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Committee on Employment and Social Affairs

2008/0193(COD)

28.1.2010

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Women's Rights and Gender Equality

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (COM(2008)0637 – C6-0340/2008 – 2008/0193(COD))

Rapporteur(*): Rovana Plumb

(*) Associated committee - Rule 50 of the Rules of Procedure

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SHORT JUSTIFICATION

The proposal is based on Articles 137(2) and 141(3) of the EC Treaty. Although Directive 92/85/EEC is based on Article 118a of the EC Treaty (now Article 137) and is an individual Directive within the framework of the Directive on Health and Safety (Directive 89/391/EEC), Article 141 EC has been added to the legal basis of the proposal.

This proposal stems from the need to establish solid reconciliation measures whose end goal is to achieve a higher percentage of women on the labour market, less segregation on the labour market and an end to wage differences between women and men, by increasing opportunities with regard to maternity leave. The European Union needs more women to participate in the labour market, not just to solve the problem of an ageing society but also to increase competitiveness at the global level.

At present, the impact of births on women's participation in the labour market is very marked, with a difference of 26% being recorded in 2007 between women who had given birth to a child and men. There reasons for this are various, but they can be eliminated by overhauling the rules on maternity leave, its length, remuneration and the rights and obligations of women taking maternity leave or returning from it, all of which are intrinsically linked to the application of the principle of equal opportunities and equal treatment between women and men as established in Article 141(3).

Sharing responsibilities

The sharing of responsibilities between the two parents from the time of birth is of additional benefit for the psychological and physical well-being of the child. A separate directive is needed in that respect, since the present directive does not include provisions relating to parental leave, but focuses on the health and safety of women who are pregnant or breastfeeding.

Employment rights of pregnant workers

The Committee on Employment and Social Affairs is convinced that the proposed amendment of Directive 92/85/EEC will provide support for the employment rights of pregnant women.

However, we are also convinced that without the amendments proposed below by the Committee on Employment and Social Affairs and the supplementary measures adopted by the social partners at European level, the amended text will not fully contribute to enhancing the reconciliation of work with private and family life or to helping women to return to employment.

Extension of the minimum length of maternity leave and possibility of working part time

The Committee on Employment and Social Affairs takes the view that the option of extending the length of maternity leave from 14 to 20 weeks and the provision of incentives is an obvious means of enhancing the potential for women to reconcile pregnancy with remaining on the labour market. The extension will allow mothers an appropriate period of time for returning to work following pregnancy and to bond with their children.

What is more, the fears of some Member States surrounding the costs of financing that extension are unfounded, with the study by ECORYS showing that an extension to 18 weeks or even beyond will have minor economic impact, but will guarantee better health conditions for pregnant workers.

Employers need to take into consideration applications from workers to switch from full-time to part-time working in the first 12 months following a birth. Such a provision would be in line with the recommendations of WHO report A55/15.

Safeguarding career prospects

The Committee on Employment and Social Affairs supports the amendments to Directive 92/85/EEC made in Article 1(3)(b) in accordance with which workers who have given birth to a child have a right to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

That provision is closely tied in with job security and is an important step towards ending discrimination on the grounds of pregnancy.

Rights of self-employed workers

Although the proposal for a directive only protects employees, with a view to combating discrimination and guaranteeing equal opportunities, Member States will need to ensure that self-employed women also enjoy the rights laid down in the directive, with the Committee on Employment and Social Affairs having amended the Commission proposal to that effect.

Role of the social partners

On 14 December 1995, the social partners at European level (BusinessEurope (UNICE), CEEP and ETUC) concluded an agreement on parental leave, which was implemented by Council Directive 96/34/EC of 3 June 1996. That directive lays down minimum rules on parental leave, as an important means of reconciling working life with family life and promoting equal opportunities and treatment for men and women.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

**Proposal for a directive – amending act
Recital 6 a (new)**

Text proposed by the Commission

Amendment

(6a) Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC¹ lays down minimum requirements to help working parents reconcile their work and parental responsibilities. The social partners did, however, reach an agreement on 18 June 2009 and a draft directive is currently being considered.

¹ OJ L 145, 19.6.1996, p. 4.

Justification

Council Directive 96/34/EC is a framework agreement between BusinessEurope (UNICE), CEEP and the ETUC on parental leave and is an important addendum to the proposal amending Directive 92/85/EEC as it lays down minimum requirements to help working parents reconcile their work and parental responsibilities. It should, however, be emphasised that the social partners did reach an agreement on 18/06/09 and a draft directive is currently being considered which would update the aforementioned framework agreement.

Amendment 2

**Proposal for a directive – amending act
Recital 6 b (new)**

Text proposed by the Commission

Amendment

(6b) The agreement concluded by Member States at the Barcelona Summit in 2002 aimed at achieving equality between women and men (equal remuneration, paternity leave, access to work where they enjoy the same rights), is the basis for the achievement of better conditions regarding the reconciliation between private and professional lives and will ensure the economic independence of both men and women.

Justification

Barcelona s targets are a part of the EU Strategy for the grow and the creation of workplaces

and they intend to help the young parents - especially women - to be engaged in the work field and to realise the reconciliation between the professional and private life. The access to better childcare services (conditions, price and very important - properly hours for the parents) represents the key for the access of the women on the labour market.

Amendment 3

Proposal for a directive – amending act Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) The Commission Communication of 4 July 2006 entitled 'Towards an EU Strategy on the Rights of the Child' states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals.

Justification

The communication states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals. With reference to this directive, this means ensuring that all children may be breastfed and receive appropriate care in accordance with their needs as regards development and access to adequate quality care.

Amendment 4

Proposal for a directive – amending act Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The care of disabled children presents a particular challenge for working mothers, which should be recognised by society. The increased vulnerability of working mothers of disabled children means that they should be granted additional maternity leave; the Directive should lay down a minimum period for such leave.

Justification

Caring for disabled children presents an additional, physical, mental and psychological challenge for working mothers. Society should recognise their efforts to meet this challenge. Pregnant women who are expecting a disabled child have to make many preparations during pregnancy to ensure the well-being of their child. In these cases it seems essential to lay down an additional minimum leave period to enable pregnant workers who expect a disabled child and working mothers of disabled children to meet this challenge and make the necessary preparations.

Amendment 5

Proposal for a directive – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) A post deemed ‘equivalent’ pursuant to Article 11(2)(c) should mean that such a post is essentially the same as the former job, as regards both the salary paid and the duties to be performed.

Amendment 6

Proposal for a directive – amending act Recital 13

Text proposed by the Commission

Amendment

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection.

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection ***in order to safeguard their rights to decent working conditions and a better balance between family life and work.***

Amendment 7

Proposal for a directive – amending act Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) To achieve true gender equality, it is

essential for men to be given a legal entitlement to paternity leave, modelled on maternity leave, except as regards duration, with a view to gradually establishing the conditions required for balanced participation of men and women in work and family life.

Justification

Paternity leave should be established on a binding basis so as to ensure that men will not be made, on account of social pressure, to forgo their entitlement. A signal should be sent to the labour market to the effect that men too have to spend time away from the workplace and their job when they have children. Economic activity must consequently be organised in such a way as to allow for human reproduction, which is a right and responsibility in equal measure for men and women alike, as well as being a pre-eminent social value.

Amendment 8

Proposal for a directive – amending act Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) The Commission Green paper entitled "Confronting demographic change: a new solidarity between the generations" refers to the fact that the Member States have low fertility rates, which are insufficient for the replacement of the population. Measures are therefore needed for the improvement of conditions at the workplace for workers before, during and after pregnancy. It is recommended that the best practices from those Member States with high fertility rates and which ensure the continued participation of women in the labour market be followed.

Amendment 9

**Proposal for a directive – amending act
Recital 18 a (new)**

Text proposed by the Commission

Amendment

(18a) Member States should introduce into their national legal systems measures to ensure real and effective compensation or reparation, as they consider appropriate, for any harm caused to a worker by any breach of the obligations under this Directive, in a way which is dissuasive and proportionate to the damage suffered.

Amendment 10

**Proposal for a directive – amending act
Recital 19 a (new)**

Text proposed by the Commission

Amendment

(19a) Victims of discrimination must have appropriate legal protection. Member States should ensure, in accordance with their particular legal systems, that the rights of pregnant women are protected effectively. To provide more effective protection, it should be possible for associations, organisations and other legal entities to engage in proceedings on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 11

**Proposal for a directive – amending act
Recital 19 b (new)**

Text proposed by the Commission

Amendment

(19b) It will be necessary for Member States to encourage and promote active participation by the social partners to

ensure better information for those concerned and more effective arrangements. Through encouraging dialogue with the above-mentioned bodies, Member States could obtain more feedback and a greater insight into the implementation of the directive in practice, and of problems likely to arise, with a view to eradicating discrimination.

Justification

Participation by social partners is extremely important in efforts to eradicate discrimination. Their data networks could provide additional information channels for workers about their rights and a source of feedback for the Member States, given that they have greater experience regarding the various problems likely to arise. We therefore consider it important to ensure their active participation and establish an open dialogue.

Amendment 12

Proposal for a directive – amending act Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Member states should encourage dialogue between social partners and with NGOs, in order to be aware of different forms of discrimination and to fight them.

Amendment 13

Proposal for a directive – amending act Article 1 – point -1 (new) Directive 92/85/EEC Article 1 – point 3 a (new)

Text proposed by the Commission

Amendment

-1. The following paragraph is added to Article 1:

"3a. This directive shall, in addition, ensure that workers can fulfil their essential family role and shall provide specific and appropriate protection for mother and child."

Justification

The new paragraph emphasises the vital need for working women to be able to fulfil their essential role as mothers.

Amendment 14

Proposal for a directive – amending act

Article 1 – point -1a (new)

Directive 92/85/EEC

Article 2 – point a

Text proposed by the Commission

Amendment

-1a. In Article 2, point a is replaced by the following:

"(a) pregnant worker shall mean a pregnant worker, including a domestic worker, who informs her employer of her condition, in accordance with national legislation and/or national practice;"

Justification

The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.

Amendment 15

Proposal for a directive – amending act

Article 1 – point -1 b (new)

Directive 92/85/EEC

Article 2 – point b

Text proposed by the Commission

Amendment

-1b. In Article 2, point b is replaced by the following:

"(b) worker who has recently given birth shall mean a worker, including a domestic worker, who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;"

Justification

The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.

Amendment 16

Proposal for a directive – amending act

Article 1 – point -1 c (new)

Directive 92/85/EEC

Article 2 – point c

Text proposed by the Commission

Amendment

-1c. In Article 2, point c is replaced by the following:

"(c) Worker who is breastfeeding shall mean a worker, including a domestic worker, who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice."

Justification

The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.

Amendment 17

Proposal for a directive – amending act

Article 1 – point -1 d (new)

Directive 92/85/EEC

Article 3 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

-1d. In Article 3(1), the following subparagraph is added:

"2a. The guidelines referred to in the first subparagraph shall be regularly evaluated with a view to their revision, at least once every five years, starting in 2012."

Justification

Explanation: it is important to keep the guidelines up to date with recent developments and

knowledge.

Amendment 18

Proposal for a directive – amending act

Article 1 – point -1 e (new)

Directive 92/85/EEC

Article 4 – title

Text proposed by the Commission

Amendment

-1e. In Article 4 the title is replaced by the following:

"Assessment, information and consultation"

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 19

Proposal for a directive – amending act

Article 1 – point -1 f (new)

Directive 92/85/EEC

Article 4 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1f. In Article 4, the following paragraph is inserted:

"-1. In the risk assessment carried out under Directive 89/391/EEC the employer shall include an assessment of the reproductive risks for male and female workers."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 20

Proposal for a directive – amending act

Article 1 – point -1 g (new)

Directive 92/85/EEC

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

-1g. Article 4(2) is replaced by the following:

"2. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives and the relevant social partners shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 21

Proposal for a directive – amending act

Article 1 – point -1 h (new)

Directive 92/85/EEC

Article 4 –paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1h. In Article 4 the following paragraph is added:

"2a. Appropriate measures shall be taken to ensure that workers and/or their representatives may monitor the application of this Directive or may be involved in its application, in particular with regard to the measures determined by the employer which are referred to in paragraph 2, without prejudice to the employer's responsibility for determining those measures."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 22

Proposal for a directive – amending act

Article 1 – point -1 i (new)

Directive 92/85/EEC

Article 4 –paragraph 2 b (new)

Text proposed by the Commission

Amendment

-1i. In Article 4 the following paragraph is added:

"2b. Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance

with Article 11 of Directive 89/391/EEC.

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 23

Proposal for a directive – amending act

Article 1 – point -1 j (new)

Directive 92/85/EEC

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1j. The following paragraph is added to Article 6:

"2a. Pregnant women shall, in addition, not be required to perform tasks such as carrying and lifting heavy weights or tasks that are dangerous or exhausting or which pose health risks."

Justification

Pregnant workers should be exempted not only from activities exposing them to high risks but also from tasks that involve major physical effort or pose health risks.

Amendment 24

Proposal for a directive – amending act

Article 1 – point -1 k (new)

Directive 92/85/EEC

Article 7 – paragraph 2 – point a

Text proposed by the Commission

Amendment

- 1k. In Article 7(2), point (a) is replaced by the following:

"(a) transfer to a compatible daytime working timetable; or"

Amendment 25

Proposal for a directive – amending act

Article 1 – point -1 l (new)

Directive 92/85/EEC

Article 7 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1l. In Article 7 the following point is added:

"2a. Workers wishing to be exempted from night work shall, in accordance with rules laid down by the Member States, inform their employer and, in the case referred to in point (b) of paragraph 2, submit a medical certificate to the employer."

Amendment 26

Proposal for a directive – amending act

Article 1 – point -1 m (new)

Directive 92/85/EEC

Article 7 - paragraph 2 b (new)

Text proposed by the Commission

Amendment

-1m. In Article 7 the following paragraph is added:

"2b. In respect of single parents and parents with children with severe disabilities, the period referred to in paragraph 1 may be extended in accordance with the procedures laid down

by the Member States."

Amendment 27

Proposal for a directive – amending act

Article 1 – point -1 n (new)

Directive 92/85/EEC

Article 7 a (new)

Text proposed by the Commission

Amendment

-1n. The following article is added :

"Article 7a

Overtime

The Member States shall take the appropriate measures to ensure that pregnant workers and workers who have recently given birth or are breastfeeding are not obliged to work overtime or on Sundays or holidays, during pregnancy and for six months after the birth."

Amendment 28

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of ***at least 18 weeks allocated before and/or after confinement.***

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of 18 weeks.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2

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Text proposed by the Commission

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.

Amendment

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth. ***The six-week period of compulsory maternity leave after childbirth shall apply to all working women regardless of the number of days worked prior to confinement. Member States may extend the compulsory portion of the maternity leave up to a maximum four weeks before childbirth and at least eight weeks after the birth of a disabled child.***

Amendment 30

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The worker must indicate her chosen period of maternity leave at least three months before the starting date.

Justification

Amendment 25 by the rapporteur states that pregnant workers should not be coerced into working overtime during a period of three months before the birth. If the worker indicates her chosen period of maternity leave around that time it is easier for her employer to make arrangements for her replacement.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In the case of a multiple birth the period of maternity leave mentioned in Article 8(1) shall be increased by four weeks for each child.

Justification

Total periods of normal leave are also expressed in weeks.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.

4. Member States shall take the necessary measures to ensure that additional leave ***on full pay*** is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities, ***mothers with disabilities***, and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated. ***The total period of maternity leave shall be extended by at least eight weeks after the birth in the case of the birth of a disabled child and Member States shall also ensure an additional period of leave of six weeks in the case of a stillbirth.***

Amendment 33

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. This Directive shall not apply to self-employed workers.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on this illness and correcting the prejudices and possible stigmatisation which it can still attract.

Justification

The aim of this amendment is to raise Member States' awareness of the need for official recognition of postnatal depression as an illness, given that it affects 10-15% of women and has significant repercussions for work and family life.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall take appropriate measures to ensure the safety and health of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job),

work intensity, and increased protection against specific infectious agents and ionising radiation.

Justification

Protecting the health and safety of pregnant workers should be a major concern of this directive.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 2

Text proposed by the Commission

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 ***the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs*** within six months following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing ***at the request of the worker concerned.***

Amendment

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 ***or*** within six months following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing. ***This shall not affect the substantive provisions on dismissal under national law.***

Amendment 37

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an equivalent allowance for, workers within the meaning of Article 2, must be ensured in accordance with

national legislation and national practice;

Justification

Entitlements should be based on full pay, to prevent women losing out financially because they are mothers.

Amendment 38

Proposal for a directive – amending act

Article 1 – point 3 – point a

Directive 92/85/EEC

Article 11 – paragraph 1a

Text proposed by the Commission

1a. workers, within the meaning of Article 2, who are excluded from work by their employer who considers them not fit for work without medical indication supplied by the worker, **shall**, until the beginning of the maternity leave in the sense of Article 8(2), receive a payment equivalent to their full salary.

Amendment

1a. A worker, within the meaning of Article 2, who *is* excluded from work by *her* employer who considers *her* not fit for work without medical indication supplied by the worker, **must consult a doctor on her own initiative. If the doctor certifies the woman as fit to work, either the employer must employ her again as normal, or** until the beginning of the maternity leave in the sense of Article 8(2), **they shall** receive a payment equivalent to *her* full salary.

Justification

If the woman consults a doctor of her choice, this ensures clarity as to whether she is actually sick or not. Only after clarifying the situation should further measures be taken.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 3 – point a a (new)

Directive 92/85/EEC

Article 11 – point 1 aa (new)

Text proposed by the Commission

Amendment

(aa) In Article 11, the following point 1 aa is inserted:

"1aa. Member States may adopt preventive and monitoring measures for the protection and safety at the workplace of pregnant workers and workers who have recently given birth."

Justification

Workplace stress can have an adverse psychological affect on pregnant women and mothers of newly-born infants and can have repercussions for the foetus or infant. We need monitoring measures from the flexisecurity point of view.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 92/85/EEC

Article 11 – paragraph 2 – point c

Text proposed by the Commission

(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;

Amendment

(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence; ***in exceptional situations of restructuring or radical reorganisation of the production process steps shall always be taken to ensure that the worker can discuss with her employer the impact of such changes on her work situation and the body representing workers' interests must always be given the opportunity, together with the employer, to advise the worker concerned about the effects of such changes;***

Amendment 41

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 92/85/EEC

Article 11 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

"(ca) the maintenance for workers within the meaning of Article 2 of opportunities for career development through education along with ongoing professional and additional training with a view to consolidating their career prospects;"

Justification

This is to ensure that the fact that women are mothers does not adversely affect their career prospects. Employers should, in consultation with the workers concerned, take the necessary education and training measures to ensure that the workers' career prospects are maintained.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 92/85/EEC

Article 11 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) the taking of maternity leave must not be prejudicial to the worker's pension rights; the period of maternity leave must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave.

Justification

It is important to ensure that allowances paid to workers during maternity leave do not adversely affect their pension entitlements. Member States should prevent this from happening and provide compensation for any loss of pension rights.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 3 – point c

Directive 92/85/EEC

Article 11 – point 3

Text proposed by the Commission

3. the allowance referred to in point 2(b) shall be **deemed** adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary, **subject to any ceiling laid down under national legislation. Such a ceiling may not be lower than the allowance received by workers within the meaning of Article 2 in the event of a break in activity on grounds connected with the worker's state of health.** The Member States may lay down the period over which this average monthly salary is calculated.

Amendment

3. the allowance referred to in point 2(b) shall be adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary. **Workers on maternity leave shall be paid their full salary and the allowance shall be 100% of the last monthly salary or the average monthly salary.** Member States may lay down the period over which this average monthly salary is calculated.

Justification

Payment of their full salary to women is a way of ensuring that women will not lose out financially because they have decided to have children. Many Member States already provide for payment of between 80% and 100% of average earnings during maternity leave. More, the pregnant workers should not be penalized in a financial way for their decision of having a baby.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 3 – point c a (new)

Directive 92/85/EEC

Article 11 – point 3 3 a (new)

Text proposed by the Commission

Amendment

(ca) The following point 3a is inserted:

"(3a) Member States shall ensure that workers on maternity leave are entitled to receive automatically any increase of salary, if applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase."

Justification

If there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get

the higher salary and after that resume the leave. The administrative work of the employer in that respect will also be reduced and simplified

Amendment 45

Proposal for a directive – amending act

Article 1 – point 4

Directive 92/85/EEC

Article 12 a

Text proposed by the Commission

Amendment

4. The following Article 12a is inserted: **deleted**

Article 12a

Burden of proof

1. Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider that their rights under this Directive have been breached establish, before a court or other competent authority, facts from which it may be presumed that there has been such a breach, it shall be for the respondent to prove that there has been no breach of the Directive.

Paragraph 1 shall not prevent the Member States from introducing rules of evidence which are more favourable to plaintiffs.

Paragraph 1 shall not apply to criminal proceedings.

Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.

Paragraphs 1 to 4 shall also apply to any legal proceedings commenced according to Article.

Justification

The proposed regulation infringes the principle of the presumption of innocence and would disrupt the balanced position between employees and employers. Those who make an allegation should have to prove it. It is not possible to ask the other party, when it states that 'nothing happened', to provide proof that nothing happened.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 4

Directive 92/85/EEC

Article 12a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with her approval, in any judicial and/or administrative proceedings provided for the enforcement of obligations under this Directive.

Justification

*If this amendment is adopted, Paragraph 5 shall be amended accordingly to read:
'Paragraphs 1 to 4a shall also apply to any legal proceedings commenced according to Article 12.'*

Amendment 47

Proposal for a directive – amending act

Article 1 – point 5

Directive 92/85/EEC

Article 12 b

Text proposed by the Commission

Amendment

Member States shall introduce into their national legal systems such measures as are

Member States shall introduce into their national legal systems such measures as are

necessary to protect individuals from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

necessary to protect individuals **including witnesses** from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

Justification

Extending protection from reprisals to witnesses makes it possible to ensure that they are free to give reliable testimony in complaints proceedings without fear of any discrimination against them.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 6

Directive 92/85/EEC

Article 12 c

Text proposed by the Commission

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation, **which may not be limited by the fixing of a prior upper limit**, and must be effective, proportionate **and dissuasive**.

Amendment

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation and must be effective **and** proportionate.

Justification

An EU ban on limiting compensation claims disproportionately restricts Member States' freedom to adopt their own rules and forces them to adopt detailed provisions that are not in line with their own judicial law.

PROCEDURE

Title	Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding		
References	COM(2008)0637 – C6-0340/2008 – 2008/0193(COD)		
Committee responsible	FEMM		
Opinion by Date announced in plenary	EMPL 19.10.2009		
Rapporteur Date appointed	Rovana Plumb 16.9.2009		
Discussed in committee	5.11.2009	1.12.2009	26.1.2010
Date adopted	27.1.2010		
Result of final vote	+: 31	–: 11	0: 5
Members present for the final vote	Regina Bastos, Edit Bauer, Jean-Luc Bennahmias, Pervenche Berès, Mara Bizzotto, Milan Cabrnock, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Sergio Gaetano Cofferati, Marije Cornelissen, Tadeusz Cymański, Frédéric Daerden, Karima Delli, Richard Falbr, Ilda Figueiredo, Pascale Gruny, Thomas Händel, Marian Harkin, Roger Helmer, Nadja Hirsch, Vincenzo Iovine, Liisa Jaakonsaari, Martin Kastler, Ádám Kósa, Patrick Le Hyaric, Veronica Lope Fontagné, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Siiri Oviir, Rovana Plumb, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck		
Substitute(s) present for the final vote	Georges Bach, Raffaele Baldassarre, Vilija Blinkevičiūtė, Silvia Costa, Kinga Göncz, Richard Howitt, Dieter-Lebrecht Koch, Franz Obermayr, Ria Oomen-Ruijten, Emilie Turunen		