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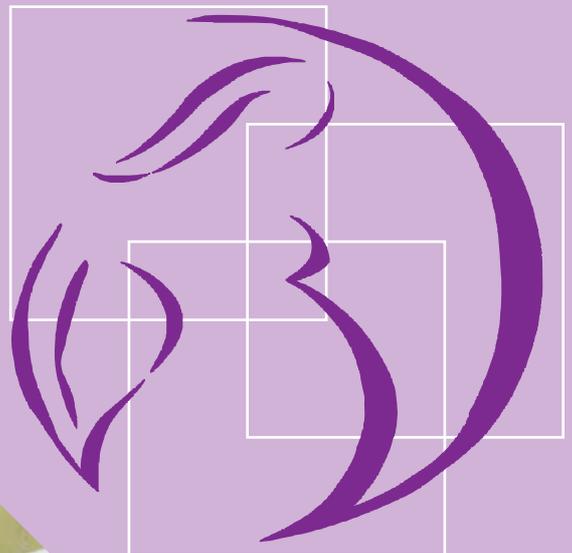
Maternity Protection Resource Package

From Aspiration to Reality for All

PART ONE

Module
1

Maternity Protection at work: What is it?



Maternity Protection Resource Package

From Aspiration to Reality for All

Module 1:
**Maternity Protection at work:
What is it?**



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Module 1: Maternity Protection at work: What is it?

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Module 1

Maternity protection at work: What is it?

Key contents

This module provides a broad introduction to maternity protection at work and child care arrangements upon return to work and covers:

- ➔ The objectives of maternity protection at work
- ➔ The scope of maternity protection at work
- ➔ The key elements of maternity protection at work:
 - ➔ Maternity leave
 - ➔ Cash and medical benefits
 - ➔ Health protection at the workplace
 - ➔ Employment protection and non-discrimination
 - ➔ Breastfeeding arrangements at work
- ➔ Coping with childcare upon return to work

Maternity protection at work is an essential element in equality of opportunity and treatment and health protection. It seeks to enable women to combine their reproductive and productive roles successfully, and to prevent unequal treatment in employment due to women's reproductive role. Strengthening maternity protection and extending it to all women in all types of economic activity is an important goal, as is making sure it is implemented as extensively as possible.

Maternity protection at work at the international level falls under the mandate of the International Labour Organization. The International Labour Organization (ILO) is the United Nations agency devoted to promoting social justice and internationally recognized human and labour rights. It is the only tripartite UN agency with representatives of governments, employers and workers who, together, develop and oversee international labour standards and policies.

Maternity protection for women workers has been a core issue for the ILO since its foundation in 1919, when the governments, employers and trade unions of member States adopted the first Convention on maternity protection. Over the course of its history, ILO member States have adopted three Conventions on maternity protection

(No. 3, 1919; No. 103, 1952; No. 183, 2000). These Conventions, together, with their corresponding Recommendations (No. 95, 1952; No. 191, 2000) have progressively expanded the scope and entitlements of maternity protection at work and provided detailed guidance orienting national policy and action.

Maternity protection has **two aims**:

- to preserve the health of the mother and her newborn;
- to provide a measure of job and income security (protection from dismissal and discrimination, the right to resume work after leave, and maintenance of wages and incomes during maternity).

International labour standards have consistently expanded **the scope** of maternity protection over the years. Convention No. 183 calls for maternity protection for all women, in the formal and informal economies, including those in atypical forms of dependent work. **Atypical work** includes a broad range of non-standard work arrangements such as part-time, casual, seasonal work and job-sharing, fixed-term contracts, temporary agency work, home-based work and remote working (see **Module 2** on the scope of maternity protection).

Since 2009, the **UN Social Protection Floor Initiative** has called for the establishment of basic social guarantees for every citizen, which could include, among other elements: 1) access to essential prenatal, childbirth and postnatal health care for the mother and her child; and 2) income transfers to low-income women during the last weeks of pregnancy and the first weeks after delivery. Thus, the progressive establishment of national social protection floors offers a promising framework for reaching self-employed women in agriculture or the urban informal economy and other vulnerable workers excluded from social security schemes (for more information on extending maternity protection to informal economy workers see **Modules 2** and **7**).

Convention No. 183 and Recommendation No. 191 (2000) comprise **five core elements of maternity protection**:

- **maternity leave**: the woman's right to a period of rest from work in relation to pregnancy, childbirth and the postnatal period;
- **cash and medical benefits**: the mother's right to cash benefits during her absence for maternity and health care related to pregnancy, childbirth and postnatal care;
- **health protection at the workplace** for the mother and unborn child during pregnancy, as well as during breastfeeding;
- **employment protection and non-discrimination**: guarantee of the woman's employment security and the right to return after her maternity leave to the same job or an equivalent one with the same pay after leave. Moreover, a woman cannot be discriminated against while at work or while searching for work because of her reproductive role;
- **breastfeeding arrangements** to help workers breastfeed or express milk at the workplace.

Each of these five elements is covered in detail by the modules in Part 2 of this Resource Package. The following provides a brief description of each of these elements.

Maternity leave

The mother's right to a period of rest in relation to childbirth is a crucial means of safeguarding her health and that of her child immediately before or after birth, in view of the particular physiological demands associated with pregnancy and childbirth.

Convention No. 183 extends the period of leave from 12 weeks as foreseen in the earlier Conventions to a minimum of 14 weeks, six of which must be taken following childbirth. Recommendation No. 191 suggests that the leave be of at least 18 weeks. The Convention also establishes a right to additional leave in case of illness, complications or risks of complications arising out of pregnancy. An essential part of maternity leave is the right to return to the same work, or one with the same pay, upon return from the leave (Articles 4 and 5).

Convention No. 183, like its predecessors, provides for compulsory leave of six weeks after the birth of the child, during which the mother must not be allowed to work. This is intended to protect the woman from being pressured to return to work during the immediate postnatal period, which could be detrimental to her health and that of her child.

The global consensus on the importance of maternity leave is reflected in the international policy framework on maternal and newborn health and in the fact that some provision exists in the legislation of virtually all countries.

→ *See Module 6: Maternity leave*

Cash and medical benefits

The right to cash benefits during absence for maternity leave is an essential part of maternity protection. Cash benefits are intended to replace a portion of the income lost due to the interruption of the woman's economic activities, giving practical effect to the provision for leave. Without income replacement, the woman's absence during leave and the increased expenditures due to pregnancy and childbirth can pose financial hardships for many families. In the face of poverty or financial duress, women may feel compelled to return to work too quickly after childbirth and before it is medically advisable to do so.

Convention No. 183 provides that the cash benefit shall be at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. The amount of such benefit shall be not less than two-thirds of the woman's previous or insured earnings, and shall be provided through social insurance or public funds or in a manner determined by national law and practice. The basic principle of payment through social insurance or public funds is essential to protect women from discrimination in the labour market, which could be more likely if employers must bear the costs of maternity directly.

Convention No. 183 requires member States to ensure that the qualifying conditions for cash benefits can be met by a large majority of employed women. Where women do not meet the qualifying conditions for cash benefits, they must be entitled to adequate benefits out of social assistance funds.

The Convention provides for medical benefits, including pre-natal, childbirth and postnatal care as well as hospitalization when necessary (Article 6).

→ *See Module 7: Cash and medical benefits*

Health protection at the workplace

During pregnancy, childbirth and breastfeeding, there are risks at the workplace that may affect the health of the woman and her child. Convention No. 183 recognizes for the first time at the Convention level the right to health protection by providing for member States to adopt measures to ensure that the pregnant or nursing woman is not obliged to perform work prejudicial to her health or that of her child, or where an assessment has established a significant risk to the mother or child (Article 3). Recommendation No. 191 provides for adaptation of the pregnant or breastfeeding woman's working conditions in order to reduce particular workplace risks related to the safety and health of the pregnant or nursing woman and her child. Measures that should be taken when work involves risks include:

- elimination of risks;
- adaptation of working conditions;
- transfer to another, safer position, without loss of pay, when such adaptation is not feasible; or
- paid leave if such a transfer is not feasible.

The woman should retain the right to return to her job or an equivalent one paid at the same rate when it is safe for her to do so (R191, Article 6(5)). She should also be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy (R191, Article 6(6)).

→ *See Module 8: Health protection at the workplace*

Employment protection and non-discrimination

It should be guaranteed that pregnant women and new mothers will not lose their jobs as a result of being pregnant, on maternity leave or because they have just had a child. Such a guarantee is essential for preventing maternity from becoming a source of discrimination against women in employment. Pregnancy and maternity leave should have no adverse effects on women's employment or on their entitlements under an employment contract, in particular, those linked to seniority (such as paid annual leave) or to length of service (such as retirement benefits).

Convention No. 183 provides for employment security by prohibiting dismissal during pregnancy, maternity leave and a period of time after return to work, and the right to reinstatement in the same job or an equivalent one with the same pay upon return to work. In the event of dismissal, the burden of proof rests on the employer to prove that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences, or to breastfeeding. This "reversal of the burden of proof" strengthens women's employment security.

The Convention requires member States to take measures to ensure that maternity is not a source of discrimination in employment, including access to employment. It prohibits pregnancy tests at recruitment except in very specific circumstances (Articles 8 and 9).

→ *See Module 9: Employment protection and non-discrimination*

Breastfeeding arrangements at work

The right to breastfeed a child after returning to work is an important part of maternity protection, which has major benefits for the mother and child's health. The World Health Organization recommends exclusive breastfeeding of babies until the age of 6 months, meaning that no food or liquid other than breast milk, not even water, is given to the infant. It also recommends that breastfeeding should continue for up to two years or beyond, with the introduction of appropriate complementary foods. As maternity leave periods generally expire before the end of the breastfeeding period – often just a few weeks after birth – provisions to enable women to continue to breastfeed upon return to work are important to meet international recommendations on breastfeeding and are in the best health interests of mother and child.

Convention No. 183 entitles women to one or more daily breaks or a reduction of hours of work for breastfeeding. Breaks or reduction of working hours shall be counted as working time and remunerated accordingly. The length and number of breaks are to be determined by national law or practice (Article 10).

→ *See Module 10: Breastfeeding at work*

Beyond maternity and back to work: Coping with childcare

Care responsibilities for children extend well beyond birth and the end of maternity and paternity leave. Reconciling paid work and the unpaid care work that stems from care for young children, as well as other dependants, is a major concern for many adults in both industrialized and developing countries. Policies and measures by governments, employers, trade unions and others can greatly contribute to ensuring that men and women can provide their children with such care, while they continue to have access to decent work and businesses retain committed and productive workforces.

The ILO Workers with Family Responsibilities Convention, 1981 (No. 156) and its accompanying Recommendation No. 165 give considerable guidance on policies and measures, which are needed to help workers with family responsibilities cope with child care needs. Convention No. 156 recognizes the need to create effective equality of opportunity and treatment for women and men workers who have family responsibilities and to improve their working conditions through a broad range of policies, which include:

- leave policies;
- family friendly working time and organization arrangements;
- care services and facilities;

- services that lighten the load of unpaid care work;
- social security benefits;
- labour-market reintegration policies.

A full review of legislation and policies is well beyond the scope of this Resource Package. However, Module 11 provides a brief overview of some key issues and considerations related to childcare.

→ *See Module 11: Beyond maternity and back to work: Coping with childcare*

Key points

- ➔ Maternity protection at work aims to ensure that women's economic activities do not pose risks to their health and that of their child, and to ensure that women's reproductive function does not compromise their economic and employment security.
- ➔ Maternity protection at work is for all women, in the formal and informal economy.
- ➔ Maternity protection at work comprises different elements: maternity leave, cash and medical benefits, health protection at the workplace, employment protection and non-discrimination, and paid breastfeeding breaks.
- ➔ Childcare is essential to create effective equality of opportunity and treatment for women and men workers.

VISUAL PRESENTATION MODEL

SLIDE 1: Key contents

Mod. **1**
Maternity Protection at work: What is it?

Key contents

This module provides a broad introduction to maternity protection at work and childcare arrangements upon return to work and covers:

- The objectives of maternity protection at work
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 - Maternity leave
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 - Health protection at the workplace
 - Employment protection and non-discrimination
 - Breastfeeding arrangements at work

Coping with childcare upon return to work.


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SLIDE 2: What is maternity protection?

Mod. **1**
Maternity Protection at work: What is it?

What is maternity protection?

Maternity protection is set out by international labour standards. The most recent are:

- ILO Convention on Maternity Protection, 2000 (No. 183)
- ILO Recommendation on Maternity Protection, 2000 (No. 191)




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SLIDE 3: Why is maternity protection important?

Mod. 1

Maternity Protection at work: What is it?

Why is maternity protection important?

Maternity Protection:

- Protects the health and safety of the mother and the child
- Protects against economic vulnerability due to pregnancy and maternity
- Is central to gender equality in employment



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SLIDE 4: Who is covered?

Mod. 1

Maternity Protection at work: What is it?

Who is covered?

Convention No. 3 (1919):
women in any public or private industrial or commercial undertaking

Convention No.103 (1952):
women employed in industrial undertakings and in non-industrial and agricultural occupations

Convention No.183 (2000):
all employed women including those in atypical forms of dependent work



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SLIDE 5: Five core elements of maternity protection

Mod. **1**
Maternity Protection at work: What is it?

Five core elements of maternity protection

Maternity Protection includes:

- Maternity leave
- Cash and medical benefits
- Health protection at the workplace
- Employment protection and non-discrimination
- Breastfeeding arrangements




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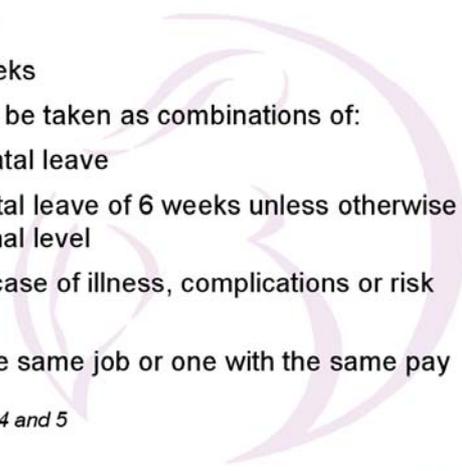
SLIDE 6: Maternity leave

Mod. **1**
Maternity Protection at work: What is it?

Maternity leave

- Not less than 14 weeks
- Maternity leave can be taken as combinations of:
 - Prenatal and postnatal leave
 - Compulsory postnatal leave of 6 weeks unless otherwise agreed at the national level
 - Additional leave in case of illness, complications or risk of complications
 - Right to return to the same job or one with the same pay

Convention No. 183, Articles 4 and 5




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SLIDE 7: Maternity leave is important because

Mod. 1

Maternity Protection at work: What is it?

Maternity leave is important because

- ⇒ Rest is an important health measure
- ⇒ Returning to work too soon may increase the risk of acute complications
- ⇒ Leave allows women time to establish breastfeeding



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SLIDE 8: Cash benefits

Mod. 1

Maternity Protection at work: What is it?

Cash benefits

The need for a secure income:



“Cash benefits shall be at the national level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”

Convention No. 183, Article 6

- ⇒ Provided in accordance with national law and practice
- ⇒ Not less than two-thirds of previous or insured earnings
- ⇒ Qualifying conditions which can be met by a large majority of employed women
- ⇒ Where women do not meet the qualifying conditions, social assistance funds will be provided subject to means testing

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SLIDE 9: Medical benefits

Mod. **1**
Maternity Protection at work: What is it?

Medical benefits

Medical benefits: the need for access to health care

- ➔ Prenatal, childbirth and postnatal medical care
- ➔ Hospitalization care, when necessary

To the extent possible, medical benefits should include:

- ➔ Qualified medical staff
- ➔ Required pharmaceuticals
- ➔ Examinations and tests, including confidential voluntary testing for HIV


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SLIDE 10: Health protection at the workplace (1)

Mod. **1**
Maternity Protection at work: What is it?

Health protection at the workplace (1)

FACT 1:
In many workplaces there are risks that may affect reproductive health

FACT 2:
Many risks CAN be eliminated

FACT 3:
Prevention can help to avoid future problems



“...adopt appropriate measures to ensure that pregnant women or breastfeeding women are not obliged to perform work prejudicial to the health of the mother or the child,”

Convention No. 183, Article 3


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SLIDE 11: Health protection at the workplace (2)

Mod. 1 Maternity Protection at work: What is it?

Health protection at the workplace (2)

Workplace Risk Assessment

If a risk is detected:

- ➔ Elimination of the risk
- ➔ Adaptation of working conditions
- ➔ Transfer to another more safe position, without loss in pay, when such adaptation is not feasible; or
- ➔ Paid leave if such a transfer is not feasible

 **“Right to return to her job or an equivalent one when it is safe to do so.”**

Recommendation No. 191, Par. 6

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SLIDE 12: Pregnant Workers and HIV and AIDS

Mod. 1 Maternity Protection at work: What is it?

Pregnant Workers and HIV and AIDS

Preventing mother to child transmission of HIV (PMTCT):

- ➔ The risk of mother to child transmission is 20 – 45%
- ➔ This can be reduced to under 2% by antiretroviral (ARV) treatment for the mother, appropriate delivery and avoidance of breastfeeding

The workplace can help by:

- ➔ Giving this information to men and women workers
- ➔ Encouraging all workers – especially pregnant women – to take a voluntary HIV test
- ➔ Referring them to local health services
- ➔ Providing them with information about infant feeding options

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SLIDE 13: Employment protection and non-discrimination (1)

Mod. **1**
Maternity Protection at work: What is it?

Employment protection and non-discrimination (1)

No dismissal during:

- Pregnancy
- Maternity leave
- Leave for maternity-related illness or complications
- A period following women's return to work

No dismissal except for reasons **unrelated** to maternity:

- The burden of proof is on the employer to show that the dismissal is not related to:
 - Pregnancy
 - Childbirth and its consequences
 - Nursing


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SLIDE 14: Employment protection and non-discrimination (2)

Mod. **1**
Maternity Protection at work: What is it?

Employment protection and non-discrimination (2)

- Members must take measures to ensure that maternity is not a source of discrimination in employment

Examples: recruitment, working conditions, seniority, access to training and promotions

- **No pregnancy testing at recruitment**




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SLIDE 15: Breastfeeding arrangements at work

Mod. 1

Maternity Protection at work: What is it?

Breastfeeding arrangements at work

- Right to one or more daily breaks or reduction in working time for the purpose of breastfeeding
- Length and number of breaks is decided nationally
- Nursing breaks are to be counted as working time and remunerated



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SLIDE 16: Beyond maternity: Coping with childcare

Mod. 1

Maternity Protection at work: What is it?

Beyond maternity: Coping with childcare

Workers with Family Responsibilities Convention and Recommendation, 1981 (No. 156 and No. 165)

Examples of measures:

- Care services – childcare, elder care, services to reduce domestic tasks
- Leave policies – maternity leave, paternity leave, parental leave, emergency family leave, adoption leave
- Working time and organization – duration, part-time, flexitime, predictability
- Social security measures – allowances, tax-breaks, pension credits for caregivers
- Labour market reintegration policies – vocational training, job services, 'stay-in touch' programmes
- Services that lighten the load of unpaid work – canteens, piped water, labour-saving devices, public transport, rural roads, healthcare facilities

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SLIDE 17: Key points

Mod. **1** **Maternity Protection at work: What is it?**

Key points

- ⇒ Maternity protection at work aims to ensure that women's economic activities do not pose risks to their health and that of their child, and to ensure that women's reproductive function does not compromise their economic and employment security.
- ⇒ Maternity protection at work is for all women, in the formal and informal economy.
- ⇒ Maternity protection at work comprises different elements: maternity leave, cash and medical benefits, health protection at the workplace, employment protection and non-discrimination, and paid breastfeeding breaks.
- ⇒ Childcare is essential to create effective equality of opportunity and treatment for women and men workers.

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- **Part 1: Maternity Protection at work: The basics**
- **Part 2: Maternity Protection at work in depth: The core elements**
- **Part 3: Taking action on Maternity Protection at work**



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