



MATERNITY LEAVE LEGISLATION IN SUPPORT OF BREASTFEEDING — CASE STUDIES AROUND THE WORLD

GLOBAL BREASTFEEDING
COLLECTIVE

unicef 

 World Health
Organization

INTRODUCTION

Time off work in the time after birth is important for the health and survival of mothers and babies. The evidence is clear that a nurturing environment, stimulating and responsive care can strengthen a baby's developing brain. To undertake these critical practices, parents need time, resources and support, including in the form of paid parental leave. Paid leave promotes gender equity, increases women's economic participation, and improves mothers' physical and mental health.^{1,2} Longer maternity leave is associated with lower infant mortality in low- and middle-income countries. For each month of additional maternity protection, there is a reduction of nearly eight infant deaths per 1,000 live births.³

Adequate paid maternity leave is critical for protecting and supporting breastfeeding, giving babies the best chance to survive and thrive.^{4,5} Returning to work too soon after the birth of a child has been shown to have a detrimental effect on breastfeeding practices.^{6,7} One recent study found that a one-month increase in the legislated duration of paid maternity leave was associated with a 5.9 percentage point increase in the prevalence of exclusive breastfeeding.⁸ The Global Breastfeeding Collective (<https://www.unicef.org/breastfeeding>), led by UNICEF and WHO, has called on governments to mandate paid maternity leave for a minimum of 18 weeks, and preferably, for a period of six months or more after birth.⁹

2019 marks the 100th anniversary of international labour standards on maternity protection as defined by the International Labour Organization (ILO). Maternity Protection Convention No. C183 and its corresponding Recommendation No. R191 call upon countries to provide new mothers with at least 14 weeks of maternity leave (18 weeks in R191) paid at no less than two-thirds of previous earnings (100% in R191) provided through compulsory social insurance or public funds. This report uses the centenary as an opportunity to explore the legislation, its implementation and related challenges in a small number of purposefully selected country case studies which represent different levels of economic development and implementation of the ILO framework.¹⁰

Maureen Chepkoech, a driver, and her baby Kelly Kiprop, outside their home in Ngoina, Kericho, Kenya. UNICEF is collaborating with her employer, a tea company, on an innovative baby-friendly workplace initiative that provides women with time, space and support for breastfeeding.

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BURKINA FASO

Length of leave: 14 weeks

Level of maternity leave cash benefits: 100%

Funding source: Social security

Ratified ILO MP Conventions: No. 183

Proportion of the informal economy: 94.6%

Economic development: Lower-middle-income country

BRIEF OVERVIEW Burkina Faso ratified the Maternity Protection Convention No. 183 in 2013 and is one of four low-income countries that meet all its requirements with respect to length of leave, rate of cash benefits and source of funding (along with Mali, Senegal and Tajikistan).

KEY BARRIERS AND POCKETS OF GOOD PRACTICE The vast majority of women in Burkina Faso work in the informal economy (97.6% of women) and do not benefit from paid maternity leave as they do not contribute to the social security system. Any time off from work that these women receive is based on discretionary supports by employers. Even women that work in the formal economy often do not know their rights and thus do not claim their maternity leave cash benefits. Burkina Faso is a country with high rates of maternal mortality and morbidity. There is a widespread lack of knowledge around maternity protection in general, influenced by factors such as low education levels, particularly low literacy levels among women, cultural perceptions and poor infrastructure. Women also often do not know that they have to register their pregnancy with a health facility.

The implementation of ILO standards in Burkina Faso requires a culturally sensitive approach which is adapted to the local context. The government uses culturally appropriate communication strategies (e.g. community radio) to sensitise the population for maternity related issues, such as maternal health care and women's rights to maternity leave health. Grassroots and non-profit organisations play an important role in raising awareness of maternity related issues and work closely with the ministries and the health system to change perceptions and improve the situation for mothers in the country. They reach out to people in the community by informing community women leaders, men, elders and young people about maternal and child health and nutrition.

THE WAY FORWARD Maternity protection is the responsibility of the Ministry of Labour and Social Welfare, the health system, employers, women, men and communities. The key focus in the country will be on combined efforts to sensitise the population for maternity related issues and to implement ILO standards adapted to the cultural context in Burkina Faso.

MONTENEGRO

Length of leave: 52 weeks

Level of maternity leave cash benefits: 100%

Funding source: Social security

Proportion of the informal economy: no data available

Economic development: Upper-middle-income country

BRIEF HISTORY Montenegro ratified the Maternity Protection Convention No. 183 in April 2012. However, the entitlement to 52 weeks of maternity leave is a remnant of the time when Montenegro was a federal unit of the Socialist Federal Republic of Yugoslavia (until the 1990s). In recent years, the European Union (EU) has been an important driving force for strengthening gender equality in the country. As a candidate for accession to the EU, Montenegro is currently in the process of integrating EU legislation into national law. In recent years, the legal framework of the EU, including the new Work-Life Balance Directive, has therefore been an important driving force for strengthening the rights of working mothers and fathers in the country.

HOW DOES IT WORK Mothers receive their maternity leave cash benefits from their employers who are reimbursed the full amount by the government. Women need to have been working for the employer continuously for at least 12 months for employers to be reimbursed 100% of women's previous basic earnings. If mothers have been employed for a shorter period of time, employers are reimbursed at a reduced rate.¹¹ For instance, if an employee has continuously worked for between six and 12 months before the leave, the compensation is calculated at 70% of the workers' average monthly salary; if an employee has worked continuously for up to three months before the leave, the compensation is calculated at 30% of the woman's previous earnings.

PERSISTENT BARRIERS AND POCKETS OF GOOD PRACTICE There currently are no official data on the participation of women in the informal economy in Montenegro, but it does exist. There are also employers that do not fully respect the law and the legislation on maternity protection. These are the main bottlenecks and the gaps that still need to be addressed. A few years ago, there was an issue with so-called phantom companies that apparently employed only pregnant women and claimed substantial amounts of maternity leave cash benefits. At the time, the country was unconditionally reimbursing employers the full amount and, in response, the law was amended in 2013, requiring evidence of minimum periods of employment to prevent such fraud in the future. In order to protect women in fixed-term employment, there were amendments to the law in 2011, stipulating that new mothers are entitled to an extension of their contract until the period of parental leave is finished. With the new law, which is currently being drafted, the same right would be given to fathers. Montenegro has been used as role model in its region for this increased protection of workers with family responsibilities.

Another key challenge is the very low breastfeeding rates in the country (among the general population, early initiation of breastfeeding rates at 24%, and exclusive breastfeeding at 6 months at 20%, according to the latest MICS data) despite generous maternity leave entitlements. These low rates have been linked to the lack of awareness among mothers and families about the benefits of breastfeeding, the popularity of breastmilk substitutes, as well as cultural perceptions associated with breastfeeding (e.g. where breastfeeding activity is restricted to private space and is viewed as inappropriate in public). Although women are legally entitled to 90 minutes daily to breastfeed or express breast milk, little is known about the extent to which women make use of this right. However, women's entitlement to 52 weeks of paid maternity leave in combination with the country's low breastfeeding rates suggests that most women will have weaned their children off the breast by the time they return to work.

THE WAY FORWARD Montenegro is currently not planning any major amendments to the law. The main focus will be on achieving full compliance with the EU Directive on Work-Life Balance, especially with respect to entitlements for parents and fathers. The country plans to extend the period of paid paternity leave from three to ten days and, with respect to parental leave, to introduce two months of non-transferable leave for fathers. In addition, there will be increased efforts, led by UNICEF in collaboration with the Ministry of Health, to improve breastfeeding rates in the country.

PARAGUAY

Length of leave: 18 weeks

Level of maternity leave cash benefits: 100%

Funding source: Social security

Proportion of the informal economy: 71%

Economic development: Lower-middle-income country

BRIEF OVERVIEW In 2015, maternity leave entitlements were extended from 12 to 18 weeks (to be taken two weeks before and 16 weeks after childbirth), and the rate of cash benefits increased from up to 50% to 100% of previous earnings. Employees contribute 9% monthly to social security (IPS) while their employers contribute 16.5% of their gross salaries. The country has not ratified any of the ILO Maternity Protection Conventions. The motivation to increase entitlements mainly came from breastfeeding activists and workers in the country, as well as women's claim to extend the duration of maternity leave for the care of their newborns and broader pressures from within the Americas region which had low rates of maternity protection overall. Since the extension of maternity leave entitlements, the claims of maternity leave cash benefits have increased substantially. At the time when the law was changed in 2015, 1,629 women were in receipt of cash benefits. According to official statistics by the *Instituto de Previsión Social*, the number had increased to 10,763 women in 2018.

BARRIERS OVER TIME AND EXAMPLES OF GOOD PRACTICE Coverage remains the most substantial persistent barrier. Although the proportion of the informal economy has been decreasing in recent years, 71% of workers are still not covered by social protection such as paid maternity leave. Current efforts to improve coverage include plans to formalise certain activity sectors of the informal economy (e.g. domestic workers).

At the time when the plans to extend maternity leave provisions were being discussed, there was some resistance by the private sector and the social security system, but the amendments to the Labour Code were still made. Concerns that longer periods of maternity leave could lead to lower employment rates did not materialise, as the employment rates of women have been increasing instead. From 2015 to 2018, the proportion of women covered in the private sector has increased from 38.3% to 44.77%. The amendments to the law in 2015 also included the requirement for employers of more than 30 women employees to provide lactation rooms, as well as the right for breastfeeding women to commence work later and to leave earlier to support breastfeeding. Since 2017, a strict monitoring system has been put in place which includes sanctions for non-compliance. Almost 50% of all private sector businesses employing 30+ female employees now provide these rooms and there currently is a debate in Parliament to lower the threshold to 10+ women and to extend maternity leave entitlements to those women who are currently excluded (e.g. police officers, military staff, university students). However, take up of the rooms has been low, which is partly due to the low breastfeeding rates in the country.

Paraguay's traditionally low breastfeeding rates (50% early initiation and 30% exclusive breastfeeding at 6 months) provide another persistent challenge. Women are often not informed or supported to breastfeed by health professionals who are heavily influenced by formula companies. This is aggravated when mothers doubt their ability to produce sufficient milk for their child and the family and work environment has lost the culture of breastfeeding. Although the country has legislation to prevent the marketing of breastmilk substitutes, this is not strictly enforced due to lack of resources for a comprehensive monitoring system. In the last couple of years, UNICEF and the Ministry of Public Health have been working on a communication strategy to raise awareness of the benefits of breastfeeding among the population in general. Online courses have been developed for employers and workers and there is a requirement for businesses to have one person in charge of the breastfeeding room. This breastfeeding champion is also in charge of providing information on and raising awareness about breastfeeding within the company.

THE WAY FORWARD The key focus of activities will be to increase maternity protection coverage to all workers, and to increase awareness around the benefits of breastfeeding. The role of the ministries will be to ensure that related legislation is respected and enforced, and to provide the funding required to carefully monitor these processes.

VIET NAM

Length of leave: 6 months

Level of maternity leave cash benefits: 100%

Funding source: Social security

Proportion of the informal economy: 76%

Economic development: Lower-middle-income country

DEVELOPMENT OF MATERNITY LEAVE LEGISLATION Viet Nam often serves as a role model within its region, as it implemented a system of social security funded maternity leave in the 1990s, part of the broader attempt to find more sustainable solutions for development. The first regulatory framework on sickness and maternity was developed in 1961 but it only covered public sector employees. Over the years, Viet Nam ratified the ILO gender equality Conventions on Equal Remuneration (No. 100), and Discrimination (Employment and Occupation) Convention (No. 111), but the country has so far not ratified any of the Maternity Protection Conventions.

A PARTICIPATORY PROCESS On June 18, 2012, Viet Nam's National Assembly voted to extend paid maternity leave from four to six months. Several questions were raised during the process of developing and approving this amendment to the Labour Code and different stakeholders were given the opportunity to participate in the decision-making process through surveys. For instance, 89% of female workers voted that they wanted to take longer maternity leave, 79% of employers and trade union representatives agreed to support maternity leave to 6 months. Another key concern was whether longer maternity leave could lead to increased discrimination against women in recruitment and it was reasoned that discrimination could be reduced by allocating public funds to cover the costs. The question of affordability of extended paid maternity leave, funded through social security was addressed through economic calculations. During 2007-2010, the Social Security Fund reported a surplus of approximately USD 340 million (36%). It was argued that the fund would be sufficient, remaining at a surplus of 8%, if maternity leave was to be extended to six months. It was argued further that women's absence from work during maternity leave would be compensated by their yearlong contributions to the economy through their labour market participation. As maternity leave contributes to the health of the mother and the child, the outcome would be a healthier population and future generation. In the final voting, the amendment of the law was passed with more than 90% of the vote.

PERSISTENT BARRIERS AND POCKETS OF GOOD PRACTICE Trade unions in Viet Nam are very strong and have an important role in monitoring compliance. However, 76% of the country's working population are operating in the informal economy and are not currently benefitting from paid maternity leave. Out of 1 million life births, only 300,000 are currently covered by social security. Low breastfeeding rates are another key challenge (27% early initiation and 24% exclusive breastfeeding at six months). There has been some increase in breastfeeding rates since the implementation of longer maternity leave in 2012 and organisations and initiatives like Alive & Thrive play an important role in working with hard to reach groups such as ethnic minority women and those in rural areas.

THE WAY FORWARD The maternity protection will be an important component of the health, labour and gender equality policies.

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