



Maternity Protection: making it work

Interpreting the new ILO Convention 183 on Maternity Protection: Questions about national laws, regulations and practices

Text of the New Instruments

Here is what the newly approved International Labour Organisation (ILO) Maternity Protection Convention and Recommendation say about maternity leave, non-discrimination against nursing mothers, breastfeeding breaks and facilities at work.

Convention

Maternity Leave (Article 4)

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.

4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organisations of employers and workers.

Employment protection and non-discrimination (Article 8)

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave...or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proof that the reasons for dismissal are unrelated to the pregnancy or childbirth and its consequences or nursing shall rest on the employer.

Breastfeeding mothers (Article 10)

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

Recommendation

Maternity Leave

Paragraph 1. (1) Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.

Breastfeeding Mothers

Paragraph 7. On production of a medical certificate or other appropriate certification as determined by national law and practice, the frequency and length of nursing breaks should be adapted to particular needs.

Paragraph 8. Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.

Paragraph 9. Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.

UPDATE

ILO Convention No. 183 becomes international legislation!

Three countries, Bulgaria, Italy and Slovakia have ratified the ILO Convention No. 183 on Maternity Protection, since its adoption in June 2000. This new Convention replaces the 48 year-old Convention 103, and will become international legislation after ratification by at least two countries.

(Source: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>)

Gains & Losses

What are the pluses and minuses of these agreements for breastfeeding women at work?

Gains

SCOPE: The Convention covers all employed women, including those in the informal sector who have an employer.

- A new provision on health protection of pregnant and breastfeeding women has been added.
- Minimum maternity leave was raised from 12 to 14 weeks in the Convention and from 14 to 18 weeks in the Recommendation.
- A six-week period of compulsory postnatal leave was returned to the Convention; the length had not been specified in the previous draft. The Convention allows nations to change this directive if workers, employers, and governments all agree to shorten compulsory leave or have none at all.
- For a period after her maternity leave, a woman cannot be fired because she is breastfeeding. If a breastfeeding woman is fired and files a complaint, her employer has the burden of proving that breastfeeding was not the cause of her termination.
- In the Convention, breastfeeding breaks are recognised as a woman's right.
- Combining breastfeeding breaks to shorten the workday, a provision from Recommendation 95, is now part of the Convention.
- The provision that provides for breastfeeding breaks on paid time, counted as work time, was successfully defended against deletion or downgrading.
- Obtaining a medical certificate to qualify for longer or more frequent nursing breaks could be a hardship for women with little access to a doctor. The new Recommendation allows for "other appropriate certification as determined by national law and practice" as an alternative to a medical certificate.

Losses

SCOPE: Nations can exclude categories of employed women if employers, workers, and government agree. However, they must report periodically on what they are doing to extend the coverage of the Convention to those groups.

- Convention 103 protected women from dismissal for any reason while on maternity leave. Convention 183 provides longer protection but allows dismissal for reasons unrelated to maternity.
- The duration of a woman's entitlement to nursing breaks is left up to national law and practice. Previously no duration was specified.

- The length and number of breastfeeding breaks were stated in Convention 3 as two half-hour breaks daily. The new Convention specifies one or more daily breaks and leaves the exact number and length up to national law and practice.
- Recommendation 95 encouraged member states to advance nursing breaks to 1½ hours daily. There is no such language in the new recommendation.
- Recommendation 95 suggested subsidising the costs of workplace facilities at the expense of the community or by compulsory social insurance. The new recommendation does not say who should pay for the facilities.

ILO Convention 183 and Recommendation 191 on Maternity Protection

Increased flexibility

Some breastfeeding provisions that were spelled out in Conventions 3 and 103 are now to be determined by "national law and practice". This increased flexibility was a stated goal of the Employers Group, the ILO Secretariat, and some industrial countries, who said it would help more countries to ratify the revised Convention. This language, "national law and practice," is both a danger and an opportunity for breastfeeding groups at national level. In the ratification process, national breastfeeding advocates must be sure that they will be part of determining their "national law and practice" on maternity protection for breastfeeding women.

Breastfeeding mothers at work need to be able to choose from a range of available options and to adjust their strategies as their babies grow. These strategies include maternity leave, modified conditions of work, working at home, part-time work, job-sharing, shortening the workday by an hour, bringing the baby to work, child care at or near the worksite, breastfeeding breaks, and milk expression at work. In your national negotiations, be sure that the full menu of options is kept open. People who are not familiar with the details of breastfeeding support might tend to use one or two strategies that are easy to understand and the easiest ones to implement, and then ignore the others. Yet having more choices open will enable more women to combine breastfeeding with their work. It is the breastfeeding advocate's job to help them understand this.

Questions about national laws, regulations and practices

Here are some specific questions for breastfeeding groups and individual advocates to raise with your national breastfeeding coordinator, national breastfeeding committee, or other competent national authority.

Q1 *In Article 8, Paragraph 1, the new Maternity Protection Convention leaves the duration of a breastfeeding woman's protection from being fired for breastfeeding to be determined by "national laws and regulations." This language opens the possibility that a national law or regulation could specify a period of protection that is shorter than the optimal duration of nursing, with the danger that a woman could be fired because she is still nursing after that period expires. How will the duration of protection be determined?*

A: Is there any good reason not to protect a breastfeeding woman for as long as she breastfeeds? Protection until the baby is no longer nursing should be the goal of breastfeeding advocates.

Q2 *According to Article 10, Paragraph 1, "a woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child." How will this right be provided?*

Q3 *Article 10, Paragraph 2 opens the possibility that a woman's entitlement to breastfeeding breaks may be recognised for a limited period only. How will this period be determined?*

A: In order to support the promotion of breastfeeding, the length of time that a woman is entitled to breastfeeding breaks should be based on the internationally recognised recommendations for optimal infant feeding. In almost all countries, the average duration of breastfeeding falls significantly short of the global recommendation of "two years and beyond." Breastfeeding breaks are especially important to support exclusive breastfeeding in the first six months and to sustain breastfeeding during the gradual addition of complementary foods in the second half of the first year.

In its statement to the Maternity Protection Committee, UNICEF also recommended one breastfeeding break daily between a child's first and second birthdays. This proposal should be explored in national discussions.

Q4 *How will the frequency and length of nursing breaks be determined?*

A: As a minimum the provisions which were specified in Convention 3, i.e. two 30-minute breaks per full working day, should be provided. Recommendation 95 encouraged an increase in the total time for nursing breaks to 1 ½ hours per

full working day. The number and duration of nursing breaks should be decided in a way that:

- gives women the flexibility they need in order to adjust the scheduling of their breaks to best meet their physical needs for sustaining a full milk supply;
- provides individual women with the backing they need, so they will not have to negotiate on their own with their employers; and
- reassures employers that they will not be asked to provide an unreasonable accommodation of work schedules for lactating employees.

Q5 *What will the procedure be for combining breastfeeding breaks to make a reduction of work hours?*

A: The option of combining breastfeeding breaks to make a reduction in the daily hours of work is a common practice in some regions, such as Latin America, but is a new idea in other regions. It may be especially appropriate under circumstances where the workplace is located far from home and transport is a problem and women are thus not able to go home during breastfeeding breaks. The difference between this option and part-time work needs to be made clear. Procedures for using this option should be carefully spelled out.

Q6 *How will a woman use a medical or other certificate to qualify for extra breastfeeding break time?*

Q7 *What forms will the 'other appropriate certification' take?*

A: It can be an expense and a hardship for a woman to see a physician to obtain a medical certificate. Breastfeeding is not a medical practice but a way of feeding and caring for a baby or young child, so the alternatives to a medical certificate should be accessible and practical, for example, a certificate from a midwife, local health nurse or lactation consultant.

Q8 *Who will bear the cost of nursing facilities at the workplace?*

A: Can a way be found that shares the costs among all sectors who benefit from breastfeeding: workers, employers, the family, the community, and the government? Nursing facilities need not be expensive or fancy. WHO calls for facilities that are "safe, clean and private...similar to those for preparing safe food...[with] clean water available for washing hands and manipulating utensils."

HOW CAN YOU BE INVOLVED?

1. Compare your country's current maternity protection legislation or regulations with the text of the new Convention and Recommendation at the ILO website: www.ilo.org
2. Liaise with your regional IBFAN and WABA groups and UNICEF office to find out the position of countries on ratifying the new Convention.
3. Work with your national WABA or IBFAN group or your local breastfeeding coalition to organize a national effort to ratify the new convention. When the Child Labour Convention of 1999 reached its first anniversary, 26 member states had ratified, and eight more were pending. Can the Maternity Protection Convention 2000 do as well?
4. Find out just how your national government will determine the items that are left up to "national law and practice," such as the period of entitlement to breastfeeding breaks. **Breastfeeding advocates must be included in the process!** You can begin by reaching out to your Ministry of Labour or your national trade union movement.
5. Coordinate your efforts with health and nutrition professional associations, such as nurses, midwives, paediatricians, dieticians, etc. You may also collaborate with trade unions and women's organisations to present a unified position to your national labour authorities and legislators.
6. Cooperate with public health agencies to supply breastfeeding training for unions or employers' groups or for labour policy-makers. Breastfeeding training for trade unions has already begun in Malaysia.
7. Women workers need training too. Women often do not know their rights to maternity protection and breastfeeding breaks. It's our job to help them find out and use those rights. Offer to assist in developing materials to educate working women.
8. Offer to form partnerships with government, unions, employers' groups, and funding agencies to develop training programs and printed or electronic educational materials about breastfeeding and maternity protection. Be aware that the manufacturers of infant feeding products will also be seeking such opportunities for cooperation with government, a potential area for Code violations. ■

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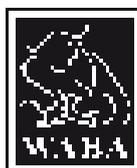
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THIS ACTIVITY SHEET is part of a series from WABA to assist groups with their activities to protect, promote and support breastfeeding and in particular, to provide action ideas that could be used during World Breastfeeding Week.

Other titles in the series are: Breastmilk: A World Resource • Mother-to-Mother Support for Breastfeeding • Transforming Health Colleagues into Breastfeeding Advocates • Breastfeeding: A Feminist Issue • Breastfeeding & the Well-being of Families • Maternity Legislation: Protecting Women's Right to Breastfeed • The Protection, Support & Promotion of Breastfeeding • Training Health Workers in Breastfeeding Management • Developing a National report Card on Breastfeeding • Breastfeeding & Food Security



The ILO Campaign is organised by the Coalition on Maternity Protection consisting of groups from the World Alliance for Breastfeeding Action (WABA), the International Baby Food Action Network (IBFAN), the International Lactation Consultant Association (ILCA) and LINKAGES, with technical support from International Maternal & Child Health, Uppsala University (IMCH) and the United Nations Children's Fund (UNICEF). The ILO Campaign supports working women's right to breastfeed through international instruments and national legislation to provide for better maternity entitlements. This activity sheet was developed by Chris Mulford, ILCA and WABA Women and Work Task Force Co-Coordinator. For more copies, contact the WABA Secretariat.

