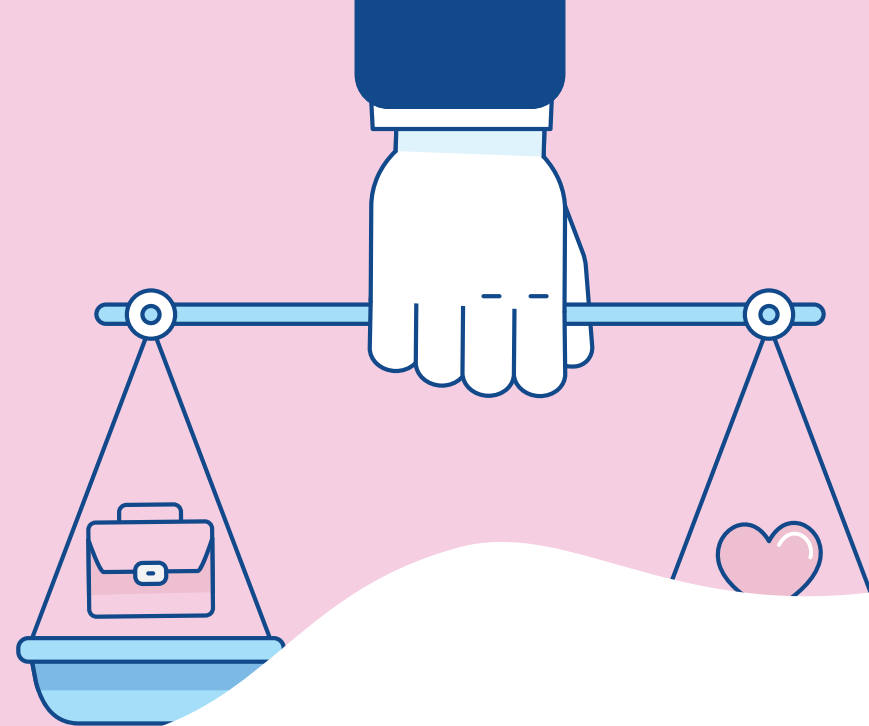


**Analysis of compliance
of the legislation of Bosnia
and Herzegovina with the Directive
(EU) 2019/1158 on work-life balance
for parents and carers**



1.

Overview of compliance obligations

Although there are numerous relevant international standards in this sphere, which should be adhere to and implemented in order to create a framework of gender-responsive family policies, and which would create equal opportunities for women to participate equally in the labour market¹, the focus of the overview of obligations, for the purposes of this analysis, is placed on the standards of the European Union law, which are certainly a reflection of other relevant international obligations in this area. Within the European Union, various documents promote the principle of gender equality, and rights related to motherhood and fatherhood, primarily through labour relations. In addition to the regulation of these rights in the Charter of Fundamental Rights of the European Union² and the European Pillar of Social Rights³, there are several important European Union Directives aimed at harmonizing, i.e. creating a balance between professional, private and family life. These are primarily the Directive 2019/1158 on work-life balance for parents and carers and the 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. In addition, Directive 2006/54 on Part-time Work⁴ refers to issues of indirect discrimination against women at work, and Directive 97/81/EC⁵ deals with discrimination against those who work part-time. The link between measures aimed at creating a work-life balance for parents and the gender equality principle is explicitly recognized in the EU law.⁶

¹ For example, the UN Convention on the Elimination of All Forms of Discrimination against Women from 1979, especially its Article 11, which obliges Member States to take all necessary measures to eliminate discrimination against women in employment and to ensure equal rights based on the equality of men and women; International Labour Organization Maternity Protection Convention, 2000, No. 183; I European Social Charter of the Council of Europe from 1961/revised in 1996, especially its Article 8.

² Article 23, "Equality between Women and Men" and Article 33/2, "Family and Professional Life".

³ Principle 2 "Gender equality", Principle 3 "Equal opportunities" and Principle 9 "Reconciliation of professional and family life".

⁴ Directive 2006/54/EEC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

⁵ Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC. Part-time work is often used by women who try to reconcile work, private and family life in this way.

⁶ In this regard - recitals 6 and 8 and clause 1 of the Directive on work-life balance for parents and carers.

Overview of the relevant European Union standards

- ▶ **The Charter of Fundamental Rights** of the European Union stipulates the obligation to ensure equality between men and women in employment, labour and payment, and that everyone, in order to reconcile family and professional life, has the right to protection against 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.
- ▶ **The European Pillar of Social Rights** stipulates that parents and persons with caring responsibilities shall have the right to suitable leave, flexible working arrangements and access to care services, as well as that women and men shall have the right to equal access to special leaves of absence in order to fulfill their caring responsibilities and be encouraged to use them in a balanced way.
- ▶ **EU Directive 2019/1158** stipulates that each parent has the right to take a minimum of 4 months parental leave, of which two months are paid and non-transferable.
- ▶ **EU Directive 2019/1158** stipulates that fathers have the right to take a minimum of 10 working days of paid paternity leave around the time of birth of the child.
- ▶ **EU Directive 2019/1158** provides that all employees who provide personal care or support to a relative or a person living in the same household have the right to take a leave of absence for a minimum of five working days per year.
- ▶ **EU Directive 2019/1158** provides that parents have the right to request that they take parental leave in flexible ways, either full-time, part-time, or in alternating periods.
- ▶ **EU Directive 2019/1158** provides that all working parents with children up to the age of at least eight years and carers have the right to request flexible working arrangements, including, where possible, reduced working hours, flexible work schedules and teleworking.
- ▶ **EU Directive 2019/1158** and **Directive 2006/54** provide for the right of employees to return to their jobs or to the same workplaces at the end of parental and similar types of leave, under conditions that are no less favorable for them, and the right to benefit from all improvements in working arrangements to which they would have been entitled if they had not taken leave.
- ▶ **EU Directive 2019/1158** provides for the prohibition of discrimination, i.e. the prohibition of less favorable treatment of employees, the prohibition of dismissal, and the prohibition of preparations for the dismissal of employees on the grounds that they have taken or have applied in writing for leave to care for children and others or on the grounds that they have exercised the right to flexible working arrangements.
- ▶ **EU Directive 2019/1158** foresees the need to introduce effective, proportionate and dissuasive criminal provisions for the violation of legal obligations introduced with the aim of creating a balance between private and professional life of parents and carers.
- ▶ In addition to these standards, regarding pregnant women, the **CEDAW** Convention and **EU Directive 92/85/EEC** - provide for the prohibition of dismissal due to pregnancy, and **EU Directive 92/85/EEC** for pregnant workers provides for the right to paid leave from work in order to have pregnancy checkups, if such checkups must be done during working hours.

2.

Overview of the laws in Bosnia and Herzegovina which regulate this area

In Bosnia and Herzegovina, there is no regulation in place that would uniquely regulate the area of protection of labour relations and protection of families with children. Rather, these issues are regulated by nearly twenty laws adopted within more than ten different administrative units.

► Federation of Bosnia and Herzegovina

The basic laws governing this area in the **BiH Federation** (FBiH) are the *FBiH Labour Law*, which regulates the protection of the rights arising from labour relations and relating to maternity and childcare, and the *FBiH Law on Grounds for Social Protection, Protection of Families with Children and Civil War Victims*, which governs the right to maternity pay for women-mothers who are employed while they are absent from work due to pregnancy, childbirth and child care.

The amount of maternity pay, the method of calculation, requirements and procedures for exercising the right are determined by *cantonal regulations*, and their financing depends on the importance given to this issue in individual cantonal budgets. Out of ten cantons, eight cantons have passed their respective laws on grounds of social protection, protection of families with children and civilian victims of war, which lays down the right to maternity pay, the Law on Social Protection of the Posavina Canton does not provide for the right to maternity pay, while Canton 10 does not have a law that regulates this area at all.

► Republika Srpska

In the **Republika Srpska** (RS), exercising the right to maternity leave is regulated by the *RS Labour Law*, the *Law on Social Protection*, which governs the social protection system, and the *Law on Child Protection*, which governs the child protection system, including support for creating a balance between work and parenting.

► Brčko District of BiH

In the **Brčko District of BiH** (BD), the protection of rights from labour relations related to parenthood, including the right to maternity pay, is regulated by the *Labour Law of BD*, while the amount of maternity pay related to time off from work related to childbirth is regulated by the *Law on Health Insurance of BD*.

► Institutions of Bosnia and Herzegovina

In addition, the *Law on Labour in the Institutions of Bosnia and Herzegovina* regulates the rights and obligations arising from the employment status of employees in the institutions of BiH and its bodies who are not civil servants, as well as employees in the institutions of BiH who are exclusively exempted from the Law on Civil Service in the Institutions of BiH, employees who are employed in public enterprises of Bosnia and Herzegovina, associations and foundations of BiH, legal entities established by the institutions of BiH, inter-entity corporations and other institutions for the performance of additional responsibilities in BiH, unless otherwise determined by another law.

Labour legislation

Social protection legislation

BiH Federation	FBiH Labour Law	Law on Grounds for Social Protection, Protection of Families with Children and Civil War Victims in FBiH
Cantons in FBiH	/	10 cantons, 9 different laws, of which none defines the right to maternity pay
Republika Srpska	RS Labour Law	RS Law on Social Protection RS Law on Child Protection
Brčko District of BiH	BD Labour Law	Law on Health Insurance of BD BiH
BiH institutions	Law on Labour in the BiH Institutions	/

3.

Situation in Bosnia and Herzegovina

In 2021, the *BiH Agency for Gender Equality* (AGE) of the Ministry of Human Rights and Refugees of BiH conducted a *survey on the rights of mothers and parenting development in BiH*⁷, which, among other things, identified the numerous challenges in policies and practices related to maternity benefits and rights relating to labour relations. Based on this survey, on July 19, 2022, the AGE adopted *Recommendations for the Protection of the Human Rights of Mothers and Parenting Development in Bosnia and Herzegovina*, intended for relevant stakeholders.

The Report and Recommendations emphasize that BiH is characterized by uneven legal regulations pertaining to parenting and maternity, where only in the territory of the Republika Srpska the right to maternity benefits is resolved in a systemic way, while in the FBiH, due to the cantonal structure of government, there is discrimination against new mothers, depending on the place of residence, salary, employment in the public or private sector, etc. The working arrangements prior to maternity leave is regulated differently as a requirement for exercising the rights, and the amounts of maternity pay are different.

⁷ Survey "Human Rights of Mothers and Development of Parenting in Bosnia and Herzegovina", Agency for Gender Equality of Bosnia and Herzegovina, December 2021, available at: <https://arsbih.gov.ba/project/istrazivanje-o-ljudskim-pravima-majki-i-razvoju-roditeljstva-u-bosni-i-hercegovini/>

There are frequent cases of mothers being dismissed on various grounds, although pregnancy is the principal reason for the dismissal, or mothers interrupting their maternity leave and returning to their workplaces due to maternity pay delays or amounts and the pressure from the employer in the form of the threat of dismissal. After returning to work, women face the problem of job degradation, salary reduction and the impossibility to exercise the right to breastfeed their children during work hours. Female entrepreneurs are not recognized in the context of exercising the right to paid maternity leave. As a result, in most cases, after taking maternity leave, they are forced to permanently or temporarily close their businesses.⁸

The European Commission's Bosnia and Herzegovina Reports 2021 and 2022 pointed it out as problematic that women are estimated to earn on average 78% to 85% of a man's salary for the same position, while there is a difference in the employment rate between men and women of 26.9 %, that the treatment of parental leave, including definitions of maternity, paternity and parental leave, differ between entities and among cantons, and that there are different maternity leave benefits.⁹

In 2019, the *CEDAW Committee* determined in relation to Bosnia and Herzegovina that "the legislation and policies to achieve equality of women and men at the State, entity, district and cantonal levels have still not been fully harmonized; there are disparities in the implementation of legislation on gender equality owing to the decentralized structure of the State party."¹⁰ The CEDAW Committee further expressed its concern about the continued low level of representation of women in the labour market, and particularly about: "(a) the persistent gender pay gap and horizontal and vertical occupational segregation in the State party; (d) the disparity in maternity benefits in the State party."¹¹

In its 2020 *Report on Bosnia and Herzegovina, the European Committee on Social Rights, established under the auspices of the Council of Europe*¹² also pointed out, among other things, that maternity benefits are uneven and inadequate in certain parts of the country.

The survey conducted by the *Sarajevo Open Center* in 2022¹³ shows that, based on the records of Social Welfare Centers, only 0.36% of fathers received benefits during the period of time that they took off from work after the birth of their children. Out of a total of 500 surveyed fathers, 57.8% of fathers stated that they were not aware of the legal possibility of taking leave to care for the child, of whom 73.4% said that they would have taken leave if they had known that they had the right to do it. Those who took parental leave encountered certain ambiguities that slowed down the process of exercising this right. It was noticed that this could further discourage fathers from taking parental leave, which could ultimately lead to a halt in an equal distribution of care for family members, i.e. to the situation where the whole burden of care would fall on mothers who, as a result, would have to make further efforts to create a work-life balance. In addition, 44.8% of the surveyed fathers declared that they had not taken parental leave because they were employed and their wives were not, 13.1% responded that their family was financially better off if they worked because they earned more, 11.2% believed that they did not need to take leave from work because women are the ones who take care of children, and 6.3% said that they should not take parental leave because they thought others did not take it either.

⁸ Report, pp. 21, 22, 40, 64 64, 70. Recommendation for the protection of human rights of mothers and development of parenting in BiH.

⁹ European Commission, 'Bosnia and Herzegovina Report 2021' (General Publications) COM (2021) 644 final, str. 30; 'Bosnia and Herzegovina Report 2022' SDW(2022) 336 final, str. 91.

¹⁰ CEDAW Committee, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, CEDAW/C/BIH/CO/6 (2019), 2019, paragraphs 11 b) and c).

¹¹ Ibid, paragraph 35, a) and d).

¹² European Committee of Social Rights, Conclusions 2019 Bosnia and Herzegovina, March 2020, pp. 21-30.

¹³ "Father on Maternity Leave: Research on Legislative and Administrative Barriers to the Use of Maternity Leave by Fathers in Bosnia and Herzegovina", Sarajevo Open Center, 2022, available at: <https://soc.ba/otacnaporodiljskomodsustvuistrazivanjelegislativnimadministrativnimprekamaizakoristenjeporodiljskogodsustvaivocevaubih/>

4.

Analysis of compliance of the legislation in Bosnia and Herzegovina with the relevant EU Directive

Although the rights related to the mother and maternity protection for employed persons, which are defined in labour laws, are to a certain extent aligned with the relevant human rights protection standards, there is a lack of additional protective and incentive measures which would have a positive impact on enhancing gender equality in the context of equal sharing of responsibilities duties in the family life as well as in the labour market, and which would enable the creation of gender-responsive family policies. In this context, the presentation of the observed shortcomings of the legal texts below is followed by appropriate recommendations for amendments to the existing laws.

► Unequal standards for the protection of the rights

All labour laws in Bosnia and Herzegovina provide for a total duration of maternity leave of 12 consecutive months, which can only be extended up to 18 months for twins, every third and subsequent child in only the Republika Srpska and the Brčko District of BiH. Maternity leave includes mandatory leave of 42 days in the BiH Federation, the Brčko District and at the level of BiH, and 60 days in the RS. These provisions are harmonized with the relevant standards, except for the fact that uneven periods of leave are foreseen for twins, the third and each subsequent child.

However, a more detailed comparative analysis in the light of the desired standard of harmonized protection of rights and equality of citizens before the law throughout BiH leads to the conclusion that there is a significant discrepancy in the level of the protection of the rights between the four key labour laws in BiH and related laws. Considering the fact that maternity benefits are uneven, not adequate or, in certain parts of the country, not provided at all, the situation in BiH is not in accordance with the relevant standards due to the provision of uneven standards of protection for parents who are in the same situation, depending on their place of residence and employment status.

► Taking a shorter maternity leave under exceptional circumstances

All labour laws in BiH provide for the possibility for a woman to take a shorter maternity leave than the period provided for by the law (but not shorter than the mandatory leave of 42 days or 60 days in the RS).

However, only the RS legislation prescribes that this possibility exists *at the woman's own request, with the consent of the employer*, and underlines that this situation must not be the result of the pressure from the employer on the woman, but is acceptable only if it is the result of her free will and proposed at her request.

► Transferability of maternity leave

The laws in BiH provide for the possibility to transfer maternity leave. Thus, under the Labour Laws, it is possible for the child's father to take maternity leave, provided that the parents so agree, and only after 42 days following the birth of the child in the FBiH and BD, and after 60 days in the RS and at the level of BiH, which are reserved for the child's mother.

In addition, the child's father may use maternity leave in the event of the mother's death, if the mother abandons the child or if she is prevented from exercising this right for justified reasons.

Legislation in BiH, however, does not recognize the concept of a non-transferable part of maternity leave (with a minimum duration of two months), as required by EU standards, as an incentive for fathers to exercise this right in practice.

► **Term and concept of maternity leave**

The term "maternity leave", which is used in the laws of BiH for the entire period of absence from work in order to take care of the child, and also for the exercise of this right by the father, is inadequate, because it is not gender neutral as is the term "parental leave", which is foreseen by the relevant standards which are the subject of this analysis.

Furthermore, maternity leave is currently conceptualized contrary to the relevant standards in all laws and in terms of content, because its definition indicates that it is essentially a right whose holders are primarily women - mothers (perceived as a *rule*), which, in the case of a parental agreement, may (considered as an *exception*) be transferred to the child's father.

► **Taking leave in parts and as part-time work**

The current wording in the labour legislation of the FBiH, RS and BD suggests that using leave after the expiration of the first 42 or 60 days is a choice that parents must make - that alternatively only one or the other parent takes or continues to take the remaining period of statutory leave all at once. Only the Law on Labour in the Institutions of BiH contains a reference to taking a "part of leave" and provides for the possibility for the parents to agree that the father will take "*leave or a part of leave*". This seems to allow, to some extent, for sharing the leave between the parents.

In addition, taking leave is defined in all four laws as the right to leave in "one continuous period". This is contrary to the relevant standards under which it is necessary to take measures to allow employees to request that they take parental leave in a flexible way, including in several segments i.e. in alternating periods, such as, for example, several weeks of work, followed by several weeks of leave from work.

Neither of these laws provides for the possibility of taking leave as part-time work, as another type of flexible way of taking leave.

► **Paternity leave**

In BiH, it is possible for men to take paid leave from work in case of the birth of a child, but under the legal provision that also applies to a number of other circumstances such as marriage, serious illness and death of a family member. In the FBiH and at the BiH level, this right is provided for a period of up to 7 working days, and in the RS and BD for a period of 5 days.

Given that this right also applies to several other personal and family situations outside the context of the birth of a child, this right cannot be referred to as paternity leave in the true sense of the word and for the duration required by the relevant standards.

► **Carers' leave**

The laws in BiH do not provide for a separate special leave for care providers for a minimum of five days, as required by the EU standards, except for the already mentioned leave on several grounds, including serious illness of a family member. Given that the role of a carer in practice is almost exclusively played by women, this can have an adverse effect on their participation in the labour market.

► **Flexible working arrangements for parents with children up to 8 years old**

The laws in BiH do not define the right of employees with children up to 8 years old and care providers to demand flexible working arrangements based on their family status. Although there are provisions that refer, for example, to the possibility of working part-time, working remotely and working from home, and redistributing working time, such a form is primarily provided when it is necessary due to the demands of the job, and not for the fulfillment of the employee's family responsibilities.

Of all the four labour laws, only the FBiH provides for the possibility that a woman or a father (provided that the woman works full-time during that time), with a child up to one year old, after the expiration of maternity leave, has the right to work half of full-time hours, and for twins, a third and every subsequent child has the right to work half of full-time hours until the child has reached two years of age.

Similar rights are provided for in other laws only in the event that the child requires enhanced care due to a medical condition. Namely, all laws provide for the right to work half of full-time hours with remuneration for the parent of a child with developmental disabilities (in the RS and BD described as "psycho-physical developmental disabilities" and in the FBiH and the Law on Labour in the Institutions of BiH as "rather severe developmental disabilities"), provided that the child is not placed in a social-health care institution.

► **Prohibition of discrimination / dismissal on grounds of pregnancy and exercise of the right in order to care for others**

The FBiH provides for the prohibition of unequal treatment in the form of the prohibition of refusing to employ a woman because of her pregnancy, as well as the prohibition of termination of the employment contract because of her pregnancy, during her maternity leave, while the parent is exercising the right to work half of full-time hours under certain circumstances and the woman is exercising her right to leave work premises to breastfeed her infant. In the RS, there is a prohibition of refusing to hire a woman because of her pregnancy, as well as of terminating an employment contract due to pregnancy or maternity leave or short-time work to care for a child. The BD provides for the same provision, while the prohibition is expanded to include maternity leave. The Law on Labour in the Institutions of BiH only defines the prohibition of refusing to employ a woman and terminating her employment contract for the reason related to her pregnancy.

In this way, the standards of protection are uneven between these four laws.

In addition, they are not harmonized with the relevant standards due to their focus on women, instead of making these protective standards for employees-parents gender-neutral.

Finally, not all laws provide for the prohibition of discrimination against employees on the grounds of taking leave or exercising the right to flexible working arrangements.

► **Mandatory return to the same job**

All four laws lack explicit provisions that would guarantee employees the right to return to work or the same workplace at the end of the parental leave or an analogous leave from work, under conditions that are no less favorable for them, and the right to benefit from all improvements in working conditions which they would have been entitled to if they had not taken the leave.

► **Transfer to another job and a different position**

In all four laws, it is stipulated that during pregnancy and breastfeeding, a woman can be transferred to another job and moved to another role under certain conditions, and exclusively with her consent.

Recommendations on amendments to the relevant laws in Bosnia and Herzegovina for the purpose of their harmonization with the relevant standards of the European Union

Although the aim of this provision is primarily to protect the health and safety of pregnant and breast-feeding women, sometimes they are moved to different roles at the initiative of the employer as a justification for the employer's hidden intention to provide a less favorable treatment. Therefore, it is necessary to introduce additional guarantees to protect the interests of women.

► Termination of a fixed-term employment contract during pregnancy and maternity leave

None of the four labour laws provide for the protection of employment of the persons whose fixed-term employment contracts expire during pregnancy-related sick leave or maternity leave, which has proven to be particularly problematic in terms of placing such persons on the grounds of gender and/or pregnancy in an unequal position compared to other employees.

The FBiH and BD labour laws even foresee a step backwards, prescribing explicitly within the provision that prohibits termination of the employment contract during pregnancy and maternity leave that termination of a fixed-term employment contract is not considered termination of an employment contract within the meaning of that provision. In other words, this means that the legislator considers it permissible to terminate an employment contract concluded for a certain period of time during pregnancy and while the worker is on maternity leave.

► Prohibition on requesting the information on family/marital status and family planning

The Law on Labour in the Institutions of BiH stipulates that an employer must not refuse to hire a woman because of her pregnancy. In the FBiH, in addition to this prohibition, there is also a prohibition on seeking any information about pregnancy, unless the worker requests a certain right provided for by law or another regulation for the protection of pregnant women. At the same time, the legal text may seem unclear as to whether this prohibition applies not only to already employed women, but also to the women who are looking for jobs.

The Labour Laws of the RS and BD go a step further by prohibiting the employer to seek the information from the job applicants on their family or marital status and family planning, i.e. to request that they present documents and other pieces of evidence that are not of direct relevance for the performance of the work for which an employment relationship is established or to require a pregnancy test as a condition for employment.

This issue is therefore regulated in an uneven manner.

► Other

The legislation in BiH does not recognize other benefits that respond to the real situations and needs of pregnant women and parents, such as the extension of maternity leave entitlement by the time from the child's premature date of birth up to the expected date of birth in cases where a child is born prematurely, or the right of a female worker to paid leave in order to perform the necessary prenatal tests.

Under the BiH Gender Action Plan for the period 2018-2022, legislative and executive bodies are obliged to improve measures for creating a work-life balance, including the protection of maternity and paternity, improving the legal provisions on paid maternity leave, paid parental leave for both parents, as well as special measures that make it easier for employees to reconcile professional and family responsibilities. Below are the recommendations that aim at providing responses to the above-mentioned challenges and harmonizing the legislation with the relevant European Union and international standards, with a special focus on the Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, through specific measures.

► Harmonization of legislation within Bosnia and Herzegovina

It is necessary to harmonize the provisions of all four labour laws in BiH relating to parenting and ensure equal standards of protection for all pregnant women, mothers and fathers in Bosnia and Herzegovina, regardless of their employment status and place of residence.

This should also be followed by the harmonization of the entire matter of regulations in the field of social protection throughout BiH in order to ensure uniform levels of protection in terms of maternity benefits throughout the country, and accompanying issues, such as the required period of work as a requirement for obtaining access to maternity benefits.

► Term and definition of parental leave:

It is necessary to replace the term "maternity leave" with the term "parental leave" and define this period as the entitlement of both parents to leave to care for their child in accordance with their agreement, of which 42 or 60 days are reserved for women as a mandatory period of leave after the birth of a child and any period of time during pregnancy, if necessary.

There would be two options – referring to the entire period as parental leave, within which 42 or 60 days (depending on the law) are mandatory for the mother; or to describe separately maternity leave of 42 or 60 days which is mandatory for mothers, while the remaining part of the leave would be used distinctively from maternity leave as an individual entitlement of both parents, after the expiration of the maternity leave, and would accordingly be referred to as parental leave.

Consequently, all other relevant provisions that provide for types of protection should be terminologically harmonized with the proposed changes in terminology related to parental leave, so that, for example, the prohibition of dismissal in connection with an employee's taking this leave is clearly defined for both parents.

Note: The following text with proposals for the improvement of certain provisions will refer to the term "parental leave" as the entitlement of both parents to take a leave, which includes maternity leave as it is now recognized in the BiH legislation.

► Taking a shorter maternity leave under exceptional circumstances

It is necessary to define in all four laws that the employee can “*exceptionally, at his or her own request*”, with the consent of the employer, take a shorter parental or maternity leave, but not shorter than 42 or 60 days after the birth of his or her child.

In order to provide guarantees that employees will not take a parental/maternity leave shorter than that provided for by the law, it is also very necessary to specify the existing penal provisions by prescribing a penalty for a situation where a mother or a father takes a parental leave which is shorter and/or contrary to the manner laid down in the law, at the request of the employer, and not by their free will.

► Taking parental leave in parts and as part-time work

The legal text needs to be specified by providing the possibility for parents to share the parental leave, so that the child's father can take a part of the leave, as it is stipulated in the *Law on Labour in the Institutions of BiH*, under which the child's parents may agree that the father takes “*the leave wholly or in part*”.

Furthermore, in order to promote flexible arrangements, it is necessary to make it possible for every employed parent to request that they take parental leave in full or in several parts of one period, with the possible limitation that, if taken in parts, the parental leave may be taken at most twice a year, each time for at least 30 days, as it is prescribed in Croatia.

Also, it is necessary for the same purpose to entitle parents to request that they take a part of the leave as part-time work, which can be done following the example of Croatia, where it is possible to exercise the right to parental leave as the right to work half-time for twice the duration of untaken parental leave.

► Non-transferability of a part of parental leave

It is necessary to define that in response to taking the leave by the father for a minimum of two months, those parents (and children) are provided with the benefit of extending the parental leave for a period of two months.

In order to ensure that during this period the child's father really assumes the role of the primary carer for the child, this entitlement should be used separately, not simultaneously. If the fathers did not take those two months (or a longer period of the parental leave), that part of the parental leave would expire, i.e. it could not be transferred to the mother.

► Paternity leave

It is necessary to prescribe in the labour laws a separate right to paternity leave, as a short and non-transferable period of leave from work of the father around the time of the birth of his child, for a duration of 10 days, i.e. two working weeks, in accordance with the relevant EU standards and the average duration of this right in comparative practice.

In this way, fathers, regardless of their right to take a part of the parental leave in agreement with the mother in a later period, would have the opportunity to take the leave immediately after the woman has given birth (simultaneously with her leave which is reserved only for mothers for a duration of 42 or 60 days), in the period in which she often needs him the most, and in the crucial moment in which essential foundations are laid for the reorganization of sharing household and childcare responsibilities.

► Provision of personal care to a family member or a person living in the same household

It is necessary in all four laws to prescribe a separate right to paid leave of five to seven days a year for the purpose of providing personal care to a member of the immediate family or a person living in the same household.

► Harmonization of the length of leave in different laws

In order to ensure a harmonized approach to the length of leave throughout the country and to respond to the needs of parents with three or more children and twins, in the BiH Federation Law and in the Law on Labour in the Institutions of BiH, it is necessary, following the example of the RS and BD, to provide for an extended parental leave of 18 months in the case of the birth of twins, a third and each subsequent child.

► Flexible working arrangements for parents with children up to 8 years old

It is necessary to define the right of employees with children up to eight years old, for the purpose of harmonizing family responsibilities and paid work, to demand flexible working arrangements, including the possibility to propose to the employer an amendment to the employment contract in order to arrange work from home for a fixed period of time or to switch from full-time work to part-time work, and to request a change/adjustment of the work time schedule.

In this context, and for the purpose of harmonizing protection standards within the country, it is also necessary to include the FBiH part-time arrangement, under certain conditions, following the expiration of maternity leave until a certain age of the child in other three laws.

► Prohibition of discrimination /dismissal on grounds of pregnancy and exercise of the right in order to care for others

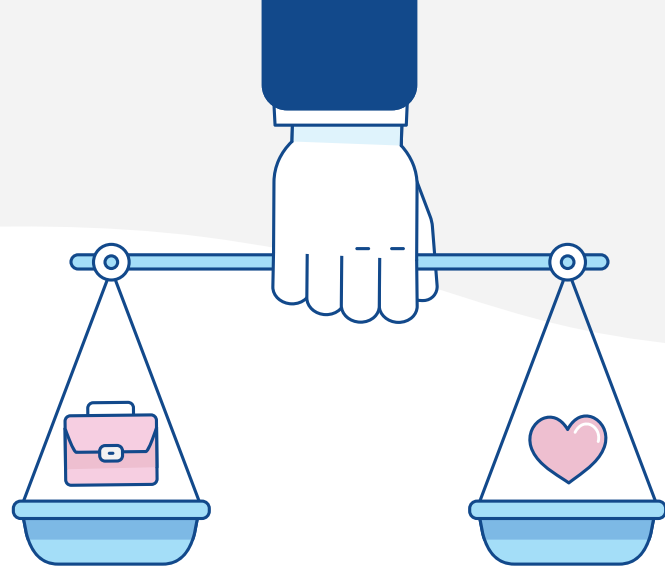
It is necessary to provide in all four laws for the prohibition of discrimination in a uniform manner, i.e. the prohibition of less favorable treatment of employees, as well as the prohibition of dismissal and preparation for dismissal of employees - both parents - due to her pregnancy-related sick leave or due to their use, or submitted request for the use, of the leave to take care of children and others, or due to their exercise of the right to flexible working arrangements.

In order to have a deterrent effect, it is necessary (in the institutions of Bosnia and Herzegovina) to define in the penal provisions a penalty for putting employees in a less favourable position due to their exercising the rights related to taking the leave to take care of children and others.

► Extension of a fixed-term employment contract during pregnancy and leave

It is necessary to abolish the provision in the FBiH and BD under which the termination of a fixed-term employment contract during pregnancy-related sick leave or maternity leave is not considered a termination of the employment contract.

In addition, it is necessary to introduce a provision in all four laws which automatically extends employment contracts during the exercise of the rights associated with the birth of a child until the expiration of the leave.



► **Mandatory return of an employee to the same job**

In all four laws, it is necessary to ensure the right of all employees (males and females) to return to their jobs or to the same workplace, during and after the expiration of parental leave and analogous types of leave taken to care for others, under the conditions which are not less favorable for them, and that they are entitled to benefit from all improvements in working conditions that they would have been entitled to if they had not taken the leave.

► **Transfer to other jobs and other workplaces**

It is necessary to define in all four laws that the transfer of pregnant and breastfeeding women to other jobs and other workplaces can happen not only with her consent, but exclusively on her initiative, in order to introduce an additional guarantee to avoid an imaginable situation in which the worker, at the request of and under the pressure from the employer, is put in a situation where she gives her consent to something she originally did not want and did not need.

► **Prohibition on requesting the information on family/marital status and family planning**

It is necessary to include in all four laws in Bosnia and Herzegovina the prohibition on requesting the information on pregnancy, marital status and family planning both from already employed female workers and from those applying for a job.

► **More efficient and stricter penalties in case of a violation of the right**

In order for the prohibitions and protective measures to really have a deterrent effect in practice, it is necessary to carry out an analysis of the existing penal system and then to expand the existing penal provisions to include penalties for their violations where they do not exist (e.g. in the case of the previously mentioned prohibition on requesting the data), or to increase the existing penalties where this proves to be purposeful.

► **Other**

It is necessary to define in the legislation in BiH (in the labour laws or separate laws on families with children) that the parental leave will be extended by the time from the child's premature date of birth up to the expected date of birth in cases where a child is born prematurely.

It is necessary to introduce the right of the female employees to one free working day per month for the purpose of prenatal tests, based on the Croatian legislation.

It is necessary to innovate the legal regulations so that also male and female entrepreneurs have guaranteed maternity/parental rights, similar to other employees.

