




# Guidelines for Employers

## On Maternity Protection at Work

 Better Work Indonesia

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## THE GUIDELINES FOR EMPLOYERS ON MATERNITY PROTECTION AT WORK

### Introduction:

For working women, pregnancy and maternity are vulnerable times. Maternity leave and breastfeeding breaks while at work are protected under national and international law in most countries, but in reality these rights are sometimes ignored or often conditional based on the misinformation of the employer. Maternity-related discrimination is driven by myriad reasons that could include an unsubstantiated fear of reduced productivity or perhaps the paternalistic view that a pregnant woman cannot or should not work.

Special protection is required in the workplace for expectant and nursing mothers to prevent harm to their health or to the health of their children, and they need adequate time to give birth, recover, and nurse their children. They also need social protection to ensure job security that prevents dismissal based on pregnancy or maternity leave. Such protection not only ensures a woman's equal access to employment, but it also ensures the continuation of often vital income, which is necessary for the well-being of her entire family. Safeguarding the health of expectant and nursing mothers and protecting them from job discrimination, is a precondition for achieving genuine equality of opportunity and treatment for men and women at work, and enabling workers to raise families in conditions of security.

Gender equality promotes economic efficiency. Women possess huge potential as economic agents in reducing poverty, strengthening economies, contributing to businesses, and transforming societies. In reality, numerous employers around the world have reported that implementing maternity protection at the workplace (e.g. offering leave, employment security and non-discrimination, breastfeeding arrangements, etc.) has brought tangible benefits and cost savings to their businesses in terms of lower staff turnover, decreased absenteeism, higher rates of return after leave, reduced health costs, and higher employee morale and loyalty.

In Indonesia, the vast majority of workers employed in garment factories are young women who have recently had or are planning to have children in the near future. Despite the many calls for and commitments to maternity protection for all workers, many women are denied such rights and remain vulnerable throughout maternity. In some cases, women workers lack maternity protection at work, because even though they are legally entitled to maternity protection, such rights are not recognized by many employers or are difficult to claim. They fear among other things that work may harm their maternal health or that maternity leave may threaten their livelihoods and economic security.

Indonesia ratified the *United Nations Convention on the Elimination of Discrimination of All Women* (CEDAW) on 28 February, 2000; and the *ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* on 7 June, 1999. Discrimination against pregnant workers is prohibited by many national laws. *Act No. 13 on Manpower*, and its implementing regulation, is the major legislation concerning pregnant worker protection in Indonesia. However, the level of pregnant workers' protection is relatively low in Indonesia in that the Government has not ratified *ILO Maternity Protection Convention, 2000 (No. 183)*, which is the most comprehensive one. These legal protections are not always followed in practice. According to the Better Work Indonesia assessment report (Better Work Indonesia 2012), one factory required women to undertake a pregnancy test as a requirement for recruitment. Breastfeeding in particular, is one of the entitlements that is often neglected, due to a myriad of cultural and perceived productivity-related reasons.

The objective of these Guidelines is to provide practical guidance and advice to employers on pregnant worker-related issues in the workplace.

The Guidelines largely consists of two parts:

- 1) Entitlements of pregnant workers - maternity leave and related types of leave; breastfeeding; cash and medical benefits; and, non-discrimination on the grounds of pregnancy; and,
- 2) Occupational Safety and Health for pregnant workers.

#### Legal Basis:

International and national legal frameworks establish rights to maternity protection in Indonesia. Internationally, Indonesia is party to the *United Nations Convention on the Elimination of Discrimination of All Women* (CEDAW); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and, the *Convention on the Rights of the Child* (CRC). Indonesia has also ratified the *ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, but has not yet ratified the *ILO Maternity Protection Convention, 2000 (No. 183)*. Domestically, maternity protection rights have been established in labour laws, adopted in 1984 (International Labour Organisation 1984).

#### Global Frameworks on Maternity Protection:

The drafting of these Guidelines is based on these international and national legal frameworks, human rights and labour standards, as well as relevant legislation, including:

##### 1. *Human Rights Treaties:*

Together, the world's nations have repeatedly reaffirmed the importance of maternity protection to human rights, women's rights, children's rights and for gender equality. Several global human rights instruments contain provisions related to maternity protection, including the:

- *Universal Declaration of Human Rights (UDHR), 1948;*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;*
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; and,*
- *Convention on the Rights of the Child (CRC), 1989.*

The provisions of these instruments related to maternity protection are shown below.

- *Universal Declaration of Human Rights (UDHR), 1948* (United Nations 2014)
  - **Article. 25(2):** Motherhood and childhood are entitled to special care and assistance.
  
- *International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966* (United Nations Human Rights 1966)
  - **Article. 10(2):** Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.
  
- *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979* (United Nations Women 1979)

Preamble: Women's right to non-discrimination, including in maternity: leading implicitly to maternity protection at work, to paternity and parental leave, and to understanding society's responsibility towards women vis-à-vis maternity.

  - **Article. 11:** Non-discrimination in employment; health and safety at work; prohibits dismissal during pregnancy and maternity leave; maternity leave with pay; services enabling women to combine family obligations and work (child-care facilities); protection against work that is harmful during pregnancy.

(1): States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular: [...]

  - (f) The right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.

(2): In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

  - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or maternity leave, and discrimination in dismissals on the basis of marital status;
  - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
  - (c) To encourage the provisions of the necessary supporting

social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection of women during pregnancy in types of work proven to be harmful to them.

- **Article. 12.2:**...States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.
- *Convention on the Rights of the Child (CRC), 1989* (United Nations 1989)
  - **Article. 18(2):** For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
  - **Article. 18(3):** States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

## 2. *International Labour Standards*

- *ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*

Indonesia ratified *ILO Convention No. 111 in 1999*. *Convention No. 111* promotes equality and prohibits discrimination in employment and occupation. It defines discrimination as ‘any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation’.(Art.1(1a)). Discrimination occurs when a differential and less favourable treatment is adopted based on any of the above mentioned grounds at any stage of the employment cycle, from education and training for work, job search, recruitment, on the job, to after leaving the labour market.

*Convention No. 111* does not directly prohibit discrimination on the grounds of pregnancy and maternity. However, given that only women become pregnant, discrimination on these grounds can be considered to amount to discrimination based on sex.



- *ILO Maternity Protection Convention, 2000 (No. 183)*(International Labour Organisation 2014)

The latest *Maternity Protection Convention (No. 183) and Recommendation (No. 191)* adopted in 2000 form the most comprehensive protective framework for maternity protection for workers, worldwide. They provide for:

- 14 weeks of maternity leave, including six weeks of compulsory postnatal leave;
- Cash benefits at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living;
- Access to free medical care, including prenatal, childbirth and postnatal care, as well as hospitalization when necessary;
- Health protection: the right of pregnant or nursing women not to perform work prejudicial to their health or to that of their child;
- Breastfeeding: a minimum of a one-hour daily break, with pay; and
- Employment protection and non-discrimination.

### 3. National Instruments

- *The Indonesian Constitution: Chapter XA Human Rights*
  - **Article. 28D(1):** Every person shall have the right of recognition, guarantees, protection and certainty before a just law; and, of equal treatment before the law. (2) Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.
  - **Article. 28G(1):** Every person shall have the right of protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.
  - **Article. 28H(1):** Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and have the right to obtain medical care. (3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.
  - **Article. 28I(2):** Every person shall have the right to be free from discriminatory treatment based on any grounds whatsoever, and shall have the right to protection from such discriminatory treatment.

- *The Labour Law (2003):*

#### [Employment Protection and Non-Discrimination]

##### Chapter III Equal Opportunities:

- **Article. 5:** Any manpower shall have the same opportunity to get a job without discrimination.
- **Article. 6:** Every worker/ labourer has the right to receive equal treatment without discrimination from their employer.

##### Chapter XII Termination of Employment

- **Article. 153:** (1) The entrepreneur is prohibited from terminating the employment of a worker/ labourer because of the following reasons:  
[...] e. The worker/labourer is absent from work because she is pregnant, giving birth, having a miscarriage, or breastfeeding her baby.

#### [Cash and Medical Benefits]

##### Chapter X Protection, Wages and Welfare

- **SUB SECTION 4 WORKING HOURS, Article. 84:** Every worker/ labourer who uses her right to take the period of rest as specified under points b, c and d of subsection (2) of Article 79, Article 80 and Article 82 shall receive her wages in full.

#### [Maternity Leave and Related types of Leave]

##### Chapter X Protection, Wages and Welfare

- **SUB SECTION 4 WORKING HOURS, Article. 82:**
  - (1) Female workers/ labourers are entitled to a 1.5 (one-and a-half) month period of rest before the time at which they are estimated by an obstetrician or a midwife to give birth to a baby, and another 1.5 (one-and-a-half) month period of rest thereafter.
  - (2) A female worker/ labourer who has a miscarriage is entitled to a period of rest of 1.5 (one-and-a-half ) months, or a period of rest as stated in the medical statement issued by the obstetrician or midwife.



– **SUB SECTION 4 WORKING HOURS, Article. 93:**

(2) However, the provision as mentioned under subsection (1) shall not apply and the entrepreneur shall be obliged to pay the worker/labourer's wages if the worker/labourer does not perform work because of the following reasons: [...] c. The workers/labourers have to be absent from work because they are: getting married; are marrying off their children; are having their sons circumcised; are having their children baptized; or, **because the worker/ labourer's partner gives birth or suffers a miscarriage**; or, because the partner or children or children-in-law(s) or parent(s) or parent-in-law(s) of the worker/labourer or a member...

(4) The amount of wages payable to workers/ labourers during the period in which they have to be absent from work for reasons specified under point c of subsection (2) shall be determined as follows, [...] e. If a workers/labourers' partner gives birth or suffers a miscarriage, shall be entitled to receive a payment for **2 (two) days**;

[Health Protection at the Workplace]

Chapter X Protection, Wages and Welfare

- **SUB SECTION 3 WOMEN, Article 76:** (2) Entrepreneurs are prohibited from employing pregnant female workers/ labourers who, according to a doctor's certificate, are at risk of damaging their health or harming their own safety and the safety of the baby that is in their wombs if they work between 11 p.m. until 7 a.m.

[Breastfeeding Arrangements at Work]

Chapter X Protection, Wages and Welfare

- **SUB SECTION 4 WORKING HOURS, Article. 83:** Entrepreneurs are under an obligation to provide proper opportunities to female workers/ labourers whose babies still need breastfeeding; to breastfeed their babies if that must be performed during working hours.

- *The Safety Law (1970)*

### Chapter III Conditions

- **Article. 3:** (1) Safety conditions shall be prescribed by legislative regulation to:
  - a. Prevent and reduce the possibility of accidents; [...]
  - b. d. provide means of escape from fire or other danger;
  - c. e. provide first-aid in case of injury; [...]
  - d. g. prevent or control the incidence or spread of temperature variations, humidity, dust, dirt, smoke, vapour, gas, draught, variable weather conditions, rays or radiance, sound and vibration;
  - e. h. prevent or control the incidence of occupational disease whether physical or psychological; poisoning; infection; or, contagion;
  - f. provide adequate and suitable illumination;
  - g. j. provide satisfactory temperature and humidity levels;
  - h. k. provide satisfactory air circulation;
  - i. l. maintain cleanliness, health and good order.
- **Article. 4:** Safety conditions in relation to the planning, production, transportation, circulation, marketing, installation, use, application, maintenance and storage of materials, goods, technical products and means of production, which involve or may cause danger of accident, shall be prescribed by legislative regulation.
  - (2) Such safety conditions shall be based upon technical scientific principles and arranged into a collection of orderly, clear and practical provisions with reference to various activities - including those concerning construction, processing and manufacturing; protective equipment; testing and approbation; packaging or bagging; and, the furnishing of marks on materials, goods, technical products and means of production - to ensure the safety of the goods themselves, the workers concerned, and public safety.

## Chapter VI Safety and Health Committee

- **Article. 10:** The Ministry of Manpower shall have authority to set up Safety and Health Committee to develop co-operation, mutual understanding and effective participation on the part of the employer or manager and workers in workplaces, in fulfilment of their common tasks and obligations in the field of safety and health, for the promotion of production.  
The composition of Safety and Health Committees, their tasks, etcetera, shall be prescribed by the Minister of Manpower.

### 1. What is Maternity Protection / Pregnant Worker Protection at Work?

#### 1.1 Definitions

Maternity protection at work is an essential element in ‘equality of opportunity and treatment’ and ‘health protection’ (International Labour Organisation 2012).

Maternity protection has two aims:

- To preserve the health of the mother and her newborn; and,
- To provide a measure of job and income security; protection from dismissal and discrimination; the right to resume work after leave; and, maintenance of wages and income during maternity.

Maternity protection at work, and these Guidelines, is directed to any workplace employing women workers who are pregnant or returning from maternity leave.

#### 1.2 Practical challenges for Pregnant Worker Protection in the Indonesian garment industry

The workforce in the Indonesian garment industry surveyed by Better Work Indonesia in 2012 was 92.2 percent female. This overwhelming proportion of female workers reflected the gender composition commonly observed in Indonesian garment factories in which, as of 2008, 78 percent of a total 500,000 workers were women. Most workers were also young; 80.3 percent of workers were aged 21–35, which is usually considered to be the reproductive age.

However, even though there have been many calls for, and commitments to, maternity protection for all workers, many women still lack such rights and remain vulnerable throughout maternity. In some cases, women workers refuse or are refused these rights despite being legally entitled to them. Some women report that they fear that work may harm their maternal health or that maternity may threaten their livelihoods and economic security. According to the BWI assessment report (Better Work Indonesia 2012), one factory required women to undertake a pregnancy test as a requirement for recruitment.

Breastfeeding in particular, is one of the entitlements that is often neglected, due to a myriad of cultural and perceived productivity-related reasons.

The objective of these Guidelines is to provide practical guidance and advice to employers on pregnant worker-related issues in the workplace.

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- 2) Occupational Safety and Health for pregnant workers.

## 2. Why is Pregnant Worker Protection a Workplace Concern?

**2.1 Recognition by National Instruments** – please refer to Global Frameworks on Maternity Protection for further detail.

### **2.2 Importance and Benefits**

Maternity protection is important for the following reasons:

- It is a fundamental human right: the right to live free of discrimination and harassment and work in dignity and safety in decent working conditions is a human right. Maternity protection is obviously significant in the realization of these human rights. Maternity protection explicitly provides for the right of all women of reproductive age to participate in paid work without threat of discrimination and, in the case of maternity, the right of women to work in conditions of economic security and equal opportunity, as well as to benefit from decent working conditions.
- It is an essential component of gender equality: maternity protection is also a cornerstone of gender equality, which is not only important as a matter of rights and justice, but also is economically efficient. It is a driver of economic growth and poverty reduction, and it improves the economic, social and physical well-being of women, children, their households and their communities. Maternity protection is required to enable women to carry out their biological role, such as delivery and breastfeeding, without being marginalized in the labour market in a manner that threatens their productive role as workers and undermines their economic security. Thus, maternity is a condition that necessitates different treatment to achieve genuine equality and, in this sense, its protection is a premise of the achievement of the principle of equality of opportunities and treatment at work.
- It helps improve the health of mother and child: maternity leave is intended to safeguard the health of a woman and that of her child during the prenatal period. This protected leave is critical in promoting better health, in view of the particular physiological demands associated with pregnancy and childbirth. This protection also mitigates health risks and prevents participation in dangerous working practices that may impede or affect women and their children during pregnancy, after birth and whilst breastfeeding.

- It plays an important role in economic growth and poverty reduction: maternity protection strengthens women's economic roles and labour force attachment or LFA, which refers a lack of full engagement in education or employment. Providing maternity leave and protection against discrimination is a way to encourage young women of reproductive age to join the labour market. It is also an incentive for young mothers to maintain a labour market attachment and return to work at the end of leave. Increased labour force attachment yields productivity benefits and stimulates business. It increases the likelihood that women's skills and investments in their education and training are utilized efficiently. In this way, maternity protection can benefit employers who can better recruit and retain female employees with skills, knowledge and experience.
- It is part and parcel of the *Decent Work Agenda*, whose overall aim is to effect positive change in people's lives through creating Jobs, guaranteeing rights at work, extending social protection, and promoting social dialogue. Countless women lack access to decent work that would enable them to rise above poverty and work in safe conditions; many fall outside traditional legal and social protection systems that safeguard against vulnerability and provide access to health care. Through the Decent Work Agenda, a fundamental part of which is maternity protection, the ILO aims to ensure that women benefit equally from employment, rights, social protection and dialogue in order to make decent work a reality for all.

#### Benefits for Companies include:

- Pregnant workers who have good health and economic security will be more likely to return to the factory after maternity leave;
- Pregnant workers can continue to work productively;
- It is a smart investment for the employer to keep their employee mothers productive and engaged at work, because when maternity benefits are protected, female workers are more likely to see the factory as a good place to work; and,
- Employers can improve productivity, increase staff morale, reduce rates of staff turnover, reduce sickness, and reduce training and recruitment costs through a fitter and healthier workforce now and in the future.

#### Benefits for Pregnant Workers

- Pregnant workers attain a better quality of life, experience a better work environment, have better job security, experience healthier pregnancies, safer childbirth, suffer fewer complications, experience health and emotional benefits from infant feeding, and improvements in their future health and life expectancy.
- Children have a healthier, stronger and safer start in life; and an increased likelihood of better health later in life, due to the benefits of being breastfed.

## Benefits for Society

- Society at large gains from a healthier population, lower costs to the public purse from high maternal and infant mortality, a more productive workforce, and better quality of life through better health and longer life expectancy.

### 3. Entitlements of Pregnant Workers

Various kinds of international frameworks, labour standards and guidelines address maternity protection in the workplace. The *ILO Maternity Protection Convention 2000 (No. 183)* is one of the most comprehensive international labour standards. It accords the mother the right to a period of rest in relation to childbirth, with cash and medical benefits, employment security and non-discrimination, health protection and the right to breastfeed. However, the Indonesian government has not yet ratified the Convention; therefore the entitlements of pregnant workers are confined to existing Indonesian laws. The table below shows the entitlements of pregnant workers based on Indonesian national legislation, such as the *Manpower Act*:

Table 3.1 Entitlements of Pregnant Workers under Indonesian Law

		Qualifying Condition & Scope	Support Level & Period
Pregnancy & Childbirth	Maternity Leave	Pregnant worker and spouse, on the basis of doctor's certification of pregnancy.	1.5 (one-and-a-half) months before and after childbirth respectively, 3 months in total with 100% of wages, which is employer's liability (International Labour Organisation 2012) ( <b>Article. 82</b> – (1) and <b>Article. 84</b> , chapter 10 of No. 13 of 25 March 2003 on Manpower).
		Spouse, on the basis of doctor's certification of pregnancy (two days of paid leave is allowed for the spouse whose wife gives birth or has a miscarriage, as written in Indonesian labour law).	2 days for spouse ( <b>Article. 93</b> – (2)(C) and (4)(e), chapter 10 of chapter 10 in No. 13 of 25 March 2003 on Manpower).

	<b>Prohibition on Night Shift</b>	Pregnant worker, on the basis of doctor's reference note encouraging healthcare for pregnant worker and foetus.	Night shift work between 23:00 and 07:00 is banned ( <b>Article. 76</b> , chapter 10 of No. 13 of 25 March 2003 on Manpower).
	<b>Miscarriage Leave &amp; Stillbirth Leave</b>	Pregnant worker, on the basis of doctor's reference note of miscarriage or stillbirth.	1.5 months for mother ( <b>Article. 82</b> – (2), chapter 10 of chapter 10 in No. 13 of 25 March 2003 on Manpower).
		Spouse, on the basis of doctor's certification of pregnancy *.	2 days for spouse ( <b>Article. 93</b> – (2)(C) and (4)(e), chapter 10 of chapter 10 in No. 13 of 25 March 2003 on Manpower).
<b>After Childbirth &amp; Childrearing</b>	<b>Breastfeeding Break</b>	Worker who has given birth.	During working hours, 30 minutes break in the morning & afternoon respectively (twice a day, 1 hour in total) to provide breast milk and breastfeed infants under six months ( <b>Article. 83</b> , chapter 10 of No. 13 of 25 March 2003 on Manpower and Health Law No. 36/2009 Article 128).

### 3.1 Maternity Leave and Related Types of Leave

Leave provisions make up the core of maternity protection and work–family policies. The rationale for maternity leave is to support women in coping with both the physiological and psychological demands of pregnancy, childbirth, and breastfeeding. There are also other related types of leave such as paternity leave, stillbirth and miscarriage leave, besides maternity leave in Indonesia.

- *3.1.1 Maternity Leave*

Maternity leave is the woman's right to a period of rest from work in relation to pregnancy, childbirth and the postnatal period. Maternity leave covers the periods before, during and after childbirth. Its purpose is to safeguard maternal and foetal health during the perinatal period, in view of the particular psychological and physiological demands associated with pregnancy and childbirth. In Indonesia, maternity leave entitlements under the Law on Manpower Affairs apply to all female workers, being any female who works for a wage or other form of remuneration. The leave totals at least three months; one-and-a-half months before delivery and one-and-a-half months after the delivery.



*a) Maternity leave before childbirth*

While pregnancy and childbirth are physiologically demanding, pregnancy is not an illness and few of its aspects will affect a woman at work for the bulk of her pregnancy. However, in every pregnancy there is a period of time during which it is medically inadvisable for the woman to work. In this respect, a period of leave before birth is important for a woman to adequately prepare for the coming baby.

The duration of maternity leave required before childbirth is different for each woman and depends mainly on the extent of complications and pre-existing medical conditions. It also depends on occupational hazards that cannot be eliminated or addressed by adapting a pregnant woman's working conditions or transferring her to another post. Medical consensus suggests that for uncomplicated, singleton pregnancies, health-related maternity leave may be required to commence two to six weeks prior to the estimated date of birth (International Labour Organisation 2012).

*b) Maternity leave after childbirth*

Maternity leave after childbirth is crucial for maternal and newborn health. The first hours, days and weeks after childbirth are imperative for bonding, recovery of the mother, and for laying a solid foundation of development for the child. This time also poses considerable health risks for both mother and newborn baby. Two-thirds of maternal and newborn deaths occur in the first two days after birth, while four percent of maternal deaths and almost thirty percent of neonatal deaths take place between the second and sixth week after childbirth.

The period of postnatal leave under Indonesian law is one-and-a-half months. Extended time is possible on a case-by-case basis. Extension to maternity leave with respect to breastfeeding is based on certification from the doctor and any written agreement between the company and the relevant worker and/or the union, such as through the working agreement, company regulation, and/or collective labour agreement (Better Work Indonesia 2012).

- Extension of leave: The length of the maternity leave period may be extended if required. This must be validated with a written statement from the obstetrician or midwife either prior to, or after, the delivery (Explanatory notes to Article 82 of the Law on Manpower Affairs 2003).
- Leave in case of illness or complications: There is no general entitlement to leave in the case of any pregnancy-related illness or complication. However, a worker who has a miscarriage is entitled to a period of leave of one-and-a-half months, or a period of leave as stated in the medical statement issued by the obstetrician or midwife (Article 82 of the Law on Manpower Affairs 2003).

## Benefits of Maternity Leave

Taking maternity leave has myriad benefits for both mother and child. It helps to reduce infant mortality and morbidity, and helps to improve overall health.

Maternity leave is necessary to allow the mother to:

- Detect and report postnatal complications and health risks that may arise;
- Heal, rest and recover physically from labour and childbirth, including the related sleep loss or disruption and the accompanying fatigue;
- Establish and maintain exclusive breastfeeding, which means the child is fed with only breast milk and no other type of sustenance;
- With the father, adjust and adapt psychologically and emotionally to the parenthood;
- Bond with her child and learn how to meet his/her needs, in order to guarantee the optimal growth of the infant; and,
- Afford time for postpartum and neonatal care of health professionals.

- *3.1.2 Related types of Leave*

- a) Paternity leave:*

- In Indonesia, two days of paid leave is allowed for the partner who has given birth or suffered a miscarriage – this is a part of his paternity right. This leave aims to enable fathers to spend time with the mother and his newborn during childbirth; to participate in events or celebrations related to the birth; and, to carry out other related formalities. Paternity leave also provides an opportunity for fathers to begin nurturing and bonding with their child; to support the mother with the many physical and psychological demands related to childbirth; and, to adjust to the new responsibilities of parenthood.

- b) Miscarriage leave:*

- Miscarriage is the term used for foetal death in utero. Indonesia provides leave for one-and-a-half months in the case of a miscarriage.

- c) Parental leave:*

- No relevant provisions are identified in Indonesia.

- Indonesian labour laws are silent on adoption rights and carers' rights, but in the case of adoption rights, as long as all legal documents are given to the employer, parents of an adopted child will have the same maternal and paternal rights as parents of a naturally born child. In terms of carers' rights, leave may be granted by an employer as unpaid leave. This also applies to emergency care for dependants, a spouse, or a close family member. Workers may be given permission for unpaid leave (Thomson Reuters Legal Solutions 2014).

## 3.2 Cash and medical benefits

- 3.2.1 Cash benefits

*a) Maternity leave benefits:*

Every worker who uses her right to take maternity leave shall receive her wages in full (Article 84 of the Law on Manpower Affairs 2003). The right to payment during maternity leave applies to any worker, being any person who works for a wage or other form of remuneration, who uses her right to take maternity leave (Articles 82 and 84 of the Law on Manpower Affairs). The cash benefit is for the duration of maternity leave taken by the worker, in accordance with Indonesian law. The principle entitlement period is up to three months. A worker's period of maternity leave may be extended as required by a written statement from the obstetrician or midwife. It is not clear whether female workers are entitled to full wages for such an extension period (Articles 82 and 84 of the Law on Manpower Affairs 2003)

*b) Paternity leave benefits:*

If a worker is absent from work because his partner gives birth to a baby or his partner suffers a miscarriage, he shall be entitled to receive a payment for two days' work during the absence (Article 93(4)(e) of the Law on Manpower Affairs 2003). The entitlement to be paid paternity leave applies to workers who are employed by the employer.

A worker is any person who works for a wage or other forms of remuneration.

The worker shall be entitled to paid paternity leave if his partner gives birth or suffers a miscarriage (Articles 93(2)(c) and 93(4)(e) of the Law on Manpower Affairs 2003). The entitlement to payment on account of paternity leave is for a period of two days (Articles 93(2)(c) and 93(4)(e) of the Law on Manpower Affairs 2003). The worker shall be entitled to receive a payment for two days' work during the absence (Article 93(4) (e) of the Law on Manpower Affairs 2003). The benefit is to be paid by the employer (Article 93 of the Law on Manpower Affairs 2003) (International Labour Organisation 2011).

An employer is:

- a. An individual (proprietor), partnership, or legal body that runs an enterprise that he or she or it owns;
- b. An individual, partnership, or legal body that independently runs an enterprise that does not belong to him, her or it.
- c. An individual, a partnership, or a legal body that is situated in Indonesia but represents an enterprise as referred to under point a) and point b), which has its seat/ base outside the territory of Indonesia (Articles 1(3), 1(5), 93(2) of the Law on Manpower Affairs 2003).

*c) Adoption leave benefits:*

No relevant provisions are identified in Indonesia.

- 3.2.2 *Medical benefits*

- a) *Workers are entitled to medical benefits under national social security laws.*

- Prenatal, childbirth and postnatal care:  
Employees, their spouses and up to three children shall have the right to receive healthcare benefits, including maternity check-ups and childbirth assistance. A worker needing the service of pregnancy examination and/or help at work shall obtain this service from an appointed maternity hospital (Article 16 of the Act concerning Employees' Social Security; Articles 33 and 42 of the Government regulation No. 14 on the implementation of the program of workers' social security).
    - Financing of benefits:  
This includes the employees' social security programme. Contributions for the branch of Health Maintenance Security shall be fully borne by the employer. Only employers employing 10 workers or more, or spending at least IDR 1,000,000 a month on wages, are obliged to insure the workers in the employees' social security programme (Article 6 of the Act concerning Employees' Social Security; and, Articles 2 and 9(2) of the Government regulation No. 14 on the implementation of the program of workers' social security).

4. Breastfeeding arrangements at work (Better Work Indonesia 2012)

‘Breast milk is the best food a baby can have and breastfeeding gives a child the best possible start in life.’

Anthony Lake, *UNICEF Executive Director*, July 2010

**4.1 What is Breastfeeding?**

Breastfeeding provides naturally-produced food for the healthy growth and development of infants; it is also an integral part of the reproductive process with important implications for the health of mothers. Exclusive breastfeeding for the first six months of the child’s life is the optimum way of feeding infants, according to such research as conducted by the US Department of Health. This research found that during the first months of life, infants who are breastfed exclusively receive stronger protection against infections than those who are not (Department of Health and Human Services 2000). Breastfeeding an infant for a longer period of time may also result in more robust protection against infections. It is therefore important that the workplace has an appropriate nursing room and gives working mothers the time they need to express their breast milk.

Under the Health Law in Indonesia, mothers are encouraged to breastfeed their children exclusively from birth until six months old. It is expected that family members, the Government, Regional Governments, and communities will support lactating mothers by providing time and space for them to breastfeed their babies in workplaces and public areas. This requirement is in line with two joint regulations issued in 2008 by the State Minister of Women Empowerment, and the Minister of Labour and Transmigration, together with the Minister of Health. Any party intentionally obstructing breastfeeding is liable to imprisonment for up to one year and a fine of up to IDR 100,000,000. If this unlawful act is committed by a corporation, the fine can be tripled. In addition, the business license and/or legal entity status of the corporation can be revoked.

For more details on breastfeeding, please refer to the Better Work Indonesia document, *Breastfeeding-Friendly Workplaces: A Guideline for Employers*, which can be found on the BWI website.

- *Benefits of Breastfeeding*

Benefits for the Worker

- Obtain a decent, appropriate and clean facility to express milk.
- Protect the rights of workers’ children to have the best and most complete nutrition, which can be provided by breast milk.
- By fulfilling the child’s right to receive breast milk, the child’s health will be more secure, which may reduce health claims by the worker later on in their career.
- Breastfeeding workers enjoy both physical and psychological benefits, which ultimately has a positive impact on their performance and productivity in the workplace.
- Children who are breastfed are healthier and less prone to illness.

## Benefits for the Enterprise

- **Lower Health Costs**  
Breastfeeding can reduce medical costs for mothers and children. For every 1,000 babies not breastfed, there are an extra 2,033 physician visits, 212 days in the hospital, and 609 prescriptions.
- **Lower Absenteeism**  
One-day absences to care for sick children occur more than twice as often with mothers of formula-feeding infants than mothers of breastfeeding infants.
- **Keeping Valuable Employees**  
High employee turnover rates are costly for enterprises. Employers are interested in retaining valuable workers, including those who go on maternity leave. Providing family-centred programmes to help employees balance family and work commitments can positively impact retention rates, resulting in potential cost savings for the enterprise. A study of multiple enterprises with breastfeeding support programmes found an average retention rate of 94 percent.
- **Positive Public Relations**  
Breastfeeding policies may help employers build goodwill within the community. In addition, any recognition given to breastfeeding-friendly worksites can be valuable because it gives enterprises a competitive advantage when recruiting and retaining workers.

### 5. Health protection at the workplace for pregnant workers (International Labour Organisation 2012.)

One of the important aspects of maternity protection in the workplace is to ensure that pregnant women are not exposed to working conditions or substances at the workplace that might pose particular risks during maternity. Since pregnant workers are considered a specific risk group, conditions which may be considered acceptable in normal situations may no longer be so during pregnancy. Therefore, occupational safety and health (OSH) are important considerations, and measures should be taken with regard to the safety and health of pregnant workers.

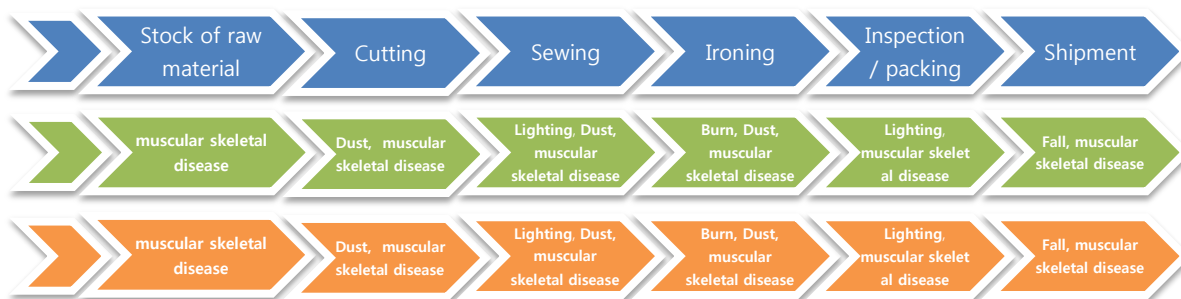
Employers have a legal duty to meet the needs of pregnant workers. Workers are protected throughout the course of their pregnancy, from the moment the employer has been informed of their condition. Meeting this requirement will be beneficial for both the factory and the workers.

#### **5.1 Assessing Risks to Health and Pregnancy**

For maternity protection, it is essential to undertake an assessment of risks to pregnant workers in the workplace. On receiving notification that a worker is pregnant, an employer should assess the specific risks to the worker and take action to ensure that she is not exposed to anything in the workplace that will damage either her safety or health, or that of her developing child.

Risk assessments should be kept under review as the pregnancy progresses, as conditions change during pregnancy. Any significant changes in the individual's health (or complications in pregnancy or birth) or proposed changes in the work, work equipment, workforce or workplace should also be assessed for risks to measure the impact on workers' health. Such assessments provide opportunities both to prevent risks and harm, and to engage in education and training on safe maternity at work.

Workers in garment industry are exposed to high concentration of cotton dust in the work area; high level of noise in the weaving areas; finishing processes; extreme heat; dust from textile fibers; and, ergonomic hazards (Lu 2011). The chart below offers an example of addressing potential risks in the garment industry. Generally, the process in garment factories consists of six steps: stock of raw material, cutting, sewing, ironing, inspection/packing, and shipment.<sup>1</sup> Each individual step has its risk as below:



There are many kinds of reproductive hazards at work that can affect the woman and the child. The different groups of hazards are as follows: biological agents, chemical agents and other hazardous substances, physical agents, physical and mental demands, working conditions, and other workplace health, safety and hygiene issues. This section will give examples of how agents and working conditions can affect reproductive health, with particular emphasis on effects on pregnancy.

<sup>1</sup> Korea Occupational Safety and Health Agency (KOSHA), KOSHA Risk Assessment OSH at garment factory, 2012, P.2



- *5.1.1 Biological hazards*

Bacteria, viruses, parasites and fungi are typical examples of biological hazard, including infections carried and transmitted by people, some diseases carried by animals or other wildlife, and some micro-organisms that are found in water, food, soil or other substances.

- Any severe infection of biological hazard is likely to harm the woman and therefore put the baby at risk.
- In particular, some micro-organisms can infect the womb and cause miscarriages, foetal death, birth defects, stillbirth, premature birth or early neonatal death.
- Some agents can bring about increased risks of cancer, illness or other health problems for the woman or the child in later life.
- A few agents can cause abnormal bleeding, blood clotting or complications at birth.
- The woman may pass on an infection without experiencing any symptoms herself.

- *5.1.2 Chemical hazards (hazardous substances)*

Chemicals, chemical compounds or chemical intermediates in any form are also dangerous for pregnant workers and their babies, including chemicals that are or may be carcinogenic, teratogenic or mutagenic or toxic to reproduction at any stage; some heavy metals (e.g. mercury, lead); some drugs; and, harmful chemicals that may be absorbed through the skin, swallowed or breathed in (e.g. pesticides or tobacco smoke).

- Before conception: Menstrual disorders; low sperm count, infertility or sterility; reduced sexual drive or impotence; damage to male or female reproductive organs; irreversible genetic damage in sperm and eggs causing disease or birth defects; miscarriage; or, stillbirth.
- Upon conception: Difficulties conceiving a child.
- During pregnancy: Miscarriage, stillbirth, cancer, disease, birth defects and/or developmental problems
- On the child at or after birth, or during breastfeeding:
  - Premature birth, early neonatal death, low birth weight or developmental problems due to toxic effects of substances affecting development in the womb;
  - Early childhood cancer due to effects of earlier exposure to carcinogens; and,
  - Toxic effects, including developmental problems and allergies due to substances carried in the mother's breast milk or on parents' work clothes or skin.

- *5.1.3 Physical hazards*

Physical agents can cause different kinds of reproductive harm to the woman and her child. Noise, extremes of heat or cold (including climate), and pressurized atmospheres are notable examples of physical hazards. Depending on the agent and the nature and timing of exposures, they may:

- Harm the expectant mother
- Threaten her health and her pregnancy
- Cause foetal lesions or other damage
- Lead to low birth weight, miscarriage or premature birth

- *5.1.4 Physical and mental demands, movements and postures*

Due to the nature of the work process in garment factories, employers should pay special attention to the following hazardous points: arduous work; manual handling of loads; prolonged sitting or standing; awkward movements or postures; transportation or travel; stressful work or work situations; intense workloads; work requiring balance; or, uniforms that do not fit or impede movement.

The hazardous examples below are likely to lead to reproductive harm.

- Increased risks of injury or ill-health due to stress or strain on the woman's body, particularly on her heart, circulatory system, limbs or lower back;
- Increased risks of anxiety and stress;
- Pain and fatigue; and,
- Possible increased risks to the health and development of the unborn child, and to the pregnancy.

In particular, potential harm from prolonged sitting or standing, postural problems, over-exertion, prolonged stress, and fatigue, are often documented.

- *5.1.5 Working time and conditions*

Typical hazards and bad examples of working time and conditions include: night work; rotating shifts; long or inflexible working hours (including overtime); restrictions on breaks; starting and finishing times (too early or too late); lone working; workplace harassment; sexual harassment; lack of psychological support; restrictions on maternity leave or leave for medical care; lack of nursing breaks; and, breastfeeding facilities when breastfeeding.

In terms of potential reproductive harm, employers should keep the following points in mind:

- Long hours combined with intensive or arduous work can increase the risk of fatigue and exhaustion. It can also aggravate other problems, such as risks from manual handling, postural strain or hazardous exposures. For this reason, under a doctor's statement, pregnant workers who are at risk of damaging their health or harming their own safety or the safety of their unborn child should not be allowed to work between 11pm and 7am (Article 76 of Chapter X Protection, Wages and Welfare in Act No.13 concerning Manpower (2003).
- Inflexible piecework systems, intensive workloads, lack of control over the pace of work, or inability to take rest or toilet breaks when needed, can increase physical and mental stress and strain.
- Lack of psychological support or intentional denigration from employers and co-workers vis-à-vis maternity, maternity leave and breastfeeding, can have mental consequences on mother and child.
- Inadequate maternity leave both before and after the birth, or not being allowed to take sick leave if there are medical complications, can increase risks to mother and child. Preventive care is important - it can help to detect and prevent later complications.

- *5.1.6 Workplace and hygiene problems*

Workplace and hygiene problems are as follow: inadequate first aid; fire and emergency procedures; unsanitary or unhygienic conditions; lack of access to clean toilets, washing and changing facilities; unhygienic eating and refreshment areas; lack of safe drinking water; lack of nursing or rest facilities; unsafe water (for washing, cleaning, cooking or drinking); rough terrain, uneven or slippery floor surfaces; lack of space or poor workplace layout; and, remote or inaccessible workplaces/environment.

Examples of the potential reproductive harm which employers should consider include:

- A lack of suitable sanitation, washing and changing facilities and poor general hygiene increases the risks of infection, contamination, discomfort and stress.
- Unsafe drinking water and contaminated industrial water supplies increase the risks of dehydration and heat stress.
- A woman with restricted mobility may be particularly vulnerable in a medical emergency or fire. With regard to breastfeeding, the nursing room should never be in a toilet.

## 6. Good practices on health and safety for pregnant workers (Better Work Vietnam 2014)

Managers and supervisors should seek to develop creative and flexible responses to individual pregnancy-related needs. Temporary solutions can include the following:

- Grant an exemption from work without loss of salary, to allow pregnant women to attend prenatal check-ups;
- Allow leave for maternity-related illness or complication;
- Permit pregnant worker to take short breaks, to walk, and to stretch several times per day;
- Refrain from asking pregnant workers to work overtime;
- Ensure that all pregnant workers benefit from special protection against hazardous jobs and night work;
- Take measures to protect pregnant women from risks linked to certain hazardous work:
  - Avoid coming into contact with hazardous chemicals;
  - Avoid standing for long periods of time, and use a comfortable chair or stool;
  - Avoid lifting heavy loads;
  - Avoid tasks involving a risk of falling or slipping;
  - Avoid tasks requiring workers to constantly be in a crouched or bent position;
  - Avoid working long hours in hot temperatures; and,
  - Avoid working for long periods with loud noise.

## 7. Employment protection and non-discrimination

Maternity protection often constitutes a source of discrimination in employment, in relation to access to employment, equal opportunities, treatment at work and termination of employment. The first part of this section helps to explain what employment protection and non-discrimination involves, followed by suggested actions that can be taken by employers to prevent and address discrimination, for instance in relation to the proper way of recruiting and employing women workers.

## 7.1 Definition

Childbearing women face discrimination based on this demographic in many ways. It may manifest itself through the refusal of a company to hire women because they are currently pregnant or may become pregnant during their tenure; or, it may manifest itself in the form of the unfair dismissal of women because they are pregnant. Whether maternity discrimination or complaints thereof, or a combination of both, are increasing, the fact remains that any persistent discrimination is unacceptable and warrants action. Thus, measures to safeguard the employment of pregnant workers and to deter all forms of discrimination against women in employment based on maternity are, together, an integral part of maternity protection.

- *7.1.1 Forms of Discrimination*

- Rejecting employment

Pregnancy appears to be a factor not only in women losing their jobs, but also in women having difficulty obtaining a job in the first place. Better Work Indonesia found that at least one employer required women to take a pregnancy test as a requirement of employment (Better Work Indonesia 2012). In addition to pregnancy tests, it is also usual that during interviews, employers question a job applicant about their plans for childbearing. Some employers intentionally refuse to hire young women to avoid the possibility that they may utilize maternity leave at some future point in their careers. However, fundamentally, women have the right to not be discriminated against due to their reproductive potential.

- Dismissal

Maternity-related discrimination has grown in recent years as the typical form of discrimination throughout the world since the economic crisis (International Labour Organisation 2012). In some countries, categorized as Export Processing Zones, women workers are often forced to show used sanitary towels to prove that they are not pregnant. In this respect, pregnant workers are easily placed under such pressure that they are forced to resign, or are illegally dismissed. Indonesia is no exception. In Indonesia, cases have emerged in which companies fired pregnant workers or those on maternity leave, or forced them to resign. According to a 2003 report conducted by the International Confederation of Free Trade Unions, Indonesian workers had been fired for taking three-month maternity leave (Labour Behind the Label 2014). The practice of unfair dismissal is usually driven by either an unsubstantiated fear of reduced productivity or the paternalistic view that a pregnant woman cannot or should not work. However, maternity-related dismissal directly impacts the economic security and health of victims of discrimination, as well as their children. Lower income due to job loss means less revenue with which to raise a newborn. Lack of access to affordable healthcare of sufficient quality is also a risk for unemployed women, which can in turn increase otherwise preventable incidences of maternal and infant mortality.

- **7.1.2 Wrongful treatment at work**

There are many forms of wrongful treatment that can emerge in the workplace. For example, harassment of pregnant workers is inappropriate and must not be tolerated. This can include verbal abuse, higher production quotas, longer work hours, and more difficult tasks, such as standing instead of sitting or being transferred to a warmer work area (Labour Behind the Label 2014). Other forms of wrongful treatment are to change the employment status, position, wages, benefits or seniority of workers during maternity leave. From the perspective of employment opportunities, these unfair practices can have adverse effects on women's salaries and their access to certain benefits such as seniority and promotions.

## **7.2 Conditions and procedures during employment & recruitment**

- **7.2.1 Recruiting a pregnant woman or a woman who may become pregnant**

- Employers are not allowed to request a pregnancy test or proof of sterilization as a condition of employment, nor are they allowed to question women about their plans for childbearing: fundamentally, women have the right to not be discriminated against due to their reproductive abilities. Therefore, it is inappropriate to make enquiries during recruitment processes about an applicant's intentions regarding future pregnancy, or how childcare needs will be met. Such questions could appear to be, and may be found to indicate, sex or maternity discrimination.
- Employers should ensure that occupational safety and health (OSH) risks in relation to potential pregnancy are not used as a barrier to employing women in the workplace: since companies may recruit women who are pregnant, there must be an assessment of OSH risks that should include this likelihood. This is a factor to include in employment planning. Medical information about a pregnancy may be sought so that an employer can address OSH issues, provided the information is not used in a discriminatory matter when received.
- Employers should guarantee the right to return to work or equivalent position: the right to return after maternity leave to the same or an equivalent position as the one held prior to maternity leave is an important part of employment protection during maternity.
- The burden to prove that dismissal is not related to maternity should be on the employer: given that the real rationale for dismissal is generally known only to the employer, it is pragmatically very difficult for workers to show that the dismissal was in reality maternity-based discrimination. Thus, transferring the burden of proof to the employer strengthens the worker's protection and enforces the principle of equal treatment (Article 8 of the Maternity Protection Convention, 2000 [No. 183]).

8. Frequently Asked Questions

	Frequently Asked Questions	Answer
Maternity Leave & Related types of Leave	Q1. How long does maternity leave last?	Maternity leave lasts for three months; one-and-a-half months before delivery and one-and-a-half months after the delivery. In the case of miscarriage, a female worker is entitled to one-and-a-half months off after the miscarriage.
	Q2. What rights, including rights to pay and benefits, does a woman have during maternity leave?	A female worker is entitled paid time-off during her maternity leave. The same applies in case of miscarriage.
	Q3. What rights does a woman have upon her return to work from maternity leave?	If applicable, a worker who is still nursing her child must be given an appropriate time and facility to nurse her child if it has to be done during working hours. She is allowed to do light work for two months after returning from maternity leave.
	Q4. Do fathers have the right to take paternity leave?	Yes, if the worker's partner gives birth or miscarries, he may take two days paid leave.
	Q5. Are there any other parental leave rights that employers have to observe?	Yes, Article 93 (4) of the Manpower Law provides, among others, the following parental paid leave rights: 1) if an employee's child gets married, two days; 2) if an employee's child is circumcised, two days; 3) if an employee's child is baptized, two days; 4) if an employee's partner, parent or parent-in-law, child, or daughter-in-law or son-in-law dies, two days; and, 5) if an employee's family member living in the same house dies, one day.
	Q6. Are employees entitled to work flexibly if they have responsibility to care for dependents?	A worker who is still nursing her child must be given an appropriate opportunity to nurse her child if this has to be done during working hours.

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