Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 153(2), in conjunction with point (i) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Point (i) of Article 153(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union is to support and complement the activities of the Member States in the area of equality between men and women with regard to labour market opportunities and treatment at work.

(2) Equality between men and women is a fundamental principle of the Union. The second subparagraph of Article 3(3) of the Treaty on European Union (TEU) provides that the Union is to promote equality between women and men. Similarly, Article 23 of the Charter of Fundamental Rights of the European Union (Charter) requires equality between men and women to be ensured in all areas, including employment, work and pay.

(3) Article 33 of the Charter provides for the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child, to reconcile family and professional life.

(4) The Union has ratified the 2006 United Nations Convention on the Rights of Persons with Disabilities. That Convention is thus an integral part of the Union legal order, and Union legal acts must, as far as possible, be interpreted in a manner that is consistent with the Convention. The Convention provides, in particular in Article 7(1), that parties thereto are to take all necessary measures to ensure the full enjoyment by children with

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

disabilities of all human rights and fundamental freedoms on an equal basis with other children.

(5) The Member States have ratified the 1989 United Nations Convention on the Rights of the Child. Article 18(1) of the Convention provides that both parents have common responsibilities for the upbringing and development of the child and that the best interests of the child should be the parents' basic concern.

(6) Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay. Such policies should take into account demographic changes including the effects of an ageing population.

(7) In light of the challenges that arise from demographic change, together with the resultant pressure on public expenditure in some Member States, the need for informal care is expected to increase.

(8) At Union level, several directives in the areas of gender equality and working conditions already address certain issues that are relevant for work-life balance, in particular Directives 2006/54/EC[(4)] and 2010/41/EU[(5)] of the European Parliament and of the Council, and Council Directives 92/85/EEC[(6)], 97/81/EC[(7)] and 2010/18/EU[(8)].

(9) The principles of gender equality and work-life balance are reaffirmed in Principles 2 and 9 of the European Pillar of Social Rights, which was proclaimed by the European Parliament, the Council and the Commission on 17 November 2017.

(10) However, work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on women's employment. A major factor contributing to the underrepresentation of women in the labour market is the difficulty of balancing work and family obligations. When they have children, women are likely to work fewer hours in paid employment and to spend more time fulfilling unpaid caring responsibilities. Having a sick or dependent relative has also been shown to have a negative impact on women's employment and results in some women dropping out of the labour market entirely.

(11) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. The lack of paid paternity and parental leave in many Member States contributes to the low take-up of leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender stereotypes and differences between work and care. Policies on equal treatment should aim to address the issue of stereotypes in both men's and women's occupations and roles, and the social partners are encouraged to act upon their key role in informing both workers and employers and raising their awareness of tackling discrimination. Furthermore, the use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.

(12) In implementing this Directive, Member States should take into consideration that the equal uptake of family-related leave between men and women also depends on other appropriate measures, such as the provision of accessible and affordable childcare and long-term care services, which are crucial for the purpose of allowing parents, and other persons with caring responsibilities to enter, remain in, or return to the labour market. Removing economic disincentives can also encourage second earners, the majority of whom are women, to participate fully in the labour market.

(13) In order to assess the impact of this Directive, the Commission and the Member States should continue to cooperate with one another in order to develop comparable statistics that are disaggregated by sex.

(14) The Commission has consulted management and labour in a two-stage process with regard to challenges related to work-life balance, in accordance with Article 154 TFEU. There was no agreement among the social partners to enter into negotiations with regard to those matters, including with regard to parental leave. It is, however, important to take action in that area by modernising and adapting the current legal framework, taking into account the outcome of those consultations, as well as of the public consultation carried out to seek the views of stakeholders and citizens.

(15) Directive 2010/18/EU regulates parental leave by putting into effect a framework agreement concluded between the social partners. This Directive builds on the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights. Directive 2010/18/EU should be repealed and replaced by this Directive.

(16) This Directive lays down minimum requirements related to paternity leave, parental leave and carers' leave, and to flexible working arrangements for workers who are parents, or carers. By facilitating the reconciliation of work and family life for such parents and carers, this Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union.

(17) This Directive applies to all workers who have employment contracts or other employment relationships, including contracts relating to the employment or the employment relationships of part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, as previously provided for by Directive 2010/18/EU. Taking into account the case-law of the Court of Justice of the European Union (Court of Justice) regarding the criteria for determining the status of a worker, it is for Member States to define employment contracts and employment relationships.

(18) Member States have the competence to define marital and family status, as well as to establish which persons are to be considered to be a parent, a mother and a father.

(19) In order to encourage a more equal sharing of caring responsibilities between women and men, and to allow for the early creation of a bond between fathers and children, a right to paternity leave for fathers or, where and insofar as recognised by national law, for equivalent second parents, should be introduced. Such paternity leave should

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

be taken around the time of the birth of the child and should be clearly linked to the birth for the purposes of providing care. Member States are also able to grant paternity leave in the case of a stillbirth. It is for Member States to determine whether to allow part of the paternity leave to be taken before the birth of the child or to require all of it to be taken thereafter, the time frame within which paternity leave is to be taken, and whether and under which conditions to allow paternity leave to be taken on a part-time basis, in alternating periods, such as for a number of consecutive days of leave separated by periods of work, or in other flexible ways. Member States are able to specify whether paternity leave is expressed in working days, weeks or other time units, taking into account that ten working days correspond to two calendar weeks. In order to take account of differences between Member States, the right to paternity leave should be granted irrespective of marital or family status, as defined by national law.

(20) As most fathers do not avail themselves of their right to parental leave, or transfer a considerable proportion of their leave entitlement to mothers, this Directive extends from one to two months the minimum period of parental leave which cannot be transferred from one parent to the other in order to encourage fathers to take parental leave, while maintaining the right of each parent to take at least four months of parental leave as provided for in Directive 2010/18/EU. The purpose of ensuring that at least two months of parental leave is available to each parent exclusively and that cannot be transferred to the other parent, is to encourage fathers to make use of their right to such leave. It also promotes and facilitates the reintegration of mothers in the labour market after they have taken a period of maternity and parental leave.

(21) A minimum period of four months of parental leave is guaranteed under this Directive to workers who are parents. Member States are encouraged to grant the right to parental leave to all workers who exercise parental responsibilities in accordance with national legal systems.

(22) Member States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and should be able to decide whether the right to parental leave is subject to a certain period of service. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating such a period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether to allow employers to postpone the granting of parental leave under certain circumstances, subject to the requirement that the employers should provide reasons for such a postponement in writing.

(23) Given that flexibility makes it more likely that each parent, in particular fathers, will take up their entitlement to parental leave, workers should be able to request that parental leave be granted on a full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways. The employer should be able to accept or refuse such a request for parental leave in ways other than on a full-time basis. Member States should assess whether the conditions of access to and the detailed arrangements for parental

leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

(24) The period within which workers should be entitled to take parental leave should be linked to the age of the child. That age should be set in such a way as to enable both parents to effectively take up their full entitlement to parental leave under this Directive.

(25) In order to facilitate the return to work following a period of parental leave, workers and employers are encouraged to maintain voluntary contact during the period of leave and can make arrangements for any appropriate measures to facilitate reintegration into the work place. Such contact and arrangements are to be decided between the parties concerned, taking into account national law, collective agreements or practice. Workers should be informed of promotion processes and internal vacancies and should be able to participate in such processes and to apply for such vacancies.

(26) Studies demonstrate that Member States that provide a significant portion of parental leave to fathers and that pay the worker a payment or allowance during that leave at a relatively high replacement rate, experience a higher take-up rate by fathers and a positive trend in the rate of employment of mothers. It is therefore appropriate to allow such systems to continue provided that they meet certain minimum criteria, instead of providing the payment or allowance for paternity leave as provided for in this Directive.

(27) In order to provide men and women with caring responsibilities with greater opportunities to remain in the workforce, each worker should have the right to carers' leave of five working days per year. Member States may decide that such leave can be taken in periods of one or more working days per case. In order to take account of divergent national systems, Member States should be able to allocate carers' leave on the basis of a period other than a year, by reference to the person in need of care or support, or by case. A continued rise in care needs is predicted, because of an ageing population and, consequentially, the concomitant increase in the prevalence of age-related impairments. The rise in care needs should be taken into account by Member States when they develop their care policies, including with regard to carers' leave. Member States are encouraged to make the right to carers' leave available with regard to additional relatives, such as grandparents and siblings. Member States can require prior medical certification of the need for significant care or support for a serious medical reason.

(28) In addition to the right to carers' leave provided for in this Directive, all workers should retain their right to take time off from work without the loss of employment rights that have been acquired or that are in the process of being acquired, on the grounds of *force majeure* for urgent and unexpected family reasons, as provided for in Directive 2010/18/EU, in accordance with the conditions established by the Member States.

(29) To increase incentives to workers who are parents, and to men in particular, to take the periods of leave provided for in this Directive, workers should be provided with a right to an adequate allowance while on leave.

(30) Member States should therefore set a level for the payment or allowance with respect to the minimum period of paternity leave that is at least equivalent to the level of