



## PROTECTION OF PREGNANT, HAVING GIVEN BIRTH AND BREASTFEEDING WOMEN

The provisions related to the protection of pregnant, having given birth and breastfeeding women are provided in articles L.331-1 and following of the Labour Code.

These provisions concern every women, without taking into account their age or nationality, married or not, who are legally bound by an employment or apprenticeship contract or who are occupied as students during school holidays, providing they do not benefit from more favourable provisions by effect of law or resulting from the application of a collective bargaining agreement.

These provisions aim to protect:

- **Pregnant women:** every pregnant woman who has informed her employer of her situation by providing him a medical certificate by registered letter. If it is given by hand by the employee, the signature of the employer on the copy of the certificate has the value of acknowledgement of receipt.
- **Women having given birth** during a period of 12 weeks following birth.
- **Breastfeeding women :** every woman breastfeeding her child during a period exceeding 8 weeks after birth and who informs the employer by medical certificate that she breastfeeds her child.

The protection measures include the following points:

- I. The prenatal leave
- II. The postnatal leave
- III. The maintaining of the rights resulting from the employment contract during the maternity leave
- IV. The protection against dismissal
- V. The resignation of the employee at the end of the maternity leave and the rehiring priority
- VI. The pregnancy declared during the trial period
- VII. The working time of pregnant or breastfeeding employees
- VIII. The night work of pregnant or breastfeeding employees

- IX. The working conditions of pregnant or breastfeeding employees
- X. The maternity allowance

### **I. Prenatal leave**

The prenatal leave starts 8 weeks before the expected date of delivery.

Article L.332-1 of the Labour code states that it is strictly forbidden to occupy pregnant women during their prenatal leave provided the following conditions are fulfilled:

- The prenatal leave must be certified by a medical certificate indicating the expected delivery date and established within 12 weeks before this date. This certificate must be given in hand by the employee to the employer who then sends it to the national health fund (Caisse Nationale de Santé - CNS)".
- If the birth occurs after the expected date of delivery, the prenatal leave during which work is not allowed is extended until the effective date of birth, without reducing the duration of the postnatal leave.
- If the birth occurs before the expected date of delivery, the days of prenatal leave which have not been taken before the birth are added to the postnatal leave.

### **II. The postnatal leave**

The postnatal leave lasts 12 weeks after the actual date of delivery.

Article L.332-2 of the Labour code states that it is strictly forbidden to occupy an employee who has just given birth during the postnatal leave. The postnatal leave must be certified by a medical certificate mentioning the delivery date. This certificate must be provided by the employee to her employer.

Moreover, when breastfeeding is extended after the end of the postnatal leave, a medical certificate must be given at the request of the employer in order for him to apply the legal provisions related to the duration of work, to the work at night and to the provisions related to the protection against work hazardous to health and safety (see points VII, VIII and IX).

In case of sickness resulting from the pregnancy, the pregnant employee may take a sick leave during a period or periods which will be added to the prenatal or the postnatal leave or, where required, may be exempted from work depending on the professional activity she exercises (dangerous tasks and / or work at night).

### **III. The upholding during the maternity leave of the rights resulting from the employment contract**

The employer must uphold the job of the employee on maternity leave or, if it is not possible, a similar job corresponding to her qualifications, and give her an equivalent remuneration.

The maternity leave must be taken into consideration in order to determine the rights resulting from the employee's seniority. Moreover, the employee keeps the benefit of all the advantages she has acquired before the beginning of the maternity leave.

The maternity leave is considered as an effective period of work. The employer must therefore take the maternity leave into consideration when calculating the days of annual leave. The leave that the employee did not take prior to the beginning of the maternity leave is deferred within the legal limits.

#### **IV. Protection against dismissal**

Under the provisions of article L.337-1 of the Labour code, an employer who has been duly informed of the pregnancy may not dismiss an employee whose pregnancy has been confirmed by a medical practitioner. This ban on dismissal is valid throughout the duration of the pregnancy and for 12 weeks following the birth. It is also forbidden to summon the employee to a preliminary interview when applicable (companies of at least 150 employees).

If an employee is dismissed before her pregnancy has been confirmed by a medical practitioner, she has 8 days from the notification of the dismissal to send to her employer by registered letter a medical certificate as proof of her pregnancy. The employer must then declare the dismissal procedure null and void. If the employer refuses to withdraw the dismissal, the employee has 15 days after the termination of the contract to take her case to a labour court in order to request the court to declare her dismissal null and void and to order that she is kept or reintegrated in the undertaking.

However, under the provisions of article L.337-1 of the Labour code, a pregnant employee's contract may be terminated in case of serious misconduct. In such case, the employer may pronounce the employee's immediate suspension pending the decision of the labour court, but cannot send the actual letter of dismissal of his own initiative. The employer must file a request with the labour court in order to be authorized to terminate the employment contract. The court analyses the seriousness of the misconduct and decides whether or not to validate the immediate suspension and thus terminate the employee's employment contract.

In case the request is rejected, the immediate suspension is declared null and void by the judge.

On her side, the pregnant woman or the employee having given birth keeps her right to resign providing that she respects the legal notice.

#### **V. The resignation of the employee at the end of the maternity leave and the rehiring priority**

When the maternity leave ends, the employee can decide to give up her job without notice in order to raise her child and without having to pay an indemnity related to the breach of her employment contract.

In this case, the termination date of the employment contract corresponds to the end date of the maternity leave. Within one year following the end date of her employment contract, the employee may ask for her rehiring in her former employer's company.

During one year after the rehiring request, the employer who needs to hire new employees must give to the employee concerned a rehiring priority if her qualifications correspond to the position and must give her, further to her new hiring, the benefit of all the advantages she had acquired when she previously left the undertaking.

The employee's request of rehiring, the offer done by the employer and, where applicable, the employee's refusal of the offer must be done by registered letter with acknowledgement of receipt.

#### **VI. The pregnancy declared during the trial period**

When the employee is on trial period, the trial period is suspended as from the day on which the employee submits a medical certificate to her employer certifying the pregnancy until the beginning of the maternity leave. The remaining part of the trial period will start again after the end of the period of protection against dismissal, which is the end of the 12 weeks period following birth.

## VII. The duration of work of pregnant or breastfeeding employees

### A. Overtime hours

Under article L.336-1 of the Labour code, pregnant or breastfeeding women may not work overtime hours. Working overtime hours is however possible if the employee agrees to do so.

We remind you that overtime is the work performed above the daily and weekly limits of the normal duration of work determined by the parties in the employment contract or by the Labour code.

### B. Dispense de travail pour se rendre aux examens prénataux

The employer must grant an exemption from work without loss of remuneration to allow pregnant women to attend their prenatal check-ups taking place during working time (article L.336-2 of the Labour code).

The list of the prenatal check-ups is provided by article 277 of the Social security code. A grand-ducal regulation dated 27 July 2016 sets out the details of these medical examinations and of the pregnant woman's dental examination.

Pregnant women must attend the following check-ups:

- At least 5 pregnancy medical examinations operated by a gynecologist ;
- One dental examination operated by a dentist.

### C. Breastfeeding time

Under the provisions of article L.336-3 of the Labour code, women breastfeeding their child can be awarded, on request, a breastfeeding time divided in two periods of 45 minutes each at the beginning and at the end of their normal daily working time.

If the day is only interrupted by a rest of less than one hour or if it is not possible for the woman to breastfeed her child in the working place neighbourhood, these two periods can be gathered in a single breastfeeding time of at least 90 minutes.

The breastfeeding time is considered as an effective period of work and, consequently, during this time the employee is paid her normal remuneration.

## VIII. The protection against night work of pregnant or breastfeeding women

Article L.333-1 of the Labour code states that the pregnant and breastfeeding employees shall be exempted from night work (between 10pm and 6am) until their child's first birthday if the occupational physician advises that this is not compatible with the employee's health or security.

It is therefore not forbidden to the employer to employ pregnant or breastfeeding women between 10pm and 6am, but the employee may, under advice of the competent occupational physician, need to be transferred to a daytime position or, if a transfer is not possible, be exempted from work.

If the employee is transferred to a daytime position, the employer must still pay the same remuneration to the employee (i.e. the remuneration which was paid for the night position). He submits afterwards the advice of the competent occupational physician to the CNS in order to obtain the reimbursement of the difference between the remuneration for the daytime position and the remuneration for the nighttime position that was held by the employee before her pregnancy.

The pregnant or breastfeeding woman who wants to benefit from the provisions of above mentioned article L.333-1 shall request the exemption from night work from her employer by registered letter. The employer has to submit her case to the competent occupational physician within 8 days following the receipt of her request. The opinion issued by the doctor shall be notified to the employee and the employer within 15 days following the submission of the case.

In case of refusal, the advice of the occupational physician can be subject to a request of reexamination introduced by the employee or the employer to the health at work directorate (Direction de la Santé au travail). An appeal against the decision of the health at work directorate can be done to the social security arbitration committee (Conseil Arbitral de la Sécurité Sociale) within 15 days from the notification of the judgement. None of these procedures has a suspensive effect.

## **IX. The working conditions of pregnant or breastfeeding employees**

For all activities presenting a specific risk of exposition of pregnant or breastfeeding women to dangerous biological agents, dangerous processes or dangerous working conditions, the employer must evaluate the risk and if necessary and in accordance with the occupational physician's recommendation, take the necessary measures in order to avoid the exposition of the pregnant or breastfeeding woman to the risk. The remuneration may not be affected by these measures.

Where such measures may technically or objectively not be taken, the employer in accordance with the occupational physician must either transfer the employee to another position, or exempt her from work during the whole period necessary to protect her health and safety. Again, the remuneration shall not be affected.

The tasks hazardous to health and safety are divided in two categories listed in annex 1 and 2 of the Labour code.

- Category 1: for these tasks the employer must evaluate whether there is a risk to the employee's health and safety in case she carries on her work. This evaluation is done in accordance with the competent occupational physician. Where such risks have been identified by the employer a change of the working conditions or working time must be operated. If such change is not possible, the employer must transfer the employee to another position or, if necessary, release her from work. The tasks listed in category 1 are for example activities that are likely to present a risk of falling or slipping, a risk of exposure to ionizing radiations, tasks requiring the employee to constantly be in a crouched or bent position, etc.
- Category 2: for these tasks which are considered to be more dangerous than the tasks listed in category 1, the simple observation of a risk of exposition of the employee leads to the setting up of protective measures. The employer, in accordance with the occupational physician, must then transfer the employee to another position or, if this is impossible, release her from work. The tasks listed in category 2 are for example tasks exposing the woman to chemicals such as lead or exposing the woman to biological agents such as viruses, etc.

An appeal against the opinion of the occupational physician concerning the pregnant or breastfeeding woman can be undertaken by the employer or the employee under the conditions mentioned in paragraph VIII above.

## **X. The maternity allowance**

Under article 25 of the social security code, the following persons can be granted a maternity allowance:

- during the maternity leave (prenatal and postnatal leave), the employee who has been registered with the mandatory sickness and maternity insurance for at least 6 months during the 12 months prior to the maternity leave,
- the employee exempted from work by the employer during the whole period necessary to protect her health and safety because it has not been possible to transfer her to another position (see points VIII and IX).

In principle, maternity benefits amount to the employee's gross salary (maternity benefits are identical to cash sickness benefits). It is capped to five times the social minimum wage (i.e. €10,709.97 per month at index 834.76).

This allowance cannot be cumulated with cash sickness benefits or with another professional income.

The allowance is directly paid to the employee by the CNS.

## Brief overview of the interdictions and obligations for employers

	Interdictions	Obligations
<b>Pregnant women</b>	<ul style="list-style-type: none"> <li>to occupy her during 8 weeks before the expected date of delivery and during 8 weeks after birth</li> <li>to give her tasks exposing her to agents, processes or working conditions implying a risk for her health and security</li> <li>to dismiss her or to summon her to a preliminary interview as from the date her pregnancy is medically assessed</li> <li>to occupy her between 10 pm and 6am, if this is against advice of the competent occupational physician</li> <li>to make her work overtime without her consent</li> </ul>	<ul style="list-style-type: none"> <li>to uphold the employee's job or an equivalent job</li> <li>to evaluate, under advice of the occupational physician, any risk for her security and health and any possible effect on her pregnancy</li> <li>to determine, under advice of the occupational physician, the measures to be taken for the protection of her health and of her security</li> <li>to transfer her to another position or to exempt her from work, with the maintaining of her rights, during the whole period necessary to protect her health and safety in accordance with the opinion of the occupational physician</li> <li>to exempt her from work to attend her prenatal check-ups taking place during working time</li> </ul>

	Interdictions	Obligations
<b>Non breastfeeding woman having given birth</b>	<ul style="list-style-type: none"> <li>to occupy her during 12 weeks following the birth</li> <li>to dismiss her or to summon her to a preliminary interview during 12 weeks following birth</li> </ul>	<ul style="list-style-type: none"> <li>to uphold the employee's job or an equivalent job</li> <li>to re-engage her, on her request, by priority in case she has not gone back to work after the end of her maternity leave, providing positions corresponding to her qualifications are available</li> </ul>

	Interdictions	Obligations
<b>Breastfeeding women</b>	<ul style="list-style-type: none"> <li>to occupy her during 12 weeks after birth</li> <li>to give her tasks exposing her to agents, processes or working conditions implying a risk for her health and security</li> <li>to dismiss her or to summon her to a preliminary interview during 12 weeks following birth</li> <li>to make her work overtime without her consent</li> </ul>	<ul style="list-style-type: none"> <li>to uphold the employee's job or an equivalent job</li> <li>to give her, on her request, a breastfeeding time during her daily working time</li> <li>to evaluate, under advice of the occupational physician, any risk for her security and health and any possible effect on her pregnancy</li> <li>to determine, under advice of the occupational physician, the measures to be taken for the protection of her health and of her security</li> <li>to transfer her to another position or to exempt her from work, with the maintaining of her rights, during the whole period necessary to protect her health and safety in accordance with the opinion of the occupational physician</li> <li>to pay her as an advance for the account of the National Health Fund (CNS) the difference of income resulting from a transfer of work position</li> <li>to re-engage her, on her request, by priority in case she has not gone back to work after the end of her maternity leave, providing positions corresponding to her qualifications are available</li> </ul>

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