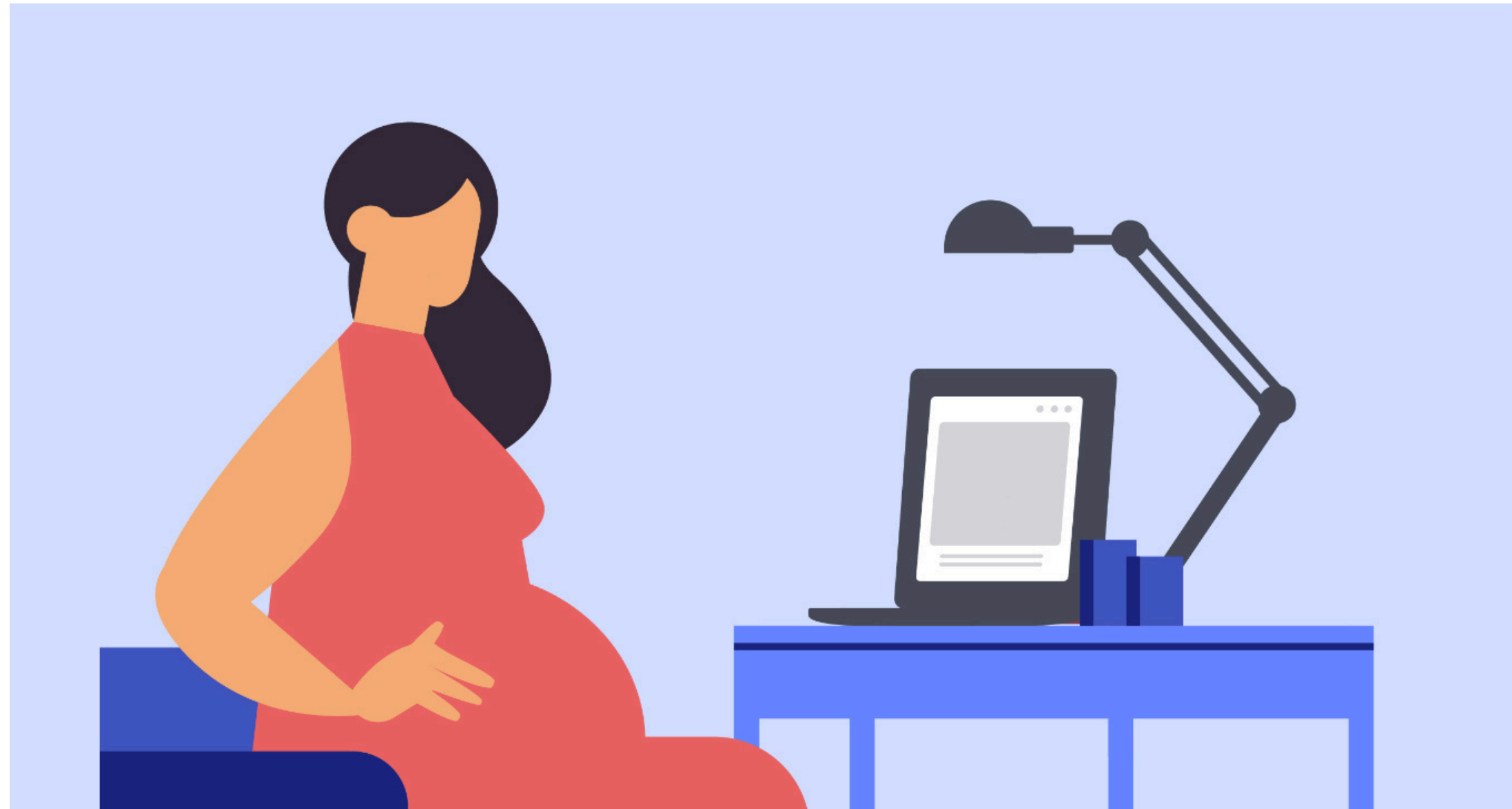




Protective regulations for pregnant women and mothers in labor law: Germany and France

Ensuring the safety and well-being of pregnant women and mothers is an important aspect of labor law in many countries. These protective regulations not only safeguard the health of mother and child, but also provide the necessary job security and financial support during this difficult period. However, the details of this protection can vary greatly depending on the legal framework and cultural context of each country.



In this article, our experts from France and Germany address five key questions to provide a detailed overview of how the protective regulations for pregnant women and mothers are implemented in their respective countries. They look at the measures in place to protect women's rights and health before and after childbirth, as well as the legal obligations of employers.



Protective regulations in France

Very early, French law adopted laws in order to protect women during maternity periods. In 1909, a first law enacted that women unable to attend work during 8 weeks before or after giving birth were protected against dismissal. Soon after, in 1913, a four-week maternity leave after giving birth became mandatory and paid. Since the early 20th century, numerous French laws have ensured a growing protection of women giving birth. This ever-increasing protection has led to an entire section of the French Labour Code being dedicated to the protection of both pregnancy period and postpartum. As of today, the French protection of maternity is quite important, women being protected:

- Whether or not they actually have a job, as the law protects pregnant applicants from being discriminated;
- Before and after giving birth – women benefiting from paid leave and protection against dismissal, the employer having to ensure a safe and healthy working environment.

Companies or industries sometimes even expand these protective provisions by concluding collective agreements relating to pregnancy, maternity or parental leave.



Protective regulations in Germany

In Germany, the Maternity Protection Act in particular offers comprehensive protection for the health of women and their children at work, in training and at university during pregnancy, after childbirth and during breastfeeding. Its origins date back to 1927, when the first regulations on protection against dismissal, bans on employment before and after childbirth and breastfeeding breaks were introduced.

The law has been continuously expanded over time in order to improve the protection of mothers and promote family-friendly working time regulations. The key provisions of the Maternity Protection Act in force today include a ban on dismissal, a general ban on employment before and after childbirth, financial benefits for protection during maternity leave and the obligation of employers to provide a safe and healthy working environment. After the birth, parents are also entitled to up to 3 years of parental leave.



When does the general employment ban begin and end?

Under French law, the maternity leave entitlements may vary based on numerous factors: expectation of twins, pathologies or third birth can increase the duration of the minimal maternity leave entitlement. Generally speaking, the minimal maternity leave entitlement is 16 weeks: theoretically, the pregnant employee should take 6 weeks of leave before the expected date of birth and 10 weeks after giving birth.

This repartition of the maternity leave can however be adapted. The employee is not obliged to strictly respect this minimal entitlement, and can freely choose to increase or reduce its duration. In such case, French law provides for a minimal employment ban of 8 weeks, including at least 6 weeks after giving birth: during this period, work is strictly prohibited to the pregnant employee. During her maternity leave, the pregnant woman receives the social security maternity benefits (which cannot be under 10,79 euros per day or over 100,36 euros per day).

Employers may also choose or be obliged by a collective bargaining agreement to compensate for the loss of salary during the employee's maternity leave.



When does the general employment ban begin and end?

Under German law, employers are generally not permitted to employ a pregnant woman for six weeks before the expected date of birth and up to eight weeks after the birth - or even up to twelve weeks in the case of premature births, multiple births or a disabled child. This period is known as the protection period. During this protection period, there is a general ban on employment unless the pregnant woman expressly declares her willingness to continue working.

In addition, a medically prescribed ban on employment may also be necessary at an earlier point in time. During the maternity protection periods (6 weeks before and 8/12 weeks after delivery), employees with statutory health insurance receive maternity pay. Maternity benefit is paid by the statutory health insurance fund in the amount of up to 13 euros per day (currently). If the regular net salary is higher than this amount, the employer pays the difference as an allowance so that the employee receives her full salary.

Privately insured or uninsured women can receive maternity benefit from the competent authority under certain conditions. If women are unable to work outside the protection period due to an employment ban, they receive maternity protection pay from their employer in the amount of the average salary.



What special aspects apply to terminations/hiring?

French law provides that both health condition and pregnancy are forbidden discriminatory criteria. Hence, pregnancy or maternity cannot constitute a valid ground for refusal to hire, or being sanctioned or terminated. Furthermore, French law prohibits seeking any information concerning the state of pregnancy of a woman. A female job applicant or employee has no obligation to reveal her state of pregnancy to her employer, except when she requests the benefit of the legal provisions relating to the protection of pregnant women. Please note that she may still benefit from formally revealing this information to her employer, as it triggers protection against dismissal. As mentioned, all pregnant employees are protected against dismissal. The French Labour Code makes a distinction between two types of protections:

- A “relative” protection period – starting from the information of the pregnancy to the employer to the beginning of the maternity leave, and 10 weeks after the end of the maternity leave (or subsequent paid vacation). During these periods, the concerned employee cannot be dismissed, except on two grounds which must mandatorily not be related to the pregnancy: dismissal for gross misconduct or impossibility to maintain the employment contract.
- During maternity leave, the protection of the pregnant employee is deemed “absolute”, meaning that any dismissal carried out during this period would automatically be deemed null and void.



What special aspects apply to terminations/hiring?

In Germany, protection against dismissal begins as soon as the employer is informed of the pregnancy and applies for the entire pregnancy and at least 4 months after the birth. During this time, the employer may not normally dismiss the pregnant woman. Dismissal is only possible in very few exceptional cases and requires the approval of a special authority. If the employer has not yet been informed of the pregnancy at the time of termination, the pregnant woman should inform the employer within two weeks of receiving the notice of termination in order to trigger the protection against dismissal.

In contrast, the pregnant woman should not and does not have to inform the potential employer of an existing pregnancy during the job interview. This means that a pregnant woman does not have to provide information about her pregnancy in this context if she is asked about it.



Are there regulations for adjustments in the workplace during pregnancy?

French labour law indeed has provisions for adjustments of the workplace during pregnancy. First of all, pregnant employees must be protected from any risk to their health or that of their unborn child. These risks must be consigned in the Single Risk Assessment Document, which must be updated regularly. Companies should also warn their pregnant employees about potential harmful effects of the exposure to certain specific risks.

As the employers must ensure their employees' health and safety, employers are thus encouraged to adapt the pregnant women's workstations, or, if not possible, to assign her temporarily to another position.

Finally, since 2018, employers must consider the access to remote work for pregnant women when drafting a telework policy. Please note that French law does not limit these adjustments to the pregnancy period: for instance, after giving birth, mothers are able to spend up to 1 hour per day for breastfeeding without any loss in salary.



Are there regulations for adjustments in the workplace during pregnancy?

Yes, the employer is also legally obliged in Germany to carry out a regular risk assessment and, if necessary, to adapt the workplace of a pregnant and breastfeeding employee in such a way that health risks are avoided. This may include a change in working conditions or a transfer to another workplace.

The pregnant employee must be offered a discussion about adjustments. Special regulations also apply to working hours: as a rule, pregnant and breastfeeding women may not work more than 8.5 hours per day or 90 hours in a two-week period (for underage employees, this is 8 hours per day or 80 hours in a two-week period) and may not work nights, Sundays or public holidays. After the end of the daily working hours, the employer must grant the pregnant or breastfeeding woman an uninterrupted rest period of at least 11 hours.

Pregnant, breastfeeding and non-breastfeeding women must be released from work for medical appointments in connection with the pregnancy without loss of pay.

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What does the parental leave entitlement include?

Parental leave allows employees to temporarily stop working to look after their child. The process is quite simple: the employee must request it at least one (or two – depending on the case at hand) months before the starting date. The employer cannot refuse the benefit of this parental leave. Parental leave can be extended to three years per child.

During this period, the parents receive a shared child-raising benefit from the French social security system, which varies according to their income. Employers may also decide to pay up the difference in salary for a certain duration. This parental leave may be taken as one block, or the employee can choose to spread it by working part-time. In this case, the employee must work at least 16 hours per week.

Please also note that French labour law does not limit the scope of parental leave to situations or birth: arrival into the family or adoptions of a child under the age of 16 also entitle employees to benefit from a parental leave.

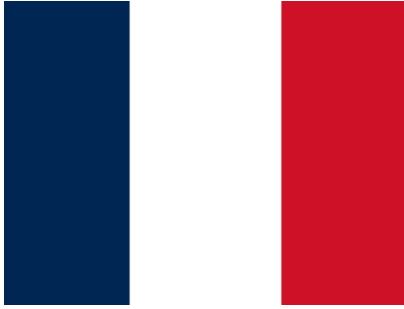


What does the parental leave entitlement include?

After maternity leave, parents in Germany can take parental leave during which they do not work. This can last up to 3 years per child. Both parents can take parental leave, which can also be split or taken jointly.

The application for parental leave must generally be submitted in writing to the employer 7 weeks (or 13 weeks between the 3rd and 8th birthday) before the start of the leave. During this time, parents receive parental allowance, which is generally (as things stand at present) 67% of their income before the birth, with a minimum of €1000 and a maximum of €1800 per full month of the child's life. In the case of multiple births and siblings, parents are entitled to a bonus.

The employer has the right to reduce the leave entitlement during parental leave by one twelfth for each full calendar month of parental leave. However, this reduction must be expressly declared before the end of the employment relationship.



What rights do employees have when they return to work after parental/maternity leave?

After any birth-related leave, the concerned employee must return to work under the most favourable conditions. In addition to aforementioned protection against dismissal, French Labour law ensures that the employee keeps his/her previous position (or at least a similar position with equivalent remuneration).

Moreover, French case law considers that the employers should raise their employees' salary when they return from maternity leave: their base salary should be increased at least by the average salary raise of all company employees. Mothers are also entitled to paid breastfeeding breaks, which can last once a day for 1 hour or twice a day for half an hour each.



What rights do employees have when they return to work after parental/maternity leave?

Under German law, employees have the right to return to their previous job or an equivalent position with the same conditions and salary after maternity or parental leave. If this is not possible, the employer must offer a comparable position. This depends on what has been contractually agreed.

Part-time work can be requested during parental leave if this is compatible with company circumstances. Mothers are also entitled to a paid breastfeeding break, which can last an hour once a day or half an hour twice a day.



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