

MATERNITY PROTECTION AT WORK IN THE REPUBLIC OF ALBANIA

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Abstract: Chapter X of the Albanian Labour Code regulates the special protection of children and women at work, taking into account pregnant, recently born or breastfeeding employees. There are established social protection measures in favor of these employees., The prohibition of working at inadequate work places or at night. In the case of adopting a newborn, the woman enjoys the right to leave defined by the law on social insurance.

Keywords: special protection of women; pregnant or breastfeeding employees; working conditions for pregnant women; adoption leave

Labour Code of the Republic of Albania¹, Law no. 7961, dated 12.7.1995² consists of 205 articles systematized in 19 chapters³. Article 1 of this normative act shows that this Labour Code “is based on the Constitution of the Republic of Albania”, and art. 2⁴ stipulates regarding the legal regime of the individual employment contract, that it “is regulated by the law of the country in which the employee usually carries on his activity, even if he is sent by the employer to work temporarily in another country”.

By exception, the Code, according to art. 4 "is applicable even to persons whose employment is regulated by the special law, if the special law does not offer the solution of the problems related to labour relations". In other words, the Labour Code is the common law for all legislation governing labor relations (relationships); They are excluded from the scope of application of the Code according to art. 5, commercial activities or representation of legal persons, as well as family work.

Article 32 letter provide that the employer is obliged to respect and protect the employee's personality in the employment relationships, as well as to take all necessary measures to guarantee the safety and protection of the mental health and physical health of the employees.

Chapter X deals with the special protection of children and women. The special protection for women is provided by art. 104, thus, pregnant women are

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¹ <https://www.wipo.int/edocs/lexdocs/laws/en/al/al066en.pdf>

² Amended by: Law no.8805 of 13.03.1996; Law no. 9125 of 29.07.2003); Law no. 10053 of 29.12.2008; Law no. 136/2015 of 5.12.2015

³ Dan Țop, *Regulation of the individual labor contract in the Working Code of the Republic of Albania*, *Revue européenne du droit social* no. 4 (45) 2019, p.

⁴ Amended by Law no. 9125 of 29.07.2003

forbidden to work in the 35 days preceding the birth of the child and 63 days after the birth of the child, while in our legislation the minimum mandatory duration of the leave is 42 calendar days⁵, with no mandatory period preceding the birth.

The first period is 60 days, when the woman is expected to give birth to more than one child. Pregnant or breastfeeding women cannot be employed, according to art. 104 para. 2 at workplaces with difficulties or which endanger the health of the mother and child. The Council of Ministers defines difficult or dangerous workplaces, which endanger the health of mothers and children, as well as special rules regarding working conditions related to pregnant or breastfeeding.

When the pregnant woman, the woman who just gave birth to a child and / or the breastfeeding woman decides to return to her previous job after the 63-day period, but the previous job is not considered appropriate in accordance with the provisions of the law on protection of safety and health at the workplace, the employer takes, according to art. 194 para. 3, the measures necessary to ensure the temporary adjustment of working conditions and / or working hours to avoid any risks to the employee and / or her child.

If the adjustment of working conditions or working hours is technically and / or objectively impossible, or if it is not possible, it may be requested on well-justified grounds, the transfer to another similar workplace which is right for her.

If the transfer, \ is technically and / or objectively impossible to achieve or if it cannot be properly requested, the employee shall receive the allowance, in accordance with the social insurance legislation in force for the entire period necessary to complete it. protect and / or the safety and health of the child.

The Council of Ministers specifies (art. 104 para. 6) the non-exhaustive list of factors, processes and working conditions that affect the safety and health of the mother and / or the mother of the child, as special rules for the working conditions for pregnant women, for women who they just gave birth to a baby and to those who are breastfeeding.

The law on social insurance establishes according to art. 105 paragraph 1, the income that the employee benefits in the case of the birth of a child.

Beyond the period of prohibition of work, provided for in Article 104, the woman may refuse to work in order to receive social insurance income. After the 63-day period after the birth of a child, the woman decides whether she wants to work or benefit from social insurance.

If the woman decides to work after the 63-day period after giving birth to the child, with the agreement of the employer, regarding feeding the child, she has the right to choose as follows, until the child turns 1 year old, by: a break paid by 2 hours within the normal working time; or the duration of work, reduced by 2 hours, with the same salary as if he worked for the normal daily working time (art. 105 para. 3).

⁵ Dan Țop, *Treated by labour law*, Mustang Publishing House, Bucharest, 2018, p. 330

Upon expiry of the maternity leave, the employee has the right (art. 105 para. 4) to return to the previous post or to an equivalent position, in conditions that are not less favorable for her and to benefit from any improvement of the conditions of employment, she would benefit during the absence.

The article 105 / a⁶ provides that pregnancy tests are prohibited prior to the commencement of employment, if requested by the employer, except where the work requires working under conditions which may have a negative influence on the pregnancy or which may harm the life of the mother or child, or health. During pregnancy, after agreement with the employer, the woman is entitled to medical consultations, when these are necessary to be performed during the work program.

In cases where the employer renounces the contract, when the woman works while being pregnant or returning to work after the child is born, in accordance with Article 30 of the Code, the employer is responsible for certifying that the reason for dismissal was neither the task nor baby's birth.

In the case of the adoption of a newborn, the woman enjoys according to art. 106, by the right to leave defined by the law on social insurance. Only one parent, the adoptive mother or father, can benefit from the adoption leave.

In Romania, according to art. 50 paragraph 1 of the Law no. 273/2004 regarding the adoption procedure⁷ the adopter or any of the spouses of the adoptive family who make income subject to income tax, called a entitled person⁸, for the proper fulfillment of the parental obligations, the employees benefit from an accommodation leave during the period in which a child will be entrusted for adoption. This leave is granted, "by hypothesis, to the employee who has adopted a child older than 2 years"⁹, because if the child is less than 2 years old, the leave provided by Law no. 66/2016¹⁰. This leave has a duration of no more than 1 year, including the period of imprisonment for the adoption time during which the employee will receive a monthly allowance of 1700 lei¹¹.

During this period, the employer cannot oblige the adoptive parent who has benefited from the adoption leave to work.

At the expiration of the adoption leave, the employer has the right (art. 106 paragraph 3) to return to his position, or to another work position equivalent to it, under conditions that are not less favorable to him and to benefit from any improvement of working conditions, which he would have benefited from during his absence.

⁶ Added by Law no.1212 of 29.07.2003, article 31, amended by Law no.136 / 2015 of 5.12.2015,

⁷ Republished in the Official Gazette of Romania, Part I, no. 739 of September 23, 2016

⁸ Septimiu Panainte, *Individual labour law.*, Hamangiu Publishing House, Bucharest, 2017, p. 138

⁹ Raluca Dimitriu, *The presence of women in the labour market*, 21 dec. 2017, www.juridice.ro

¹⁰ Dan Țop, *New regulations regarding maternity protection at work*, Romanian Labor Law Magazine no. 10/2015 p. 13-18

¹¹ Dan Țop, *Treated by labour law,op. cit*, p.357

Article 107 shows that the termination of the employment contract announced by the employer during the period in which the woman claims to receive social security income due to the birth or adoption of the child is without legal effect.

When the termination of the employment contract is announced before the protection, as defined in article 104, and the notification term remains valid, this deadline is suspended during the protection period. The notification deadline begins to be valid only after the expiry of the protection period.

In some national laws in the U.E. both the prohibition and the possibility of dismissal of pregnant workers are foreseen. Thus, art. L. 1225-4 of the French Labour Code¹² stipulates that the employer cannot order the termination of the employment contract of an employee when she is pregnant, medically established, during the suspension of the contract when she is on maternity leave, as well as for 10 weeks following the expiration of this period. However, the employer may order the termination of the contract justified by a serious deviation, not related to the state of pregnancy or the impossibility to maintain the contract for a foreign reason of pregnancy or birth. Law on the Status of Workers¹³ stipulates in art. 53 point 4 that the dismissal decision is null when the decision is motivated by one of the causes of discrimination prohibited by the Constitution or the law or when it was made with the violation of the fundamental rights and public freedoms of the worker. Also, the decision is void when it concerns a pregnant worker, but, as an exception, the decision is sound if it is based on reasons unrelated to pregnancy¹⁴.

Unlike the comparative law, the Romanian law does not refer to all the (exceptional) situations, in which, however, the dismissal of the employees protected by the law can occur. But the dismissal of the plane is not prohibited, pursuant to art. 10 of Directive 92/85 / EEC, such dismissal is possible, exceptionally, for reasons which do not concern their (pregnant) situation.¹⁵

As in our legislation, art. 128 paragraph 2 of the Labour Code, which shows that pregnant women, women and nursing women cannot be forced to work at night¹⁶ or in the European one, the employer cannot order (art. 108 (1)) to perform the work at night for pregnant women and for women who have given birth to a child, until the child makes a year if it is harmful to the safety and health of the woman and / or the child, who is checked with a medical certificate.

When the pregnant and / or breastfeeding woman decides to return to work after the 63-day period after birth, it becomes inappropriate to work at night, which is confirmed by a medical certificate, but who is not suitable to work During the

¹² Code du travail, 80° édition, Annoté. Edition spéciale à jour des ordonnances Macron, intégralement Consolidées, Dalloz, Paris, 2017.

¹³ Approved by the Royal Legislative Decree no. 2/2015, published in the Official State Bulletin, number 255 of October 24, 2015, subsequently amended.

¹⁴ M. C. Palomeque López, J. M. Álvarez de la Rosa, *Derecho del trabajo*, 25ª ed., Editorial Universitaria Ramón Areces, Madrid, 2017, p. 717-718.

¹⁵ Alexandru Țiclea, Adelina Duțu, *Discussions regarding the ban on dismissal of pregnant employees*, in Law no.9/2018, p. 56

¹⁶ Dan Țop, *Treated of Labour law*, op. cit, p. 469

day, she is transferred (art. 108 para. 2) to a similar day job, because that is appropriate.

If the transfer is technically and / or objectively impossible, the employer benefits from the social security legislation in force for the entire period necessary to protect her and / or her child's safety and health.

The Council of Ministers sets (art. 108 (4)) specific rules for cases in which night work is allowed for pregnant women, for women who gave birth to a child, until the child is one year old, and for breastfeeding women.

It can be concluded that the provisions analyzed are largely similar to the applicable regulations in the European Union states.