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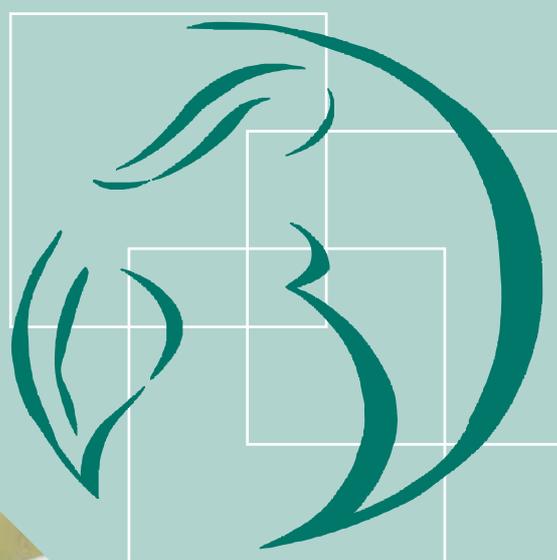
Maternity Protection Resource Package

From Aspiration to Reality for All

PART THREE

Module
12

Assessing national legislation on Maternity Protection at work



Maternity Protection Resource Package

From Aspiration to Reality for All

Module 12: Assessing national legislation on Maternity Protection at work



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Part 3: Taking Action on Maternity Protection at Work

A core element of the ILO's technical cooperation strategy is to build the capacity of constituents to deliver their own and the organization's mandate, and to play a significant role in the national social and economic planning.

Capacity development for the ILO tripartite constituents, November 2010

Capacity development is “a process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time [...]”.¹

Capacity development has a role in both strategic and operational development. Training is a key approach used to develop capacity in individuals and organizations; however, capacity development goes well beyond training. It includes strengthening organizations to carry out their mandates through efficient and effective human resource management and workplace practices. Capacity development relies on the importance of good governance, social dialogue and the opportunity for a wide range of women and men to participate in and influence policy development.

In terms of maternity protection and of balancing work and family responsibilities this implies that governments are ready and able to strengthen the legal environment through participatory law making, enforce the legislation and develop and implement policies with reference to the five key elements of maternity protection at work and childcare.

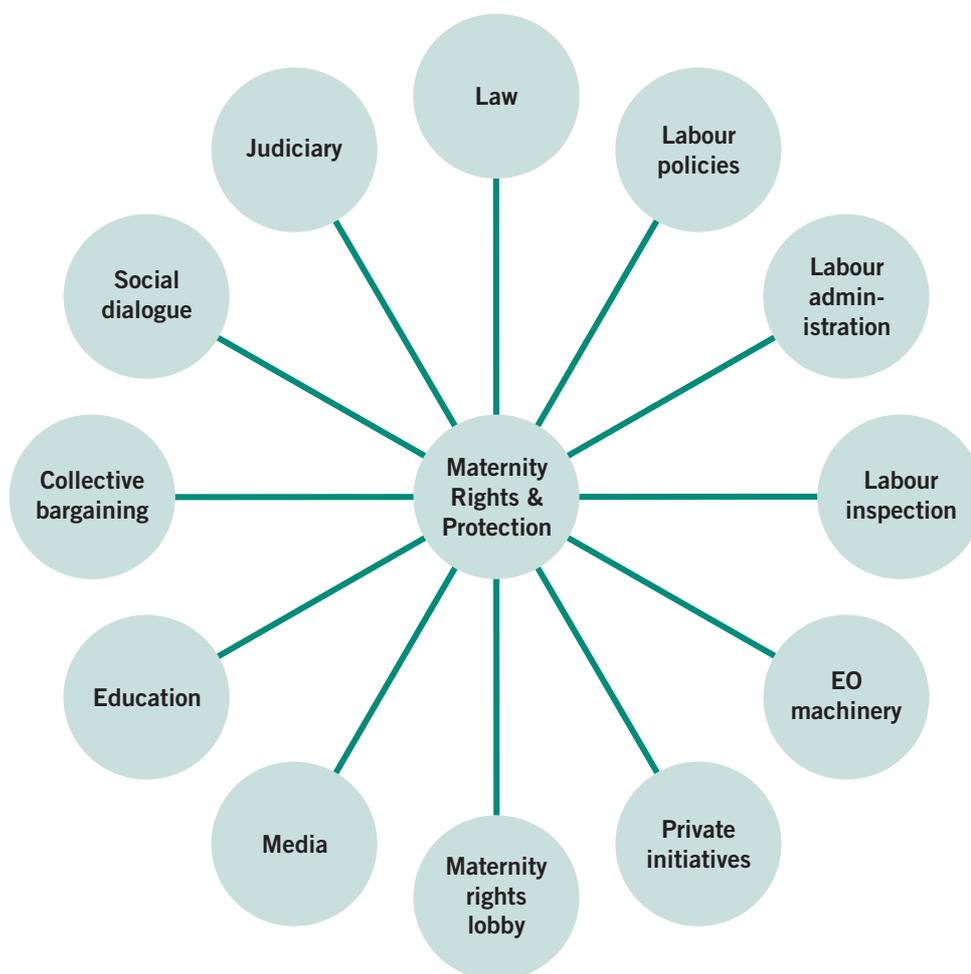
It also implies that employers' organizations are able to operate as strong independent organizations that have good governance and the ability to represent their member groups. They play a key role in influencing and implementing policies as well as providing appropriate services to members. In terms of maternity protection, this would include helping members to understand legislative requirements and the benefits of implementing maternity protection. It could also include services that assist members to implement maternity protection policies and practices at the enterprise level.

Similarly, workers' organizations have a key role in ensuring the participation and voice of workers in the development of social and economic policy. In terms of maternity protection, this means building strong democratic representation and negotiating to improve maternity protection at national and enterprise levels and in collective bargaining agreements. It also means advocacy and representation for individual women in addressing violations of maternity protection rights.

¹ Governing Body, 306/PV, para. 227

Advocating for and supporting maternity protection covers various activities whose end results are that, in a given setting (country, region or enterprise), the issue is brought forth and defended. The goal: change for the better, both in law and in practice.

The fact that a law is adopted does not guarantee that it will be effectively implemented and in reality there are many other contributions that will be needed to consistently and comprehensively address the issues of maternity protection. Many different stakeholders have a role to play in educating and shaping public opinion, representing differing views and upholding the law when it is enacted. The diagram below reflects the interaction of all the dimensions that can feed into the action process of improving maternity rights and protection. These different bodies, organizations and mechanisms will each need to be considered when assessing the situation of maternity protection in a given country and when considering how to be strategic in developing capacity.



The four following chapters examine different dimensions of this process: the assessment of national legislation vis-à-vis Convention No. 183 (**Module 12**); the assessment of maternity protection in practice, at national, local or enterprise levels (**Module 13**); advocacy at a wider level through communication strategies, alliance building and awareness-raising activities (**Module 14**); and capacity development, with the preparation of training ideas, methods and tools (**Module 15**).

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Module 12:

Assessing national legislation on Maternity Protection at work

Governments have a key role as competent authorities in improving maternity protection and work–family policies both at the statutory and workplace levels. They are responsible for initiating legal reforms, by preparing the relevant draft legislation and submitting it to the relevant body with the power to pass, amend and repeal laws. Governments are also in charge of the implementation and monitoring of laws.

National legislation is pivotal, as it transposes universally accepted principles from the global and regional levels and sets minimum standards for the national and subnational levels. Within a country, legislation adopted by municipalities, districts or provinces must meet the minimum standards set in national law and can be more protective than the national law. In the latter case, they may serve as a model for national legislation. Policies and regulations at the workplace level, including collective bargaining agreements (CBAs), must also meet or exceed minimum national standards.

Legislation and other measures have often been developed following extensive consultations and negotiations with the social partners, with relevant authorities and advisors, and with other stakeholders. For this reason, it is important for all stakeholders to have a clear sense of the legislative framework on maternity protection at work, including childcare policies, as a first step of the “action” process. This module provides guidance and tools for that purpose.

Key contents

This module offers guidance for assessing national legislation in comparison to ILO standards on maternity protection at work, including childcare. It provides tools for comparison and highlights some recent trends and best practices in legislation on this subject. It includes the following:

- ➔ An overview of maternity protection at work in national legislation
- ➔ A comparison of national provisions to ILO standards on maternity protection at work
- ➔ An explanation of the importance of having comprehensive maternity protection legislation
- ➔ Examples of good initiatives at the national and subnational levels

Maternity Protection in national legislation

National laws designed to protect the health of mother and child and the employment rights of working women during maternity figure prominently in the legislation of almost every country, with at least 167 ILO member States having passed some form of legislation on maternity protection.² However, finding and interpreting these laws is not always a straightforward task. Within a country, at national (or federal) level, maternity protection provisions may be part of:

- the national Labour Code;
- Social Security laws and regulations;
- the Civil or Family Code;
- health regulations protecting pregnant workers, new mothers and their newborns;
- anti-discrimination laws.

Maternity protection laws may be included under more than one sector and heading, such as labour, women, family, occupational health, social security or gender equality (see **Box 12.1**). Similarly, maternity legislation may be the responsibility of one or more of a number of ministries (e.g. labour, social affairs, health, finance, industry, and agriculture or gender equality). Maternity protection provisions often differ in the private and public sectors, with separate civil service regulations for the public sector. The complexity of maternity protection requires some in-depth knowledge of the legislation and coordination between ministries and departments.

Box 12.1 Where is maternity protection legislation found?

There are three types of national legislation where the statutory entitlements of maternity protection are commonly found: **labour**, **social security** and **anti-discrimination**.

Labour legislation

Labour legislation can take several forms, such as a labour code, general or sector-specific employment or labour acts, or acts specific to certain labour-related issues, such as acts on maternity protection or maternal leave. Several provisions regarding maternity protection are usually enacted in national labour law:

- Periods and conditions of maternity leave and, in certain cases, paternity and parental leave.
- Legal measures to protect the health of pregnant and nursing women against risks at the workplace.
- Protection from dismissal for maternity-related reasons, as well as the right to return to the same job or a similar job with equal pay after maternity leave.
- Provisions guaranteeing the payment of cash benefits during leave, generally indicating the source of payment.
- Allocated time for breastfeeding and compensation for breastfeeding breaks; provisions for the set-up of nursing or childcare facilities.

² See ILO: *Maternity at work: A review of national legislation*, Second Edition (Geneva, 2010).

Social security legislation

Where maternity, paternity and parental leave benefits, as well as nursing and childcare facilities, are covered by social security, then their regulation is generally included in social security legislation. This includes the amount and duration of the benefits or services, and conditions for receiving these benefits or services. Certain social security schemes also include benefits for prolonged leave and medical care in case of illness or complications. Other benefits, such as prenatal, childbirth, breastfeeding or childcare allowances, if provided by social security, can also be found in this legislation.

Anti-discrimination legislation

Provisions against discrimination on grounds of sex, religion, ethnicity, marital and family status, political or other opinion and social background are normally enshrined in national anti-discrimination law. Inadequate leave and healthcare benefits, lack of flexibility for women workers, as well as dismissal on grounds of maternity and unequal treatment in terms of employment can all be damaging to gender equality, and hence against anti-discrimination legislation.

Source: ILO: *Conditions of Work Digest, Maternity and Work* (1994, Vol. 13), p. 8.

Within the State, legislation may be drafted at various political levels:

- at the central (i.e. national or federal) level;
- at the regional level (e.g. the state, district, province or canton);
- at the local level (e.g. the municipal, communal or community level).

In a federal state, it is the federal government's role to take action with respect to ratifying Conventions at the federal level. In this case, the federal State's obligations are the same as those of non-federal member States. However, if the federal government regards the matters contained within a particular Convention as more appropriate for action at the state, provincial or cantonal level, then the federal government must refer this Convention to these more appropriate governmental levels for consultation and enactment. Thus, in the United States, for example, the federal government remains responsible for arranging periodical consultations between various levels of government in order to promote action to give effect to the Conventions it has ratified.

At all of these levels, any acts, decrees or policies have to comply with national law; they may provide **more** comprehensive protection than the national law, but they can **never** be **less** protective than it.

Lastly, several elements of maternity protection may also be in the hands of the employers and trade unions as part of collective bargaining agreements, in-house policies or rules and regulations. Here again, as a general rule, collective agreements should differ from the minimum standards granted by the law only to the extent that they are more protective than them.

The challenge is to harmonize the law at all levels. This is the task of government in association and through dialogue with its relevant social partners, the employers and the trade unions. Civil society also has an essential role to play in the field of advocacy and capacity building.

Summarizing and comparing legal provisions can be particularly difficult because of the wide variety of systems that may be in place. Lack of harmonization among different legislative provisions related to maternity protection as well as possible lack of clarity in the provisions related to their scope may give rise to gaps in coverage that are difficult to assess. Thus, within a particular country, a woman may be entitled to some aspects of maternity protection, but not to others. One example is that of an employed woman who has a right to a period of maternity leave under the general labour code, but no right to cash benefits under social security, because coverage for cash benefits is narrower than that for maternity leave. The opposite may occur for self-employed women, when social security schemes provide for cash benefits, while the labour code excludes them from maternity leave coverage. Other gaps in coverage may include additional qualifying conditions related to age, salary, number of pregnancies, marital status, time-in-service requirements or minimum contribution levels (see **Module 2** for more details).

Comparing national legislation to ILO standards

Given the fact that maternity protection involves several different elements (i.e. leave, health protection, cash and medical benefits, employment protection and non-discrimination and breastfeeding) and that provisions for these elements can be found across different legal instruments, assessing national legislation on maternity can be a challenge.

A table is available in the **Tools** section of this resource package to assist in comparing legislative provisions to international labour standards, (see **TOOL SHEET 12.1**). This table can be used as a starting point for gathering a comprehensive overview of a nation's legislative framework for maternity protection at work, including childcare. This table can also be easily used to look at legislation at other levels, e.g. state, provincial, and municipal, etc., as well as at collective bargaining agreements, or specific workplaces.

As noted earlier, identifying legislative provisions on maternity protection is not always easy, as they may be found in a variety of laws and regulations. One useful source for gathering information is the ILO Database on Conditions of Work and Employment Laws,³ which includes a database of national laws on all of the key elements of maternity protection for 167 ILO member States. The database notes the legal source for each provision, thus allowing the user to identify the relevant legal text and consult the original document.⁴ For instructions on using the database, please see **RESOURCE SHEET 12.2**.

Once legislative provisions have been gathered and entered into the table, a direct comparison with the standards set out in Convention No. 183 can be made, with notes and remarks on gaps or remaining questions noted in the last column. The table can also be modified to add the provisions set out by Recommendation No. 191, Convention No.156 and Recommendation No. 165 for international standards on parental leave as well as childcare services (see also **Module 11**).

In looking at the various components in more depth, another useful source of information may be the Comments of the Committee of Experts on the Application of Conventions and

³ Available at www.ilo.org/travail. Consulting the original is highly recommended as laws may change and errors in translation or data entry may occur.

⁴ Please report any updates or errors in the database to travail@ilo.org.

Recommendations (CEACR) (see **Module 5** for more information on this Committee of Experts and the ILO supervisory system). Comments by the CEACR are available for ratified Conventions by country. For countries that have ratified Conventions No. 3, No. 103, and/or No. 183, as well as Convention No. 156, the comments of the CEACR can be highly instructive on specific aspects of the maternity protection laws (including childcare) and implementation in that country. For countries that have not ratified any of the maternity protection Conventions, the comments of the CEACR regarding countries that have ratified one or more of the conventions can still provide guidance and clarification. They provide an insight into the experiences and difficulties that other countries have faced, and the solutions they have developed to overcome these difficulties. The comments of the CEACR are available on an ILO website, at the “Database” section of the ILO Labour Standards Department.⁵ For more information and resources see **Module 5**.

Below you will find several points for an in-focus review of each of the elements, and some highlights of good practices around the world. These can help to assess national legislation, stimulate discussion and analysis, and formulate recommendations with a view to harmonizing national laws with international labour standards.

In focus: Scope

Convention No.183 applies to all employed women, including those in atypical forms of dependent work. However, few countries have included such a wide scope in their national legislation. In reality, the percentage of women covered by the law is often quite low. In assessing legislation, it is important to consider the sectors and work categories that are excluded or poorly protected:

- private sector compared to public sector;
- rural workers compared to urban ones;
- agricultural, informal economy, domestic or homeworkers;
- migrant workers;
- part-time, casual or temporary workers;
- workers in small enterprises or those in family undertakings;
- self-employed, independent workers.

The State is responsible for extending legislation to ever wider categories of workers such that all workers are ultimately included. ILO is presently collaborating with a number of member States to extend legal coverage to women working in the informal economy. **Box 12.2** shows examples of extending maternity coverage to domestic workers in several countries.

⁵ Available at www.ilo.org/standards.

Box 12.2 Domestic workers

South Africa. Since September 2002, the Basic Conditions of Employment Act and the Labour Relations Act apply to domestic workers. Domestic workers now have the right to paid leave, overtime payments, severance pay, notice of dismissal and a written contract with their employer. Employers are also required to register domestic workers with the Unemployment Insurance Fund and pay contributions, thus making these employees eligible for unemployment and maternity benefits.

Trinidad and Tobago. In Trinidad and Tobago unions have been petitioning parliament for recognition of domestic workers as “workers” under the Industrial Relations Act. They state that “social security is only accessible to domestic workers if they are registered and contributions are paid on their behalf, which often is not the case.”

Uruguay. Uruguay’s Domestic Labour Law, approved in November 2006, offers an outstanding example of the combined effort of social actors to ensure the application of the ILO Discrimination Convention (Employment and Occupation), 1958 (No. 111) and the principle of non-discrimination. This initiative, led by a tripartite commission for equal opportunities marks a landmark effort to place labour standards regarding domestic service on an equal footing with those of the rest of the workplace. These new regulations establish maximum hours of work, and the right to severance pay, unemployment benefits, minimum wage, holidays, maternity and other benefits, all covered by general regulations. Thanks to this law, domestic workers can now access essential social security benefits, a significant step forward in this region.

Sources:

C. Hein: *Reconciling work and family responsibilities. Practical ideas from global experience* (Geneva, ILO, 2005), p. 101-102.

Espino and Amarante, 2008, cited in ILO/UNDP: *Work and family: Towards new forms of reconciliation with social co-responsibility* (Santiago, ILO, 2009), p. 108.

ILO: *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th session, Geneva, 2010.

► For more on Scope, see **Module 2**.

In focus: Maternity leave

Convention No. 183 calls for 14 weeks of maternity leave, with six weeks of compulsory postnatal leave. Many States have more specific provisions, which is why the following points should be examined when considering maternity leave:

- What is the length of the leave, and does it comply with the provisions of Convention No. 183? If so, does it reach the 18 weeks set out by Recommendation No. 191?
- How long is the compulsory postnatal leave period?
- What are the criteria for taking maternity leave? Who can take it and when?
- Is it possible to extend maternity leave in case of illness or maternity-related complications?
- What is the best balance between:
 - ➔ the proportion of leave taken before or after birth;
 - ➔ flexibility in the distribution of leave and the need for health protection, and
 - ➔ women’s right to choose the distribution of non-compulsory leave and mandatory provisions?

- How to complement maternity leave with other forms of leave: sick leave, annual leave and other family or care leaves (e.g. paternity leave, childcare/emergency leave and parental leave) (see **Box 12.3**)?
- Are there provisions for adoption leave? And leave without pay?

Box 12.3 Paternity and parental leave

Burkina Faso. Male or female employees can request up to six months of unpaid leave (renewable once) to care for their children. This leave period can be extended to one year (renewable once) in the case of a child's illness. Burkina Faso and Guinea are the only African countries that provide long-term parental leave.

Iceland. Fathers have an independent non-transferable leave quota. The overall length of maternity/paternity leave is nine months (at 80 per cent pay) divided into thirds, with the first three months being reserved for the mother, the next three for the father, and the last three to be divided between both parents as they wish until the child reaches 18 months. Furthermore, parents are entitled to 13 weeks of unpaid leave each until the child reaches eight years of age.

Sweden. Employees are allowed ten days paternal leave for the birth or adoption of a child plus 480 days parental leave, 390 of which are remunerated at 80 per cent pay and the remaining 90 days at a flat rate. If parents have joint custody, each is entitled to benefits for half of the leave period. A parent may transfer his or her right to parental leave to the other parent, except for a period of 60 calendar days which, if not taken, are lost. Parents have the right to a 25 per cent reduction in their work hours until a child is eight years old. Childcare is a legal right.

Source: ILO: *Database of conditions of work and employment laws*, <http://www.ilo.org/dyn/travail/travmain.home> [accessed Sep. 14, 2011].

- For more on leave, see **Modules 6** and **11**.

In focus: Cash and medical benefits

Benefits are important in ensuring economic security for women during maternity, as well as appropriate healthcare treatment for mothers and their newborn. Benefits can either be provided in cash, as substitution for lost income during maternity leave, or in access to maternal and infant health care. When assessing the benefits in a certain country, key questions must be answered.

Cash benefits

- What is the percentage of salary provided, or is a lump sum given? How is this calculated? Is there a ceiling?
- What are the eligibility criteria, which may be similar or different from eligibility to take leave? Who is eligible?
- Does the duration of cash benefits provided cover the whole leave or only part? Is parental leave covered?
- Who pays: government, social insurance, employer or is the system mixed?
- What is the level of contribution required from employers and workers to the social insurance system?

- What social transfers are available for non-eligible women?

Medical benefits

- Is maternal and infant health care protected? If so, what care, services and medications are covered? Are there medical examinations before and after birth, drugs, hospital birth, transportation and home visits?
- Who pays: government, employer, family or a cost-sharing system?
- What is the level of families' out-of-pocket contributions?
- Who is covered by healthcare security legislation? Is the health care accessible and of good quality? (See **Box 12.4**)
- What are the working conditions of health care personnel?

Box 12.4 Social security legislation for workers in the informal economy, India

Over the last few years, the Indian central government as well as several State governments and ministries have shown a stronger commitment to extend health protection benefits to informal economy workers, with several initiatives: welfare funds, subsidized insurance products, social obligations for private insurance companies, State governments' health insurance initiatives, etc. An "Unorganized Workers Social Security Act" was adopted in 2008 at the central level. The Act allows state governments to provide benefits such as provident funds, life and disability coverage, maternity benefits, employment injury benefits, housing and skills upgrading, with partial or complete grant support from the central state. In Uttar Pradesh the State Legal Services Authority is preparing recommendations regarding the national law.

Source: A. Coheur et al.: *Linkages between statutory social security schemes and community-based social protection mechanisms: A promising new approach*, Technical Report No. 9, (Geneva, ISSA, 2007), p. 14.

- ▶ For more on cash and medical benefits, see **Module 7**.

In focus: Health protection at the workplace

Health protection for pregnant and nursing women at the workplace is a key issue. Lack of occupational safety protection measures can result in health risks and complications for the mother and her child. Good and safe working conditions foster workers' health and the healthy development of their children, thus contributing to Millennium Development Goals (MDGs) 4 and 5 (See **Box 12.5**). In order to assess health protection at the workplace, several questions must be asked:

- Is a healthy workplace available for all workers, with gender specific provisions for pregnant and lactating women?
- Who is responsible for ensuring that an assessment of workplace risks related to the health of pregnant or nursing women and their children is carried out effectively?
- Who makes the decision on which tasks are considered dangerous or unhealthy?
- Can the mother refuse certain schedules or tasks during pregnancy/breastfeeding?

- How is either the elimination of workplace risks or an adaptation of pregnant/breastfeeding women's working conditions ensured?
- Is it possible to obtain a less dangerous temporary post in case of assessed risk for the mother or the child's health?
- Is it possible to obtain additional paid leave if a less dangerous temporary post is not available?
- Is the worker guaranteed the right to return to the same position or equivalent one at the same pay after this additional paid leave?

Box 12.5 Legislation related to health protection challenges

South Africa. When an employee notifies an employer that she is pregnant her situation in the workplace should be evaluated. The evaluation should include an examination of the employee's physical condition by a qualified medical professional; the employee's job and the workplace practices and potential workplace exposures that may affect the employee. Employers must keep the risk assessment for expectant or new mothers under regular review.

Code of Good Practice Pregnancy § 5

Gabon. A pregnant woman, like other women workers, may request the labour inspector to order an examination by an approved medical practitioner in order to ascertain that the work which is given to her is not beyond her strength. If it is assessed as dangerous, she may request to be moved to a different position without loss of pay until three months after the date of resumption of work.

Labour Code § 178

Labour Code § 172

Source: ILO: *Database of conditions of work and employment laws*.

► For more on health protection, see **Module 8**.

In focus: Employment protection and non-discrimination

Ensuring employment protection alongside non-discrimination policies is a key issue in promoting gender equality at the workplace. Ensuring equal opportunities for men and women leads to a better utilization of human potential and is paramount in improving productivity. In order to assess the effectiveness of these policies, several questions may be asked:

- Do employees have the right to return to the same or an equivalent position/job at the same pay after maternity leave and other leaves?
- Is the period of leave considered as a period of service for the determination of such rights as seniority and pension?
- Is dismissal illegal during pregnancy, childbirth, maternity leave and afterwards for reasons related to maternity or family responsibilities?
- What is the period of protection? Does it include a period following the return to work after maternity leave? How is the duration of this period determined?
- Is the right to employment protection linked to the women's maternity-related conditions or to the presence of an employment relationship with her employer?

- With whom does the “burden of proof” rest? (See **Box 12.6**)
- Is there a judicial system in place to examine complaints?
- Are pregnancy tests, sterilization or questions related to family matters and plans allowed? What means does a potential employee have to protect herself in such a situation?

Box 12.6 Job protection and non-discrimination measures

Guinea. Dismissal is prohibited during maternity leave and during extended unpaid optional maternity leave, except in the event of serious misconduct not connected to pregnancy or if, for a reason unrelated to pregnancy, the employer finds it impossible for the contract to remain in effect. If the Labour Court finds that a woman’s contract has been wrongfully terminated, the employer is ordered to reinstate the woman in her job or, if she is not reinstated, to pay her compensation equalling two years’ wages. During pregnancy and after the birth of her child for up to 15 months, a woman worker may terminate her employment contract without notice.

Ordinance No. 003/PRG/SGG/88 issuing the Labour Code §63-64

The Bolivarian Republic of Venezuela. It is unlawful to dismiss or pressure a woman, or diminish her rights, during or as a result of pregnancy. If a woman believes her rights have been violated she may bring a constitutional action in order that they be restored to her. [...] A pregnant woman worker shall be immune from dismissal during pregnancy and for one year after confinement, provided that no serious fault is committed, in which case the prior authorization of the Labour Inspectorate shall be required. This protection also applies to a woman worker who has adopted a child.

*Decree on Equal Opportunities for Women §15
Organic Labour Act §383, §384*

France. Dismissal is prohibited during pregnancy, where this has been medically certified, during maternity leave (whether or not the worker uses the right to take the leave) and during the period of paid adoption leave, as well as during four weeks after the end of maternity and adoption leave. Dismissal is nonetheless permitted in case of a serious fault of the worker unrelated to pregnancy, or when the employer is unable to maintain the contract of employment for reasons unconnected with pregnancy, confinement or adoption. However, the dismissal or notice of dismissal may not take place during the periods of maternity and adoption leave. Dismissal is considered to be null and void (except for the cases described above) if, the worker provides to the employer within 15 days as to the day of notice of dismissal, either a medical certificate attesting her pregnancy, or a certificate issued by the departmental child welfare service or the recognised adoption service arranging for the placement, attesting the arrival in his/her household, within 15 days, of a child, with a view to adoption.

Labour Code §§ L1225-4, L1225-5, L1225-38, L1225-39

Source: ILO: *Database of conditions of work and employment laws.*

► For more on employment protection and non-discrimination, see **Module 9**.

In focus: Breastfeeding upon return to work

The World Health Organization (WHO), as stated in World Health Assembly Resolution of 2001 (WHA54.2), recommends exclusive breastfeeding for infants until the age of 6 months and continued breastfeeding for two years or beyond, with the timely introduction of appropriate complementary foods. The ILO standards provide for breastfeeding breaks of

at least one hour per day. The following must be asked in order to assess good practice with regard to breastfeeding:

- What conditions must a woman fulfil in order to benefit from breastfeeding breaks (e.g. provide a doctor's certificate)?
- How much time per day is allotted for breastfeeding or expressing milk, and can this be taken by shortening working hours?
- For how long after the end of maternity leave can breastfeeding breaks be taken (weeks, months)?
- Are breaks paid or unpaid?
- Is there an equipped facility for breastfeeding or expressing milk at the workplace?
- Is there a nursing facility attached to the workplace or nearby in the community? If so is access to this facility affordable and in line with workers' needs?
- Is information about the benefits of breastfeeding distributed in the workplace?
- Do workplace facilities or services have to be provided according to a minimum number of women workers?

See **Box 12.7** for positive examples of legislation regarding breastfeeding.

Box 12.7 Good practice examples of legislation: Facilities for breastfeeding

Brazil. Brazil has recently approved the “Norms and Rules” to implement the Lactation Facilities Act. The aim is to enable working women to express their milk in hygienic conditions, to store it and take it home safely to feed their babies. This is not a law but a “sanitary rule”. For the past year advocates in Brazil have been identifying employers who have set up such lactation facilities. On 26 April 2010, a campaign to make the new norms known was launched throughout the country. A large gathering assembling entrepreneurs and decision-makers took place in Sao Paulo on that day.

Peru. A supreme decree was passed on 23 August 2006 by which all institutions of the public sector employing 20 or more women of reproductive age must set up a facility of at least 10m² for the sole purpose of expressing milk. This decree aims to harmonize family life and work. Today there are 180 lactation facilities in Peru.

Belarus. Besides the regular daily breaks, women with children under the age of three are given additional breaks of at least 30 minutes every three hours for feeding children. Women with two or more children under the age of three years are given breaks of not less than one hour. These breaks are included in the working hours and are paid at the rate of average wages.

Labour Code §267

Sources:

Norms and Rules concerning Lactation Stations in Brazilian legislation, 2010.

Lactancia de madres trabajadoras es promovida por empresas publicas,

<http://radio.rpp.com.pe/saludenrpp/lactancia-de-madres-trabajadoras-es-promovida-por-e-mpresas-publicas/>

[accessed 14 Sep. 2011].

ILO: *Database of conditions of work and employment laws.*

► For more on Breastfeeding, see **Module 10**.

In focus: Coping with childcare

The provision of adequate, gender-sensitive, childcare-related leave and services is essential to promote gender equality at work, foster child development, support decent and productive work for both women and men, and promote social protection and poverty reduction. In order to assess the effectiveness of these policies, several questions may be asked:

- Is paternity leave available? Is it compulsory or voluntary? What is its duration and replacement rate?
- Are parental leave policies available to both women and men? Is a portion of parental leave exclusively available to men (“father quota”)?
- What is the duration and replacement rate of parental leave?
- Are adequate and appropriate childcare services or arrangements available to all working parents who need them?
- Who funds the facilities and services: government, social security, employer, family or a cost-sharing system?
- Are these services or arrangements free or at a reasonable charge in line with the workers’ ability to pay?
- Are childcare services and facilities designed in line with the needs of both children and workers with family responsibilities, in terms of location, opening hours, duration and other factors?

► For more on childcare, see **Module 11**.

Summing it up

Once a comparative overview of national legislation has been compiled and comparisons made and analyzed, the situation can be summarized using the questions below as guidance:⁶

- In comparing the national law to Convention No. 183, is it less, similarly or more protective than Convention No. 183 and Recommendation No. 191? In all elements? In which ones precisely?
- How does national law compare to Convention No. 156 and Recommendation No. 165 in terms of childcare-related leave measures and services?
- Are there gaps that are particularly important to address and why?
- Are identified gaps relatively easy to fill? Which is the easiest to fill? The most difficult?

This assessment can then be used to determine perspectives and priorities related to specific gaps that different stakeholders (government, labour, finance, health and other relevant ministries; employers’ and workers’ organizations, as well as women’s organizations and research institutions) might hold, including those relating to the following questions:

⁶ Adapted from Maternity Protection Coalition (MPC): *Maternity protection campaign kit* (Malaysia, WABA, 2003) Sect. 6, pp. 9-10.

- What next steps are feasible? Revising the law? Which parts? Ratification of Convention No. 183? Ratification of Convention No. 156?
- What would be the strategic priorities or sequence, from the most to the least feasible?
- What are the obstacles towards ratification and implementation?

In a campaign to improve maternity protection, the findings from the analysis can then feed into the advocacy process outlined in **Module 14**.

ILO framework for measuring decent work: Indicators for “Combining work, family and personal life”

Since the adoption of the ILO Declaration on Social Justice for a Fair Globalization (2008), the ILO has been working to provide assistance to member States in the establishment of appropriate indicators to monitor and evaluate progress towards decent work. In 2008, a framework for the Measurement of Decent Work was adopted, which identifies ten key aspects of decent work, ranging from employment opportunities, decent hours to social dialogue and workers’ and employers’ representation. These ten thematic areas include a set of: (1) statistical indicators complemented with (2) legal framework-related indicators, namely information on rights at work and the legal framework for decent work.

“Combining work, family and personal life” has been identified as a substantive element of the Decent Work Agenda and includes the following sets of **statistical indicators**:⁷

- maternity leave and maternity benefits: coverage of workers in law and in practice;
- number of asocial or unusual hours (which may conflict with family responsibilities⁸).

The **legal framework-related indicators** for “Combining work, family and personal life” measure the existence and main features of maternity, paternity and parental leave laws and can be a valuable tool for a rapid assessment of national legislation as compared to international labour standards. So far, ILO constituents have identified the following relevant legal indicators:

Maternity leave indicators

- Length of maternity leave
- Level of maternity leave benefits
- Source of maternity leave benefits

Paternity and parental leave indicators

- Length of paternity leave
- Length of parental leave

The ILO is currently carrying out developmental work to develop additional legal indicators on maternity protection, paternity and parental leave as well as on the above mentioned

⁷ For more information on statistical indicators on maternity protection see **Module 13**.

⁸ Such as excessively long and irregular hours of work; night, weekend or public holiday work; shift work.

statistical indicators and collect information on them. These will be available by the end of 2012 on the ILO Conditions of Work and Employment Programme website: www.ilo.org/travail. For more information on Measuring Decent Work and Maternity Protection Indicators, see **Key resources** at the end of this Module.

Since the adoption of this comprehensive approach, a number of member States, including Austria, Brazil, Malaysia, the United Republic of Tanzania and Ukraine, have compiled decent work indicators to assess their progress on achieving the goals of the Decent Work Agenda. **Box 12.8** provides an example of indicators on “Combining work, family and personal life”, excerpted from the Decent Work Country Profile of Brazil, which assesses progress on ten dimensions of Decent Work in that country since 1992. As of September 2011, a common feature of available Decent Work Country Profiles is the lack of information on coverage in practice, which points to the challenge to national statistical offices in broadening and adjusting their existing statistical instruments and data-collection efforts to measure this substantial dimension of decent work.

Box 12.8 Decent Work Country Profile Brazil ILO indicators on “Combining work, family and personal life”

Legal Framework Indicator 6: Maternity leave

Law, policy or institutions: The Constitution of Brazil grants 120 days of maternity leave without prejudice to jobs or wages, and also protects women from arbitrary dismissal. According to the Consolidation of Labour Laws of Brazil (CLT), pregnancy is not a legitimate reason for dismissal, and any clause in a collective or individual contract stating otherwise shall be considered null and void. The CLT guarantees salary and other rights during pregnancy. It also states that as long as a woman fulfils her requirement for pay granted by the social insurance scheme, absence for reasons of maternity or abortion cannot be treated as unjustified absence from work. Although the CLT does not cover domestic servants, Law 11.329 of June 2006 grants them 120 days of maternity leave and protects them from arbitrary dismissal from confirmation of pregnancy until five months after childbirth. Workers in the public sector are protected by Law 8.112/90, which guarantees the same rights.

Benefits (level and duration): The CLT states that a pregnant employee has the right to 120 days of leave, without prejudice to employment and salary. The benefit shall be applied as of the 28th day prior to the expected delivery, or upon delivery. The rest periods before and after delivery can each be extended by two weeks upon provision of a medical certificate. If the delivery is premature, the mother is still entitled to 120 days of leave. Law 11.700 of 2008 established a Corporate Citizenship Programme which allows businesses to extend their maternity leave by 60 days, the cost of which is tax-deductible.

Evidence of implementation effectiveness: No information located by the ILO, apart from the lack of coverage of large numbers of workers.

Coverage of workers in law: Neither the Constitution or the CLT excludes any categories of female workers from maternity rights. In practice however, the CLT does exclude domestic workers, agricultural workers and public officials (and other officials with a similar status). Domestic workers in private households are excluded by the government from coverage under the ILO Convention No. 103.

Coverage of workers in practice: The restriction of maternity leave to employees with a signed labour contract (*carteira assinada*) and to individual contributors to the social security system means that a large proportion of workers do not have access to this benefit. In 2007, about half of all women workers contributed to the social security system.

Ratification of ILO Conventions: Maternity Protection Convention (Revised), 1952 (No. 103), ratified in 1965; Maternity Protection Convention, 2000 (No. 183), not ratified. Under Convention No.103, the Government excluded from the application of the Convention under Article 7(1)(a) and (c): (a) certain categories of non-industrial occupations; and (c) domestic work for wages in private households.

Legal Framework Indicator 7: Parental leave

Law, policy or institutions: The Transitional Provisions of the Federal Constitution (TPFC) make reference to paternity leave in article 10, but no other legislation has been located on this point.

Benefits (levels and duration): According to the single paragraph, Article 10 of the TPFC, until new legislation is adopted the period of paternity leave is five days.

Evidence of implementation effectiveness: No information was found by the ILO.

Coverage of workers in law: All male employees in principle, but the actual coverage is not known.

Ratification of ILO Conventions: Workers with Family Responsibilities Convention, 1981 (No. 156), not ratified.

Source: ILO: *Decent work country profile Brazil* (Geneva and Brasilia, 2009).

Key points

- ➔ Within a given country, the national law establishes the minimum standards of maternity protection allowed in that country. Policies and regulations at the workplace level, including collective bargaining agreements (CBAs) can only meet or exceed minimum national standards.
- ➔ Maternity protection provisions can fall under a variety of legislative measures (e.g. those relating to labour, social security, family, anti-discrimination), under the responsibility of one or more government entities (e.g. labour, social affairs, health, finance, industry, agriculture or gender equality).
- ➔ Taking action on maternity protection requires an adequate knowledge and understanding of the main federal, national, local and workplace provisions and the responsible governmental stakeholders.
- ➔ An overall assessment of national laws is an essential preliminary activity in the process of promoting and extending maternity protection to all women workers. It can greatly contribute to building consensus among the key stakeholders and finding an optimal step-by-step approach to implementing ILO standards in all the core elements of maternity protection at work and childcare.
- ➔ “Combining work, family and personal life” has been identified as a substantive element of the Decent Work Agenda. Legal framework-related indicators for the Measurement of Decent Work help to assess the existence and main features of maternity, paternity and parental leave laws.
- ➔ The ILO Database of Conditions of Work and Employment Laws is the most exhaustive source on maternity protection legislation available internationally. It provides country-specific information on the key dimensions of maternity protection.
- ➔ Some countries may face challenges related to the elements of maternity protection at work and childcare (see **Modules 6-11**). However good practices on the improvement and extension of protective legislation to vulnerable workers are emerging.

Key resources



ILO: Database of conditions of work and employment laws (Geneva).

This database, provided by the Conditions of Work and Employment Programme (TRAVAIL), gives an overview of national provisions in over 100 countries on minimum wages, working time and maternity protection. Maternity protection provisions are listed by country and by type of provision, and can serve for comparative analysis or as examples of good practice. See **RESOURCE SHEET 12.2** for instructions on how to use this database.

Available at: www.ilo.org/travdatabase.



ILO: Maternity at work: A review of national legislation, Second Edition (Geneva, 2010).

This book, written by the Conditions of Work and Employment Programme (TRAVAIL), covers national legislation on Maternity Protection around the world. It provides a comparative analysis of different provisions, gives indications on general trends, examples of good practices as well as areas in which progress is to be aspired. It is at present the most holistic assessment of national Maternity Protection legislation at the global level. This review is conducted on an issue-by-issue basis and the general structure can be useful in conducting an assessment at any level of study.

Available at:

http://www.ilo.org/global/publications/ilo-bookstore/forthcoming-publications/WCMS_124442/lang—en/index.htm



ILO: Standards and fundamental principles and rights at work

The ILO International Labour Standards Department provides a database containing information on ILO international labour standards and their application, in particular:

- The ILO Constitution and Declarations.
- ILO Conventions and Recommendations and their ratification by member States and explanations of their interpretation where necessary.
- CEACR Observations and Direct Requests: reports and recommendations by the ILO supervisory machinery on the application of Conventions by member States.
- Reports of the Conference Committee on the Application of Standards which cover the response of ILO constituents to CEACR reports, and the discussion that follows at the International Labour Conference.
- General Surveys provide an in-depth analysis of member State practices on certain subjects, as identified by the Governing Body.
- Complaints and Representations addressed by ILO constituents to member States for not respecting their obligations in ratifying ILO Conventions.
- CFA cases against freedom of association in member States, as well as a digest of their decisions.

All of these documents can be accessed via **NORMLEX**, the new ILO Information System on International Labour Standards.

Available at: <https://www.ilo.org/dyn/normlex/en>



ILO: Data Collection Indicators on Maternity Protection is a website provided by TRAVAIL that provides a list of indicators on measuring Decent Work when it comes to combining work, family and personal life.

Available at: http://www.ilo.org/travail/areasofwork/lang—en/WCMS_145724/index.htm



ILO Measuring Decent Work is a website that indicates how progress towards decent work can be assessed on a national scale. It includes a technical approach to data collection and policy analysis, in order to ultimately provide policy-making recommendations.

Available at: <http://www.ilo.org/integration/themes/mdw/lang—en/index.htm>

Resource and tool sheets

Resource Sheet 12.1: Key national provisions for maternity protection by region⁹

Africa						
Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions	
					C3	C103 C183
Algeria	14 weeks	100%	Social security	Mandatory	✓	
Angola	3 months	100%	Mixed (if necessary, employer tops up social security)	No information		
Benin	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory		✓
Botswana	12 weeks	25% or 50% for each day of absence	Employer liability	Mandatory ³		
Burkina Faso	14 weeks	100%	Mixed (if necessary, employer tops up social security)	Mandatory	✓	
Burundi	12 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory		
Cameroon	14 weeks	100%	Social security	Mandatory	✓	
Central African Republic	14 weeks	50%	Social security	Mandatory	✓	
Chad	14 weeks	100%	Social security	Mandatory		
Comoros	14 weeks	100%	Employer liability	Mandatory		
Congo, Democratic Republic of	14 weeks	Two-thirds	Employer liability	Mandatory		
Congo, Republic of	15 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory		
Côte d'Ivoire	14 weeks	100%	Social security	Mandatory	✓	
Djibouti	14 weeks	100%	Mixed (50% social security; 50% employer)	No information		
Egypt	90 days	100%	Mixed (75% social security; 25% employer)	Mandatory		
Equatorial Guinea	12 weeks	75%	Social security	Mandatory		✓
Eritrea	60 days	Paid, but no information on how much	Employer liability	No information		

⁹ ILO, 2010, op. cit. The column of "Ratified Maternity Protection Conventions" reflects the status of ratifications as of January 2012.

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Ethiopia	90 days	100%	Employer liability	Mandatory			
Gabon	14 weeks	100%	Social security	Mandatory	✓		
Gambia	12 weeks	100%	Employer liability	No information			
Ghana	12 weeks	100%	Employer liability	No information		✓	
Guinea	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory	✓		
Guinea-Bissau	60 days	100%	Mixed (if necessary employer pays difference between social security and earnings) ¹	No information			
Kenya	3 months	100%	Employer liability	Mandatory			
Lesotho	12 weeks	No obligation for employers to pay	Unpaid	N/A			
Libyan Arab Jamahiriya	50 days	50%	Employer liability	Mandatory	✓		✓
Madagascar	14 weeks	100%	Mixed (50% social security; 50% employer) ¹	Mandatory			
Malawi	8 weeks	100%	Employer liability	No information			
Mali	14 weeks	100%	Social security	Mandatory			✓
Mauritania	14 weeks	100%	Social security	Mandatory	✓		
Mauritius	12 weeks	100%	Employer liability	Mandatory			
Morocco	14 weeks	100%	Social security	Mandatory			✓
Mozambique	60 days	100%	Employer liability	No information			
Namibia	12 weeks	100%	Social security	No information			
Niger	14 weeks	50%	Social security	Mandatory			
Nigeria	12 weeks	50%	Employer liability	Mandatory			
Rwanda	12 weeks	100% first six weeks; 20% remainder	Employer liability	Mandatory			
Sao Tome and Principe	60 days	100%	Social security ¹	Mandatory			
Senegal	14 weeks	100%	Social security	Mandatory			
Seychelles	14 weeks	Flat monthly rate for 12 weeks	Mixed (80% social security; 20% employer)	Mandatory			

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions	
					C3	C103 C183
Somalia	14 weeks	50%	Employer liability	Mandatory		
South Africa	4 months	Up to 60% depending on income	Social security	Mandatory		
Sudan	8 weeks	100%	Employer liability	Mandatory		
Swaziland	12 weeks	Unpaid	N/A	N/A		
Tanzania, United Republic of	84 days	100%	Social security	Mandatory		
Togo	14 weeks	100%	Mixed (50% social security; 50% employer)	Mandatory		
Tunisia	30 days	Two-thirds	Social security	Mandatory		
Uganda	60 working days	100%	Employer liability	Mandatory		
Zambia	12 weeks	100%	Employer liability	Mandatory		✓
Zimbabwe	98 days	100%	Employer liability	Mandatory		

Asia (East, South-East, Pacific, South)						
Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions	
					C3	C103 C183
Afghanistan	90 days	100%	Employer liability	Mandatory		
Bangladesh	16 weeks	100%	Employer liability	Mandatory		
Cambodia	90 days	50%	Employer liability	Mandatory		
China	90 days	100%	Social security (individual accounts)	Mandatory		
Fiji	84 days	Flat rate	Employer liability	Mandatory		
India	12 weeks	100%	Social security ¹	Mandatory		
Indonesia	3 months	100%	Employer liability	Mandatory		
Kiribati	12 weeks	25%	Employer liability	No information		

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Korea, Republic of	90 days	100% ²	Mixed (2/3 employer; 1/3 social security)	Mandatory			
Lao People's Democratic Republic	90 days	100%	Social security ¹	Mandatory ³			
Malaysia	60 days	100%	Employer liability	Mandatory			
Mongolia	120 days	70%	Social security	Mandatory	✓		
Nepal	52 days	100%	Employer liability	Mandatory			
Pakistan	12 weeks	100%	Employer liability	Mandatory			
Papua New Guinea	As necessary for hospitalization before confinement and 6 weeks after	Unpaid	N/A	N/A	✓		
Philippines	60 days	100%	Social security	Mandatory			
Singapore	16 weeks	100% for first and second child	Mixed (8 weeks employer and 8 weeks government)	Mandatory			
Solomon Islands	12 weeks	25%	Government for the third and subsequent confinement				
Sri Lanka	12 weeks for 1st and 2nd child	6/7 or 100% ⁴	Employer liability	Mandatory			
Thailand	90 days	45 days paid 100% by employer, then 45 days paid 50% by social security	Employer liability	Mandatory	✓		
Vanuatu	12 weeks	50%	Mixed (2/3 employer; 1/3 social security)	Mandatory			
Viet Nam	4 months	100%	Employer liability	Mandatory			
			Social security	Mandatory			

Central and South-Eastern Europe (Non-EU) and CIS							
Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Albania	365 days	80% prior to birth up to 150 days after; 50% for remainder	Social security	Mandatory			✓
Azerbaijan	126 days	100%	Social security	Mandatory		D**	✓
Belarus	126 days	100%	Social security	Mandatory		D**	✓
Bosnia and Herzegovina	365 days	100%	Mixed (first month employer; remainder from employment security fund)	No information	✓	D**	✓
Croatia	45 days before birth to one year after birth	100% until 6 months after birth, then fixed amount	Social security (health insurance fund, then state budget)	Mandatory	✓	✓	
Kazakhstan	126 days	100%	Employer liability	Mandatory			
Kyrgyzstan	126 days	100% first 10 working days; 10 times the benchmark indicator (minimum wage level) for remaining period	Social security	Mandatory		✓	
Moldova, Republic of	126 days	100%	Social security	Mandatory		D**	✓
Montenegro	365 days from birth	100%	Employer liability	No information	✓	✓	
Russian Federation	140 days	100% (up to a ceiling)	Social security	Mandatory		✓	
Serbia	365 days for 1st and 2nd children	100%	Social security	Mandatory	✓	D**	✓
Tajikistan	140 days	100%	Social security	No information		✓	
Turkey	16 weeks	Two-thirds	Social security	Mandatory			
Ukraine	126 days	100%	Social security	Mandatory		✓	
Uzbekistan	126 days	100%	Social security	Mandatory		✓	

Developed Economies and European Union							Ratified Maternity Protection Conventions		
Country	Length of leave	% of wages	Source of funding	Type of funding	C3	C103	C183		
Australia	52 weeks	Unpaid	N/A	N/A					
Austria	16 weeks	100%	Social security	Mandatory		D**	✓		
Belgium	15 weeks	82% first 30 days; 75% up to a ceiling for remaining period	Social security	Mandatory					
Bulgaria	227 days	90%	Social security	Mandatory	✓		✓		
Canada	17–18 weeks (varies by province)	55% for 15 weeks	Social security	Mandatory					
Cyprus	18 weeks	75%	Social security	Mandatory			✓		
Czech Republic	28 weeks	69%	Social security	Mandatory					
Denmark	18 weeks	100% for regular employees	Mixed (employer and local government)	Mandatory					
Estonia	140 days	100%	Social security	Mandatory					
Finland	105 working days	70% up to a ceiling plus 40% of additional amount, plus 25% of additional amount	Social security	Mandatory					
France	16 weeks	100% up to a ceiling	Social security	Mandatory	✓				
Germany	14 weeks	100%	Mixed (if necessary, employer pays difference between social security and wages)	Mandatory	✓				
Greece	119 days	100% up to a ceiling	Social security	Mandatory	✓				
Hungary	24 weeks	70%	Social security	Mandatory		D**	✓		
Iceland	3 months	80%	Social security and state universal flat rate for non qualifying women	Mandatory					
Ireland	26 weeks paid (plus 16 weeks unpaid)	80% (minimum)	Social security	Mandatory					
Israel	12 weeks	100% up to a ceiling for 14 weeks	Social security	Mandatory					

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Italy	5 months	80%	Social security	Mandatory	✓	D**	✓
Japan	14 weeks	60%	Social security	Mandatory			
Latvia	112 days	100%	Social security	Mandatory	✓		✓
Lithuania	126 days	100%	Social security	Mandatory			✓
Luxembourg	16 weeks	100%	Social security	Mandatory	✓	D**	✓
Malta	14 weeks	100%	Employer liability ¹	Mandatory			
Netherlands	16 weeks	100% up to a ceiling	Social security	Mandatory		D**	✓
New Zealand	14 weeks	100% up to a ceiling	State (Universal)	Mandatory			
Norway	36 (or 46) weeks	100% (or 80% for 48 weeks)	Social security	Mandatory			
Poland	20 weeks	100%	Social security	Mandatory		✓	
Portugal	120 (or 150) days	100% (or 80% for 150 days)	Social security	Mandatory		✓	
Romania	126 days	85%	Social security	Mandatory			✓
San Marino	5 months	100%	Social security	Mandatory	✓		
Slovakia	28 weeks	55%	Social security	Mandatory			✓
Slovenia	105 days	100% up to a ceiling	Social security	Mandatory	D**	D**	✓
Spain	16 weeks	100%	Social security	Mandatory	✓		✓
Sweden	14 weeks	80%	Social security	Mandatory			
Switzerland	14 weeks (private sector)	80% (up to a ceiling)	Social security and mandatory private insurance (50% employer; 50% employee)	Mandatory			
United Kingdom	52 weeks	6 weeks paid at 90%; flat rate for weeks 7–39; weeks 40–52 unpaid	Mixed (employer reimbursed for 92%)	Mandatory			
United States	12 weeks	Unpaid	No national programme	N/A			

Latin America and the Caribbean						
Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions	
					C3	C103 C183
Antigua and Barbuda	13 weeks	100% for 6 weeks; 60% for 7 weeks.	Mixed (60% social security; 40% employer for first 6 weeks).	Mandatory		
Argentina	90 days	100%	Mixed	Mandatory	✓	
Bahamas	12 weeks	100%	Mixed (2/3 social security, for 13 weeks; 1/3 employer)	Mandatory		✓
Barbados	12 weeks	100%	Social security	Mandatory		
Belize	14 weeks	100%	Social security ¹	Mandatory		D** ✓
Bolivia, Plurinational State of	60 days	100% of minimum wage plus 70% of the difference between minimum wage and regular earnings	Social security	Mandatory		✓
Brazil	120 days	100%	Social security	Mandatory	D*	✓
Chile	18 weeks	100%	Social security	Mandatory	D*	✓
Colombia	12 weeks	100%	Social security	Mandatory	✓	
Costa Rica	4 months	100%	Mixed (50% social security; 50% employer) ¹	Mandatory		
Cuba	18 weeks	100%	Social security	Mandatory	✓	D** ✓
Dominica	12 weeks	60%	Mixed	Mandatory		
Dominican Republic	12 weeks	100%	Mixed (50% social security; 50% employer) ¹	Mandatory		
Ecuador	12 weeks	100%	Mixed (75% social security; 25% employer)	Mandatory		✓
El Salvador	12 weeks	75%	Social security ¹	Mandatory		
Grenada	3 months	105% for 2 months; 65% for last month	Mixed (65% social security for 12 weeks; 40% employer for 2 months)	Mandatory		
Guatemala	84 days	100%	Mixed (2/3 social security; 1/3 employer) ¹	Mandatory		✓

Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions		
					C3	C103	C183
Guyana	13 weeks	70%	Social security	Mandatory			
Haiti	12 weeks	100% for 6 weeks	Employer liability	No information			
Honduras	10 weeks	100% for 84 days ⁵	Social security ¹	Mandatory			
Jamaica	8 weeks	National minimum weekly wage	Employer liability	Mandatory			
Mexico	12 weeks	100%	Social security ¹	Mandatory			
Nicaragua	12 weeks	100%	Mixed (60% social security; 40% employer) ¹	Mandatory	✓		
Panama	14 weeks	100%	Mixed ⁶	Mandatory	✓		
Paraguay	12 weeks	50% for 9 weeks	Social security	Mandatory			
Peru	90 days	100%	Social security	Mandatory			
Saint Kitts and Nevis	13 weeks	65%	Social security	Mandatory			
Saint Lucia	3 months	65%	Social security	Mandatory			
Saint Vincent and the Grenadines	13 weeks	65%	Social security	Mandatory			
Trinidad and Tobago	13 weeks	100% for 1 month and 50% for 2 months paid by employer plus a sum depending on earnings from social security	Mixed	Mandatory			
Uruguay	12 weeks	100%	Social security	Mandatory	D*	✓	
Venezuela, Bolivarian Republic of	18 weeks	100%	Social security	Mandatory	✓		D

Middle East						
Country	Length of leave	% of wages	Source of funding	Type of funding	Ratified Maternity Protection Conventions	
					C3	C103 C183
Bahrain	60 days	100% for 45 days; then unpaid	Employer	No information		
Iran, Islamic Republic of	90 days or 4 months if breastfeeding	Two-thirds	Social security	Mandatory		
Iraq	62 days	100%	Social security	No information		
Jordan	10 weeks	100%	Employer liability	No information		
Kuwait	70 days	100%	Employer liability	No information		
Lebanon	7 weeks	100%	Employer liability	Mandatory		
Qatar	50 days	100%	Employer liability	No information		
Saudi Arabia	10 weeks	50% or 100% depending on duration of employment	Employer liability	Mandatory		
Syrian Arab Republic	120 days (for first child)	100%	Employer liability	No information		
United Arab Emirates	45 days	100%	Employer liability	No information		
Yemen	60 days	100%	Employer liability	No information		

Notes (all tables):

D=Denounced; D*=-Denounced, C.103 ratified; D**=-Denounced, C.183 ratified; N/A = not applicable.

The length of maternity leave as included in this table refers to the normal general duration of maternity leave as provided for by legislation at the national level for singleton uncomplicated childbirths. Unless otherwise specified, the duration of maternity leave in days is intended as 'consecutive' or 'calendar' days.

1. If a woman is not covered by social insurance but is otherwise qualified for maternity leave, her employer is responsible for the full payment of her cash maternity benefits.
2. In the Republic of Korea, benefits may be subject to a maximum and minimum as laid out in a Presidential Decree. However, there are no limits listed.
3. Only some areas of the country are covered.
4. 6/7 for employees covered by the Maternity Benefits Ordinance; 100% for those covered by the Shops and Offices Employees Act.
5. The Labour Code (31 Mar. 2003) provides ten weeks' maternity leave, while according to the General Regulation of Social Security Act (15 Feb. 2005) maternity benefits are paid for 84 days by social security.
6. The employer makes up the difference between social security or mandatory individual account payments and wages.

Sources:

All information based on the ILO Database of Conditions of Work and Employment Laws - Maternity Protection, available at: <http://www.ilo.org/dyn/travail/travmain.home> and ISSA information, except Cyprus.

For Cyprus: Ministry of Labour and Social Insurance: *The Social Insurance Law - Maternity Allowance* (Nicosia, 2008).

Resource Sheet 12.2: Using the ILO Database of Conditions of Work and Employment Laws

The ILO Database of Conditions of Work and Employment Laws contains information on the principal legislative measures adopted in member States to protect the health and welfare of working women during pregnancy, childbirth and breastfeeding and to ensure that their employment is protected and that they are not subject to discrimination. For each country, the statutory entitlements are divided into the major areas of protection, covering the main provisions of the Maternity Protection Convention, 2000 (No.183):

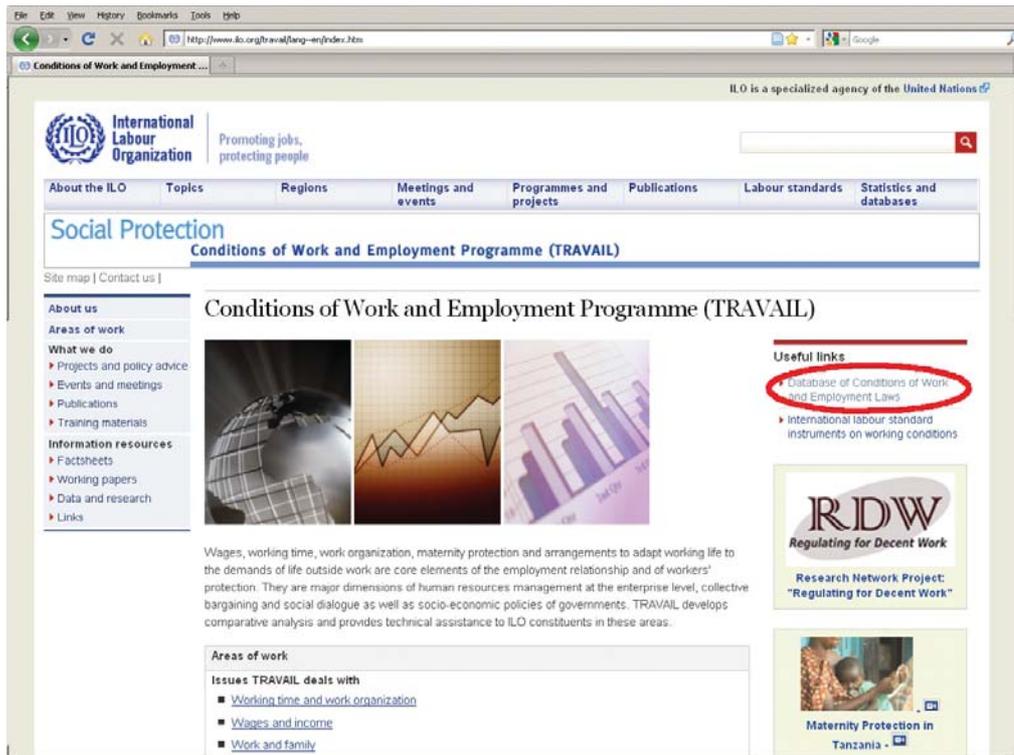
- provisions on maternity leave as well as other related types of leave, including paternity, adoption and parental leave, indicating which workers are covered, the conditions for eligibility, the duration of such leave periods as well as the possibility to take this leave as part-time leave;
- the cash benefits available during the various types of leave and the source of funding;
- health protection measures such as arrangements of working time, avoidance of dangerous or unhealthy work;
- provisions for breastfeeding; and
- provisions aimed at protecting women against discrimination on grounds of maternity and providing employment security.

Information is included for more than 160 countries throughout the world, divided into two groups. For the large majority of countries, original legislative texts were consulted and broader research was completed, while for some countries (designated in the list of countries by a yellow background) a more complete research has not yet been undertaken, but some information, limited to maternity leave duration, level of cash benefits, and source of payment, has been included, provided mainly by reliable secondary sources.

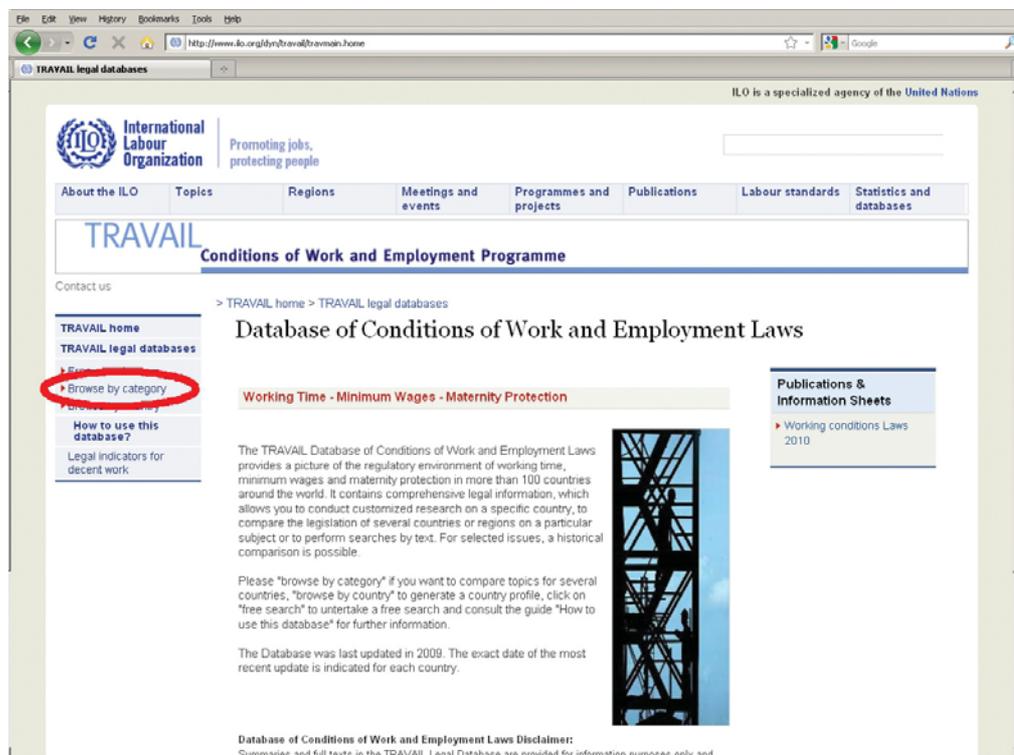
The legislation used for the Maternity Protection Database applies to the private sector. Separate legislation for the public sector is not included, nor are collective agreements. In systems where there may be no single national standard, such as federal states, the most general provision applicable is used.

The database allows conducting customized research on a specific country, to compare the legislation of several countries or regions on a particular subject or to perform searches by text. For selected issues, a historical comparison is possible.

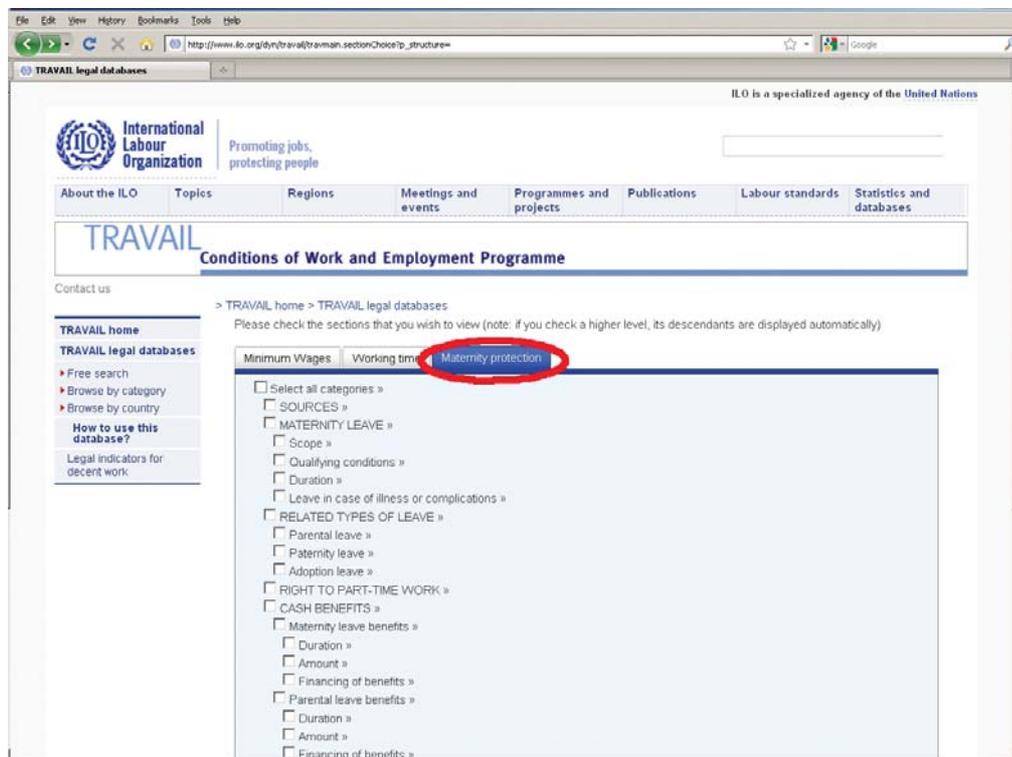
The database is available at www.ilo.org/travail. From there, click on the link to the databases which can be found on the right hand side of the page under “**Useful Links**”:



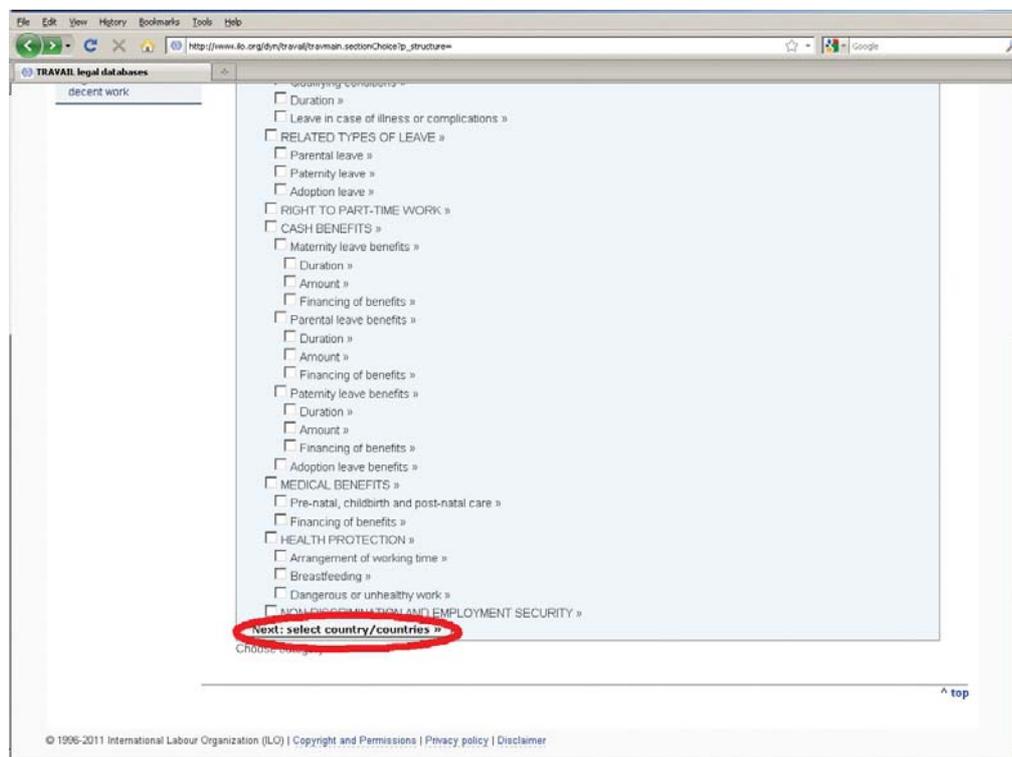
On the left hand side of the page, click **“Browse by Category”**. You will then be presented with three tabs:



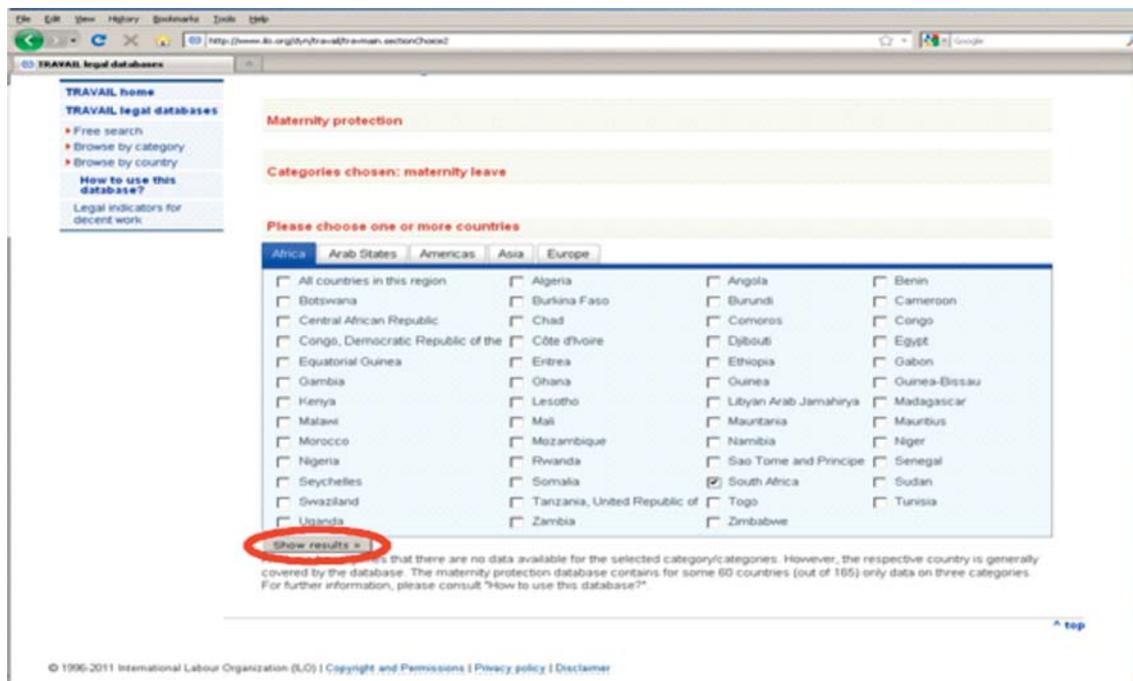
Select the Maternity protection tab. From here, you can select the provisions you are interested in, or you can select the **“All Categories”** box at the top.



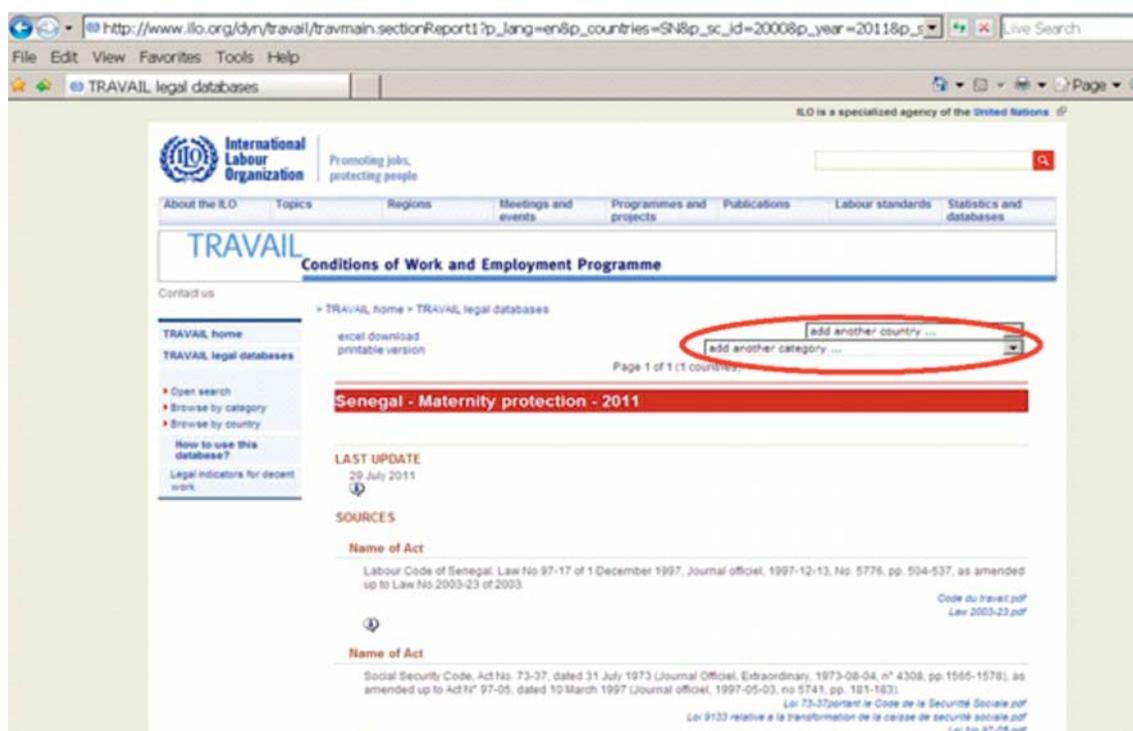
When you have finished your selections, scroll to the bottom to select **“Next: select country/countries”**.



Here, you may select one or more countries/regions you would like to examine. Use the tabs across the top to move to countries in a different region. Only countries for which the database contains data are displayed.



By clicking on “**Show results**”, the system generates a HTML web page with the requested information. Five countries per page are displayed. To change the search, the search options are located at the top of the page, allowing you to add single topics/countries to your selection.



General Information about the Results

In order to allow for a quick display of results, ten countries per page are displayed. Please click on **“NEXT”** to see the subsequent results. If there is less information displayed than expected, this may be for several reasons. The database cites references for all legislative provisions, further detailed in **“Legal sources”** within each database. The date of the most recent update is indicated for each country in the results. A little balloon with an (i) indicates that by clicking on it, additional information can be retrieved.

Historical comparison

One interesting feature is the possibility to view the development of specific topics for selected countries over time. This is at present possible for **“Maternity leave - general total duration”** and **“Maternity leave benefits - amount”** and **“Financing of benefits”**, for 1994, 1998, 2004 and 2009.

Excel download

The data are not displayed for each country in different columns, since this is not **“demonstrative”** for text-based databases. Instead, the possibility to export the data to an excel spreadsheet by clicking on **“excel download”** is provided. This provides for more advanced comparisons, table designs and printouts. It will take a while for the data to be exported, depending on the amount of data (categories, countries) selected. All cells with information will have a comment attached to them that clearly indicates where the information is from: the year, the country, the main- and sub-category and the specific topic category. Once you open the information in Excel, you can then sort or filter the information as suits your needs.

Additionally, you have the possibility to mark the search result with your cursor and copy/paste it into a word-document.

Print

You can view the information in a printable format by clicking the **“View printable page”** button. When you click this button, the browser page will refresh, displaying a page without the extraneous navigation. If you choose to print the page, for best results, go to the **“File menu”**, select **“Page setup”** and change the orientation to **“Landscape,”** click **“OK.”** For more legible printouts, you may want to use the **“Print Preview”** option to adjust the number of pages, zoom and font size, amongst other options.

In using and publishing information from the database, please cite our website as your source:

ILO. n.d. *ILO Database on Conditions of Work and Employment Laws.*

Available at: www.ilo.org/travail. [dated accessed].

Tool Sheet 12.1: Sample comparison chart: Comparison of legislative provisions to international labour standards on Maternity Protection at work and childcare

International Labour Organization – Conditions of Work and Employment Programme Table for comparing legislative provisions to international labour standards on Maternity Protection at work and childcare		
Protection	Current Legislation	Key Gaps
	<ul style="list-style-type: none"> ● ILO Convention No. 183 ○ ILO Recommendation No. 191 ➤ ILO Convention No. 156 ❖ ILO Recommendation No. 165 	
Scope (who is protected)	<ul style="list-style-type: none"> ● All married and unmarried employed women including those in atypical forms of dependent work 	
Maternity leave	<ul style="list-style-type: none"> ● Not less than 14 weeks ● Provision for 6 weeks compulsory postnatal leave ● Extended prenatal period if there is a difference between presumed and actual birth without reduction in any compulsory portion of postnatal leave ● Prenatal or postnatal leave in case of illness, complications or risk of complications related to pregnancy or childbirth ○ Not less than 18 weeks ○ Extension in the event of multiple births ○ The woman should be able to choose freely when she takes any non-compulsory portion of her maternity leave, before or after childbirth ○ In case of death of the mother before the end of postnatal leave, the employed father should be entitled to the remaining leave period ○ In case of sickness or hospitalization of the mother after childbirth and before the end of postnatal leave, the father should be entitled to the remaining leave period, when the mother cannot look after the child 	
Cash benefits	<ul style="list-style-type: none"> ● Cash benefits 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 ● Two-thirds of the woman's previous earnings OR ● Equivalent payment, on average, if an alternative calculation method is used ● Conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom the Convention applies ● Benefits from social assistance funds for women who do not meet qualifying conditions ● Benefits to be provided from social insurance or public funds or determined by national law and practice ● Developing countries can provide cash benefits at the same rate as for sickness or temporary disability but must report to ILO on steps taken to reach standards ○ Cash benefits at 100% of the woman's previous earnings or equivalent if an alternative calculation method is used ○ Any contribution due under compulsory social insurance providing maternity benefits and any tax based on payrolls raised for the purpose of providing maternity benefits, whether paid by the employer, the employees or both, should be paid in respect of the total number of men and women employed, without distinction of sex 	

Protection	ILO Convention No. 183 ILO Recommendation No. 191 ILO Convention No. 156 ILO Recommendation No. 165	Current Legislation	Key Gaps
Medical benefits	<ul style="list-style-type: none"> ● Prenatal, childbirth and postnatal care and hospitalization care when necessary ○ Medical benefits should include: a) care at the doctor's office, home, hospital or any other medical establishment by a qualified practitioner or a specialist; b) maternity care given by a qualified midwife or by another maternity service at home or in a hospital or other medical establishment; c) maintenance in a hospital or medical establishment; d) any necessary pharmaceutical or medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; e) dental and surgical care 		
Health protection	<ul style="list-style-type: none"> ● Pregnant and nursing women shall not be obliged to perform work that is assessed as detrimental to the mother or child ○ Assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child should be ensured and results should be made available to the woman concerned ○ In case of work prejudicial to the health of the mother or the child or where a significant risk has been identified, an alternative to such work should be provided, in the form of: a) elimination of the risk; b) an adaptation of working conditions; c) transfer to another post, without loss of pay if the former is not feasible; or d) paid leave if the former is not feasible ○ These measures are to be taken in respect of: a) arduous work involving manual carrying, lifting, pulling or pushing of loads; b) exposure to biological, chemical or physical agents which represent a reproductive health hazard; c) work requiring special equilibrium; d) work involving physical strain due to prolonged standing, sitting, extreme temperatures or vibrations ○ A woman should not be obliged to perform night work if a medical certificate declares such work to be incompatible with pregnancy or nursing ○ Each woman should retain the right to return to her job or equivalent as soon as it is safe for her to do so. ○ A woman should be allowed to leave her workplace for medical examinations related to her pregnancy after notifying her employer 		
Employment protection and discrimination	<ul style="list-style-type: none"> ● Unlawful for employer to dismiss a woman during pregnancy, whilst on maternity leave or whilst nursing, unless grounds are unrelated to pregnancy or nursing ● Burden of proof rests with employer ● Guaranteed right to return to same position or an equivalent position at equal pay ● Protection against discrimination in employment on the grounds of maternity ● Prohibition of pregnancy testing at recruitment ○ A woman should be entitled to return to her former or equivalent position paid at the same rate at the end of maternity leave. Any maternity leave period should be considered as a period of service for the determination of her rights 		

Protection	ILO Convention No. 183 ILO Recommendation No. 191 ILO Convention No. 156 ILO Recommendation No. 165	Current Legislation	Key Gaps
Breastfeeding upon return to work	<ul style="list-style-type: none"> ● Right to one or more daily breaks for breastfeeding/lactation ● Right to daily reduction in daily working hours for breastfeeding ● Breaks or reduction in hours counted as working time and therefore paid ○ Upon medical certificate, the frequency and length of breastfeeding breaks should be adapted to particular needs ○ Where practicable and with the agreement of the woman and her employer, it should be possible to combine the time allotted for daily nursing breaks in order to reduce working hours at the beginning or at the end of the working day ○ Where practicable, nursing facilities with adequate hygienic conditions at or near the workplace should be established 		
Parental leave and adoption leave	<ul style="list-style-type: none"> ○ The employed mother or employed father should be entitled to parental leave following the end of maternity leave. Its length, period during which it can be granted, benefits, use and distribution between employed parents should be determined by national laws, regulation or in any manner consistent with national practice ❖ Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded ○ Where national law and practice allow adoption, adoptive parents should have access to the system of protection offered by the Convention 		
Childcare leave	<ul style="list-style-type: none"> ❖ It should be possible for a worker, man or woman, with family responsibilities in relation to a dependant child to obtain leave of absence in the case of its illness. The duration and conditions for childcare leave should be determined in each country by laws or regulations, CBAs, works rules, arbitration awards, court decisions or other methods 		
Childcare services and facilities	<ul style="list-style-type: none"> ➤ All measures compatible with national conditions and possibilities shall be taken to develop or promote community services, public or private, such as childcare and family services and facilities ❖ The competent authorities should, in cooperation with the public and private organizations concerned, take appropriate step to ensure that childcare services and facilities meet the needs and preferences of workers with family responsibilities. To this end they should: a) encourage and facilitate the establishment, particularly in local communities, of plans for the systematic development of childcare services and facilities, and b) themselves organize or encourage and facilitate the provision of adequate and appropriate childcare services and facilities, free of charge or at a reasonable charge in accordance with the workers' ability to pay, developed along flexible lines and meeting the needs of children of different ages and of workers with family responsibilities. 		

Visual presentation model

SLIDE 1: Key contents

Mod.
12
Assessing national legislation on Maternity Protection at work

Key contents

This module offers guidance for assessing national legislation in comparison to ILO standards on maternity protection at work, including childcare. It provides tools for comparison and highlights some recent trends and best practices in legislation on this subject. It includes the following:

- An overview of maternity protection at work in national legislation
- A comparison of national provisions to ILO standards on maternity protection at work
- An explanation of the importance of having comprehensive maternity protection legislation
- Examples of good initiatives at the national and sub-national levels


MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 2: Maternity Protection in national legislation

Mod.
12
Assessing national legislation on Maternity Protection at work

Maternity Protection in national legislation

Almost every country has national legislation that protects the health of mothers and their children.

These provisions can be included in labour, social security, anti-discrimination legislation, among others,

Such legislation can be adopted on different levels: federal, regional, local, sectoral or workplace.




MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 3: Comparing national legislation to ILO standards

Mod. 12 Assessing national legislation on Maternity Protection at work

Comparing national legislation to ILO standards

It is important to compare national legislation to each element of ILO standards separately
Comments of the CEACR can also help
The following elements should be taken into consideration while conducting an assessment:

- Scope of maternity protection
- Maternity leave
- Cash and medical benefits
- Health protection at the workplace
- Employment protection and non-discrimination
- Breastfeeding breaks

See Tool Sheet 12.1 for a table to compare national legislation with the standards set by Convention No. 183 and Recommendation No. 191

 MATERNITY PROTECTION RESOURCE PACKAGE, FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 4: Assessing national legislation – Scope of MP and leave

Mod. 12 Assessing national legislation on Maternity Protection at work

Assessing national legislation – Scope of MP and leave

Convention No. 183 applies to all employed women, including those in atypical forms of dependent work.
Consider the sectors and work categories that are often excluded or poorly protected:

- Private sector compared to public sector
- Rural workers compared to urban ones
- Agriculture; informal economy; domestic workers; homeworkers
- Migrant workers
- Part-time workers, casual workers, temporary workers
- Workers in small enterprises; workers in family undertakings
- Self-employed, independent workers

 MATERNITY PROTECTION RESOURCE PACKAGE, FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 5: Assessing national legislation – Maternity leave

Mod.
12
Assessing national legislation on Maternity Protection at work

Assessing national legislation – Maternity leave

Convention No. 183 calls for 14 weeks of maternity leave, with six weeks of compulsory postnatal leave. The following should be assessed

- Length of the leave: does it comply with the provisions of Convention No. 183? Does it reach the 18 weeks set out by Recommendation No. 191?
- How long is the compulsory postnatal leave period?
- Who can take it and when?
- Possibility to extend leave in case of illness or complications?
- What is the best balance between:
 - leave taken before or after birth;
 - flexibility in the distribution of leave and the need for health protection; and
 - women's right to choose the distribution of non-compulsory leave and mandatory provisions?
- Adoption leave? Leave without pay?


MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 6: Assessing national legislation – Cash and medical benefits

Mod.
12
Assessing national legislation on Maternity Protection at work

Assessing national legislation – Cash and medical benefits

Cash benefits

- How much is allocated? How are these calculated? Is there a ceiling?
- Who is eligible?
- Duration of benefits? For which types of leave?
- Who pays: government, social insurance, the employer or mixed?
- What is the level of contribution to the social insurance system required from employers and workers?
- What about non-eligible women?

Medical benefits

- Maternal and infant health care protected? What care, services and medication?
- Who pays: government, employer, family or cost-sharing?
- Level of families' out-of-pocket contributions?
- Accessible health care of good quality?


MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 7: Assessing national legislation – Health protection at the workplace

Mod. 12
Assessing national legislation on Maternity Protection at work

Assessing national legislation – Health protection at the workplace

Lack of occupational safety protection measures can result in health risks and complications for the mother and her child. Good and safe working conditions foster workers' health and the healthy development of their children.

- Healthy workplace for all? Gender-responsive provisions for pregnant and lactating workers?
- Who is responsible to assess workplace risks for pregnant or breastfeeding workers and their children?
- Who decides which tasks are dangerous or unhealthy?
- Can a mother refuse certain schedules or tasks during pregnancy/breastfeeding?
- How is the elimination of workplace risks or an adaptation of working conditions ensured?
- Possibility to obtain temporary post in case of assessed risk?
- Possibility to obtain additional paid leave if a temporary post is not available?
- Guaranteed to return to the same position or equivalent one at the same pay?

MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3. TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 8: Assessing national legislation – Employment protection and non-discrimination

Mod. 12
Assessing national legislation on Maternity Protection at work

Assessing national legislation – Employment protection and non-discrimination

Ensuring equal opportunities for men and women lead to a better utilization of human potential and are paramount in fostering high productivity. Several questions may be asked:

- Period of leave considered as a period of service?
- Dismissal illegal during pregnancy, childbirth, maternity leave and afterwards for reasons related to maternity or family responsibilities?
- Duration of period of protection? How is it determined?
- Right to employment protection linked to the maternity-related conditions or to the presence of an employment relationship?
- Who is responsible for "burden of proof"?
- Is there a complaint system in place?
- Are pregnancy tests or questions related to family matters and plans allowed? What methods of protection from this?

MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3. TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 9: Assessing national legislation – Breastfeeding

Mod.
12
Assessing national legislation on Maternity Protection at work

Assessing national legislation – Breastfeeding

The WHO recommends exclusive breastfeeding for infants until the age of 6 months and continued breastfeeding for 2 years or beyond, with the timely introduction of safe and adequate complementary foods (WHA 54.2). The ILO standards provide for breastfeeding breaks of at least one hour per day. Questions to ask regarding breastfeeding are:

- What conditions must a woman fulfil in order to benefit from breastfeeding breaks (provide a doctor's certificate, other)?
- Time per day allotted to breastfeeding or expressing milk? Can one shorten working hours to do so?
- For how long after the end of maternity leave can breastfeeding breaks be taken (weeks, months)?
- Are breaks paid or unpaid?
- Equipped facility for breastfeeding or expressing milk at the workplace?
- Nursing facility attached to the workplace or nearby? Is access affordable and in line with workers' needs?
- Information about the benefits of breastfeeding distributed in the workplace?
- Do workplace facilities or services have to be provided according to a minimum number of women workers?


MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 10: Assessing national legislation – Childcare

Mod.
12
Assessing national legislation on Maternity Protection at work

Assessing national legislation – Childcare

The provision of adequate, gender-sensitive, childcare-related leave and services is essential to promote gender equality at work, foster child development, support decent and productive work for both women and men, and to promote social protection and poverty reduction. In order to assess the effectiveness of these policies, several questions may be asked:

- Paternity leave available? Compulsory or voluntary? Duration and replacement rate?
- Parental leave policies available to both women and men? A portion of parental leave exclusively available to men ("father quota")?
- Duration and replacement rate of parental leave?
- Adequate and appropriate childcare services or arrangements available to all working parents who need them?
- Who funds the facilities and services: government, social security, employer, family or cost-sharing system?
- Services or arrangements free or at a reasonable charge in line with the workers' ability to pay?
- Childcare services and facilities designed in line with the needs of both children and workers with family responsibilities (e.g. location, opening hours, duration)


MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 11: Summing up

Mod. 12
Assessing national legislation on Maternity Protection at work

Summing up

- In comparing the national law to C183, is it weaker, equal, or stronger than C183? How does national law compare to R191?
- In all elements? In which ones precisely? Are there gaps that are particularly important to address and why?
- Are identified gaps relatively easy to close? Which is the easiest to close? The most difficult?
- What next steps are feasible? Strengthening the law? Which provisions? Ratification of C183?
- What would be the strategic priorities or sequence, from the most to the least feasible?
- What are the obstacles towards ratification and implementation?


MATERNITY PROTECTION RESOURCE PACKAGE, FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 12: ILO framework for measuring decent work: Indicators for “Combining work, family and personal life”

Mod. 12
Assessing national legislation on Maternity Protection at work

ILO framework for measuring decent work: Indicators for “Combining work, family and personal life”

The ILO has produced indicators to monitor progress towards decent work
There are two types of indicators, statistical and legal
The statistical indicators relevant for maternity protection are:

- Maternity leave and maternity benefits: coverage of workers in law and in practice
- Number of asocial/unusual hours

The relevant legal indicators include:

- Length of maternity leave
- Level of maternity leave benefits
- Source of maternity leave benefits
- Length of paternity leave
- Length of parental leave


MATERNITY PROTECTION RESOURCE PACKAGE, FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK
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SLIDE 13: Key points

Mod. 12
Assessing national legislation on Maternity Protection at work

Key points

- Within a given country, the national law establishes the minimum standards of maternity protection allowed in that country. Policies and regulations at the workplace level, including collective bargaining agreements (CBAs) can only meet or exceed minimum national standards.
- Maternity protection provisions can fall under a variety of legislative measures (e.g. those relating to labour, social security, family, anti-discrimination), under the responsibility of one or more government entities (e.g. labour, social affairs, health, finance, industry, agriculture or gender equality).
- Taking action on maternity protection requires an adequate knowledge and understanding of the main federal, national, local and workplace provisions and the responsible governmental stakeholders.
- An overall assessment of national laws is an essential preliminary activity in the process of promoting and extending maternity protection to all women workers. It can greatly contribute to building consensus among the key stakeholders and finding an optimal step-by-step approach to implementing ILO standards in all the core elements of maternity protection at work and childcare.
- "Combining work, family and personal life" has been identified as a substantive element of the Decent Work Agenda. Legal framework-related indicators for the Measurement of Decent Work help to assess the existence and main features of maternity, paternity and parental leave laws.
- The ILO Database of Conditions of Work and Employment Laws is the most exhaustive source on maternity protection legislation available internationally. It provides country-specific information on the key dimensions of maternity protection.
- Some countries may face challenges related to the elements of maternity protection at work and childcare (see Modules 6-11). However good practices on the improvement and extension of protective legislation to vulnerable workers are emerging.

MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 14: Using the ILO legal database on maternity protection (1)

Mod. 12
Assessing national legislation on Maternity Protection at work

Using the ILO legal database on maternity protection (1)

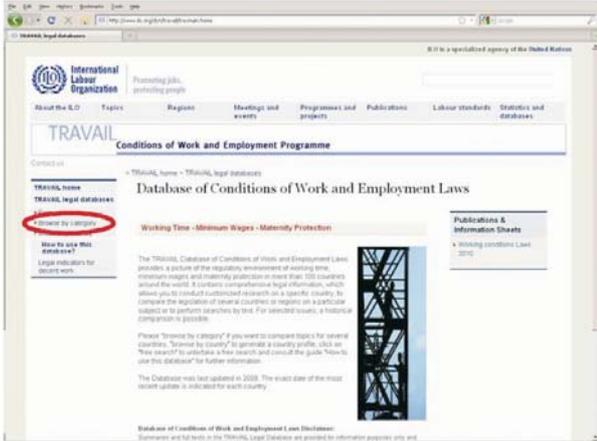
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Part 3 TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 15: Using the ILO legal database on maternity protection (2)

Mod. 12 Assessing national legislation on Maternity Protection at work

Using the ILO legal database on maternity protection (2)



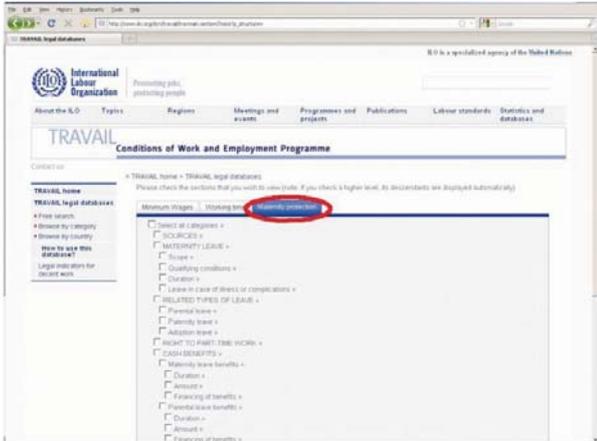
MATERNITY PROTECTION RESOURCE PACKAGE: FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 16: Using the ILO legal database on maternity protection (3)

Mod. 12 Assessing national legislation on Maternity Protection at work

Using the ILO legal database on maternity protection (3)



MATERNITY PROTECTION RESOURCE PACKAGE: FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 17: Using the ILO legal database on maternity protection (4)

Mod. 12
Assessing national legislation on Maternity Protection at work

Using the ILO legal database on maternity protection (4)

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MATERNITY PROTECTION RESOURCE PACKAGE. FROM ASPIRATION TO REALITY FOR ALL
Part 3: TAKING ACTION ON MATERNITY PROTECTION AT WORK

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SLIDE 18: Using the ILO legal database on maternity protection (5)

Mod. 12
Assessing national legislation on Maternity Protection at work

Using the ILO legal database on maternity protection (5)

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Using the ILO legal database on maternity protection (6)

The screenshot shows the ILO TRAVAIL website interface. The main content area displays search results for 'Senegal - Maternity protection - 2011'. A red circle highlights the 'Add another country' button in the search bar. Below the search results, there is a section for 'LAST UPDATE' and 'SOURCES'. The 'SOURCES' section lists the 'Labour Code of Senegal, Law No 87-17 of 1 December 1987, Journal officiel, 1987-12-16, 8719, pp. 834-837, as amended up to Law No 2010-22 of 2010.' and 'Senegal: Labour Code, 1987-12-16, 8717, Journal Officiel République, 1987-12-16, 8719, pp. 834-837, as amended up to Law No 2010-22 of 2010.'.

ILO; n.d. ILO Data base on Conditions of Work and Employment Laws. Geneva.
Available at: www.ilo.org/travail [date accessed]

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- **Part 1: Maternity Protection at work: The basics**
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- **Part 3: Taking action on Maternity Protection at work**

