, an adaptation of the worker’s conditions of work, a temporary transfer to a safer position or, in the absence of other possibilities, placing a worker on temporary paid leave. Of the 160 countries with information, 84 provide some sort of alternative to dangerous work while 76 do not.

**Breastfeeding at work and childcare: Under-explored potential**

Breastfeeding contributes to the health of mother and child. After childbirth, many women face potential job and income loss and thus cannot afford to stop work to continue nursing their infant. Without workplace support for breastfeeding, working is incompatible with breastfeeding. Nursing breaks<sup>28</sup> have been part

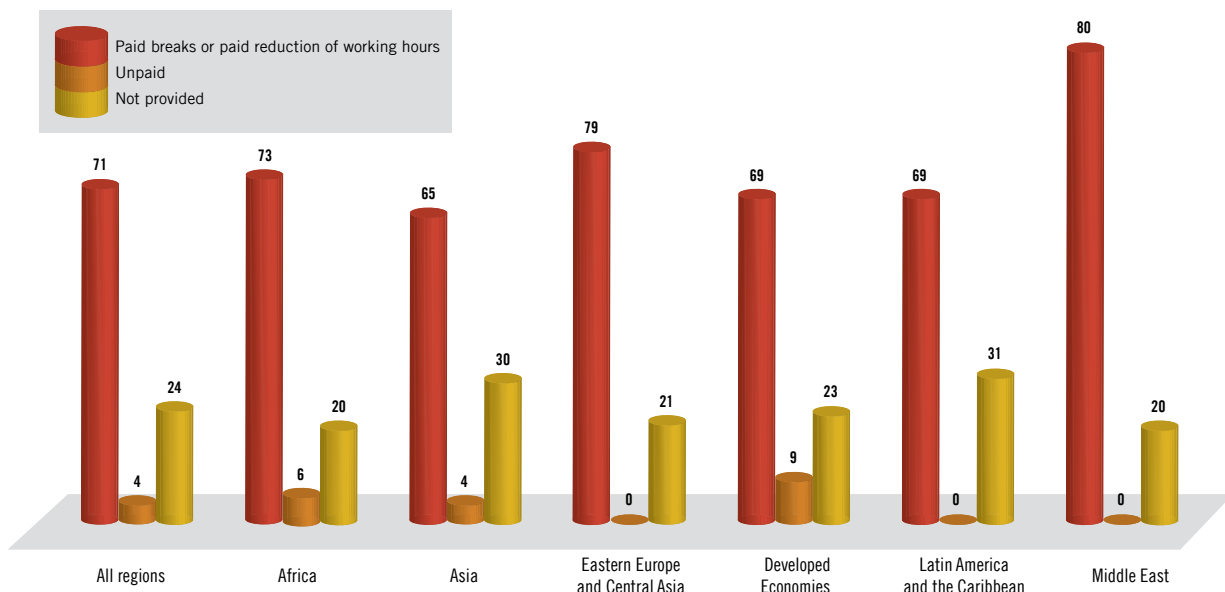
of international standards on maternity protection since 1919. Convention No. 183 leaves it to countries to determine length and number of breaks.

In all regions, support is offered for this stage of maternity through national legislation. In fact, 75 per cent of countries (at least 121 out of 160) provide for paid or unpaid daily breaks or a daily reduction in working hours for nursing workers (Figure 5). Yet 39 of the countries analysed (24 per cent) do not have provisions for nursing. Two-thirds of these (26) are in Africa, Asia and the Caribbean.

The duration of the entitlement to paid nursing breaks is also fundamental in order to allow women workers to breastfeed according to their preferences and the WHO recommendations – namely, exclusive breastfeeding through the child’s first six months, and breastfeeding with appropriate complementary foods for up to two years or beyond. Almost two thirds (75) of the countries with provisions allow for durations of between six and 23 months. Of these, 57 countries grant at least one year. Only six countries provide nursing breaks for two years (5 per cent).<sup>29</sup>

Recommendation No. 191 suggests provision for hygienic facilities for nursing at or near the workplace. However, only 31 per cent (50 out of 159 countries with available information) had relevant national legislation.

**Figure 5. Statutory provision of nursing breaks, 2013 (160 countries) (%)**



Note: Figures may not add up to 100 per cent due to rounding.

Source: ILO Working Conditions Laws Database – Maternity Protection, 2013. Available at: <http://www.ilo.org/travdatabase>.

In 29 of those 50, statutory provisions on nursing or childcare facilities apply if the company employs a minimum number of women. This is common in Africa, Asia, Latin America and the Middle East.<sup>30</sup> The concern is that such stipulations create incentives for employers not to hire women and promote the idea that women alone are responsible for childcare.

The earlier Maternity Protection Recommendation, 1952 (No. 95) suggests that facilities for nursing and day care are financed or at least subsidized by the community or compulsory social insurance. In practice, however, national provisions usually put the entire cost on the employer – again creating possible disincentives to hiring workers with family responsibilities. In 2013, Argentina bucked this trend by adopting a law that promotes breastfeeding and establishes that all implementation costs, including workplace facilities, be publicly funded.

Such are the health benefits of breastfeeding that support for it at work when properly financed can be a “win-win scenario” for workers and employers. It can be a low-cost measure yielding considerable positive outcomes for companies and society (including better performance and commitment, lower rates of absenteeism, higher levels of retention, skills preservation), as well as extensive long-term savings to health care systems. To date, these benefits to employers remain underexplored. Evidence suggests barriers persist in preventing women from continuing breastfeeding once back at work.<sup>31</sup>

Workplace initiatives alone are not enough to support women’s return to work after maternity leave: public policies are needed, specifically aimed at improving the availability, quality and affordability of childcare services and other work-family support measures. Evidence has shown that childcare plays a key role in enabling parents, especially women, to engage in paid work after childbirth.<sup>32</sup> Some countries including Costa Rica, Ethiopia, Mexico and South Africa are supporting the work-family needs of the most vulnerable by providing public childcare services. Yet one-third of the 140 countries with available information have no national legislation on such public provision or public subsidies to offset childcare costs for pre-school children.<sup>33</sup> Where programmes do exist, coverage is inadequate. Even in high-income countries, fewer children from low-income families attend formal childcare than those from affluent backgrounds.<sup>34</sup>

## CONCLUSIONS

### What works for maternity and paternity at work

Compared to 1994, more countries offer longer maternity and paternity leaves, are less reliant on employer funding, provide greater protection during maternity from hazards and discrimination, and offer more workplace support for breastfeeding.

However, a large majority of women workers still lack access to adequately paid maternity leave and protection. Women in Developed Economies, especially those in formal and standard jobs, benefit the most; those in Africa and Asia benefit least. Paid parental and paternity leave, and adequate breastfeeding and childcare facilities are unavailable, inaccessible or inadequate for most women and men.

Governments are urged to prioritize establishing and implementing inclusive legislative and policy frameworks for comprehensive work-family policies, with adequate fiscal space. This includes fostering social dialogue on the issues and promoting collective bargaining to help workers and employers. In line with ILO Conventions, employers’ and workers’ organizations have a key role to play in devising and applying maternity protection and work-family measures.

The following points aim to help guide design and implementation of policy:

#### **Adopt and implement inclusive laws and policies for effective protection**

Assessing gaps in current frameworks is a first step, followed by making the scope of maternity protection and work-family measures, especially childcare, universal and eligibility criteria inclusive. Implementation must be strengthened and data collection improved to measure coverage, progress and policy outcomes effectively.

#### **Prevent and eliminate discrimination against women and men with family responsibilities**

This requires a reliable, accessible and efficient judicial system and adequately staffed and trained labour inspection and compliance services. Governments are also urged to set up adequate anti-discrimination frameworks supported by equal opportunities bodies and to put the burden of proof on employers in dismissal cases.

**Design maternity protection and work-family policies to achieve effective gender equality**

These have great gender-transformative potential when gender equality at work and home is an explicit policy objective. Levels of public spending on work-family measures, especially social care services, should be maintained and increased as these act as social stabilisers, create jobs in the care sector and promote women's opportunities to access quality work. Measures could also include addressing the prevailing stereotypes of masculinity that hinder men in assuming caretaking roles.

**Address maternity, paternity and care as collective responsibilities**

Risk pooling through social insurance or public funds for leave benefits and social care services promotes non-discrimination at work, preventing employers from bearing the cost of society's reproduction and well-being. Effective protective regulation with minimal or no costs to employers, in combination with public incentives, especially targeting SMEs, are fundamental for forging positive links between adequate maternity protection and work-family measures, and enterprise-level outcomes.

**Make maternity and unpaid care work key components of social protection programmes**

Access to essential maternal health and income security around childbirth should be provided as part of basic social security guarantees that make up national social protection floors. Affordable, quality social care services, gender-sensitive cash transfers and employment guarantee schemes that address care needs can help reduce poverty and inequality, and promote gender equality at work and at home.

**Promote the equal sharing of family responsibilities between parents**

Fathers' involvement with infants and young children has positive effects on child development. Behaviour-changing measures to promote men's role as caregivers and to increase take-up include time off to accompany women for prenatal visits, individual statutory right to childbirth leave of adequate duration and with income-related benefits.

**Create a supportive workplace culture**

Maternity, paternity and care responsibilities should become a normal fact of business life. Extending the option for work-life balance measures, such as quality part-time work or worker-friendly flexible working arrangements, to all workers would reduce the penalty associated with being a worker with family responsibilities.

**Establish preventive health and safety culture at work**

Governments, employers and workers should actively work to create a safe, healthy environment for all workers, with the highest priority on prevention. Gender-specific protective measures should be limited to what is strictly necessary to safeguard maternity, in line with the principle of equality of opportunity and treatment in employment and occupation.

## Notes

1. ILO: *Maternity and paternity at work: Law and practice across the world* (Geneva, 2014), available at: [www.ilo.org/maternityprotection](http://www.ilo.org/maternityprotection).
2. As of January 2014, 28 countries ratified Convention No. 183. For up-to-date information on the ratification status of ILO Conventions, see NORMLEX, Information System on International Labour Standards, available at: [www.ilo.org/normlex](http://www.ilo.org/normlex).
3. United Nations (UN): *Men in families and family policies in a changing world* (New York, 2011); M. O'Brien: "Fitting fathers into work-family policies: International challenges in turbulent times", in *International Journal of Sociology and Social Policy* (2013, Vol. 33, No. 9/10), pp. 542–64; J. Ghosh: "Financial crises and their gendered employment impact. Emerging trends and past experiences", in R. Antonopoulos (ed.): *Gender perspectives and the gender impacts of the global economic crisis* (Routledge, 2014); ILO: *Work–life balance. Governing Body GB.312/POL/4, 312th Session* (Geneva, 2011).
4. Oman, Papua New Guinea and the United States provide statutory maternity leave, but have no general legal provision of maternity leave cash benefits.
5. Convention No. 183, Article 4(1).
6. Recommendation No. 191, Paragraph 1(1).
7. Based on a subset of 139 countries for which information was available in 1994 and 2013. See ILO: *Conditions of work digest: Maternity and work*, Vol. 13 (Geneva, ILO, 1994).
8. Convention No. 183, Article 6(2).
9. The 167-country subset discounted several countries on the basis that the complexity of payment systems did not allow the assessment of compliance with Convention No. 183. See the report *Maternity at work: A review of national legislation* (Geneva, ILO, 2010).
10. Less often, maternity benefits are paid from public funds (non-contributory schemes), which finance maternity benefits individually or in conjunction with social insurance or employers.
11. Hampel-Milagrosa, A.: *The role of regulation, tradition and gender in doing business. Case study and survey report on a two-year research in Ghana* (Bonn, German Development Institute, 2011).
12. S. Lewis et al.: *Maternity protection in SMEs: An international review* (Geneva, ILO, forthcoming).
13. M. Huerta et al.: "Fathers' leave, fathers' involvement and child development: Are they related? Evidence from Four OECD Countries", in *OECD Social, Employment and Migration Working Papers*, No. 140 (OECD Publishing 2013).
14. Resolution concerning gender equality at the heart of decent work, adopted by the ILC at its 98th Session, 2009 (Geneva), Paragraphs 6 and 42.
15. Switzerland is the only country with no federal parental leave provisions.
16. D. Grimshaw and J. Rubery: *The Motherhood pay gap: A review of the issues, theory and international evidence* (Geneva, ILO, forthcoming).
17. L. Thornthwaite: *Work family balance: International research on employee preferences*, Working Paper No. 79 for Working Time Today Conference, University of Sydney, 16 Aug. 2002, p. 20.
18. The 20 are: Afghanistan, Algeria, Antigua and Barbuda, Bangladesh, Brunei Darussalam, Central African Republic, Comoros, Congo, Denmark, Dominica, Guinea-Bissau, Islamic Republic of Iran, Mali, Mexico, Nepal, Sao Tome and Principe, Trinidad and Tobago, United Arab Emirates, Yemen, Zimbabwe.
19. Fundación Madrina: *La crisis en España margina laboralmente cada hora a más de 9 mujeres madres trabajadoras*, Nota de Prensa (Madrid, 2010); S. Koukoulis-Spilitopoulos: "Greece Country Report" in *European Gender Equality Law Review* (2012, No.2, pp. 79–85).
20. Convention No. 183, Article 8(2).
21. Convention No. 183, Article 8(1).
22. Convention No. 156 has been ratified by 43 ILO member States, as of January 2014. In addition, the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) are the fundamental international labour standards on equality and non-discrimination, ratified by 171 and 172 member States respectively.
23. Key ILO instruments on occupational safety and health include: The Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002; the Occupational Health Services Convention, 1985 (No. 161); the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
24. For example, Barbados, Cambodia, Canada, Niger and Norway.
25. Such as China, Ethiopia, Israel and Russia.
26. Including Austria, Guinea, Jordan, Kuwait, Mexico, Namibia, Thailand and Viet Nam.
27. See ILO: *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, 2008, ILC 101st (Geneva, 2012).
28. Nursing breaks refers to both breastfeeding or expressing breast milk should the infant not be in proximity.
29. Argentina, Bahrain, Chile, Egypt, Islamic Republic of Iran and Syrian Arab Republic.
30. In Madagascar, for example, a special nursing room must be provided in or near enterprises employing more than 25 women.
31. S. Lewis et al., op. cit.
32. International Monetary Fund (IMF): *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity*, IMF Staff Discussion Note (Geneva, 2013).
33. World Bank: *Gender at work. A companion to the World Development Report on Jobs* (Washington, 2014).
34. W.V. Lancker: "Putting the Child-Centred Investment Strategy to the Test: Evidence for the EU27", in *European Journal of Social Security* (2013, Vol. 15, No. 1) pp. 4–27.

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