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Public Defender of Rights

Parenthood and discrimination at work: practical guide for parents regarding their right to equal treatment in the labour market

Recommendation of the Public Defender of Rights 2022

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Contents

Mission of the Defender

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities and other institutions, as well as against their inactivity. The Defender may peruse administrative and court files, request explanations from the authorities and carry out unannounced inquiries on site. If the Defender finds errors in the activities of an authority and fails to achieve a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Defender systematically visits facilities where persons are restricted in their freedom, either ex officio or as a result of dependence on the care provided. The purpose of the visits is to strengthen protection against ill-treatment. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are directed both to the facilities themselves and their operators as well as central governmental authorities.

In 2009, the Defender assumed the role of the national equality body. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, sex/gender, sexual orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out surveys, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

In January 2018, the Defender became a monitoring body for the implementation of rights recognised in the Convention on the Rights of Persons with Disabilities, also helping European Union citizens who live and work

in the Czech Republic. The Defender provides them with information on their rights and helps them in cases of suspected discrimination on grounds of their citizenship.

The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an enjoined party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an administrative action to protect a general interest or to file an application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also recommend that a relevant public authority issue, amend or cancel a legal or internal regulation. The Defender advises the Government to amend laws.

The Defender is independent and impartial, and accountable for the performance of his or her office to the Chamber of Deputies, which elected him or her. The Defender has one elected deputy, who can be authorised to assume some of the Defender's competences. The Defender regularly informs the public of his or her findings through the media, web, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the Annual Report on the Activities of the Public Defender of Rights submitted to the Chamber of Deputies.

Foreword

The Public Defender of Rights has been in the position of national equality body since 2009. It is my duty as Defender to contribute to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, sex/gender, sexual orientation, age, disability, religion, belief or world view.

I also provide methodological assistance to people who have become victims of discrimination in the labour market on the grounds of their parenthood. I am approached every year by individuals who feel discriminated against on the grounds of sex/gender;[1] under the anti-discrimination law, these grounds also comprise parenthood. Many of these people seek merely advice that would help them grasp this subject and devise arguments for their dealings with the employer. To these people, I address this recommendation[2]: a practical manual for parents regarding their right to equal treatment in the labour market. I hope that this text will help all parents seeking an appropriate work-life balance to become familiar with the issue of equal treatment, as it manifests itself in the Defender's work and in the complaints they address to me.

The present Recommendation deals with individual employment matters chronologically – from the commencement of employment to its termination. The last section summarises the defence options by individual bodies and by the most common situations. Each of the sections is accompanied by illustrative examples that make it easier to understand the basic principles and legal rules, as well as cases from the Defender's practice gathered over the past twelve years. I believe that together with brief recommendations for parents in the labour market, the whole guide will help employees across sectors to better respond to events at work and become familiar with their rights, and also their limits.

1. In 2020, the Defender received complaints regarding discrimination on the grounds of sex (which comprise parenthood) in the area of employment from 13 female and 3 male complainants. In 2019, the Defender dealt in this area with complaints from 21 female and 10 male complainants, and in 2018, from 16 female and 4 male complainants.
2. I issue my recommendations in connection with the project "Reinforcing the activities of the Public Defender of Rights in the protection of human rights (with the aim of establishing a National Human Rights Institution in the Czech Republic)", No. LP-PDP3-001. The project is part of Human Rights Programme financed from the 2014–2021 Norway grants through the Czech Ministry of Finance.

I believe that enough information on both sides can facilitate amicable settlement of conflicts in labour-law relationships. In these cases, as well as in cases where such settlement cannot be reached, I am prepared to continue providing methodological assistance not only to victims of discrimination, but also to those who want to avoid it.

My Recommendation builds on a number of my previous outputs and also those of my predecessors. In 2018, my predecessor issued a Recommendation regarding measures for positive work-life balance in civil service, which aimed to promote the use of flexible forms of work and other benefits at ministries. The Recommendation directly followed up on a survey concerning work-life balance in civil service at most Czech ministries. Certain parts of the Recommendation can also serve as a source of inspiration for other civil service offices, empowering them to improve the situation of civil servants in the area of work-life balance.

The public can make use of a series of leaflets available on the Defender's website. An overview of work-life balance measures in employment is provided in the leaflet "Work or family? Let's have both!"[3] General information about equal treatment of parents is provided in the leaflet "Sex-based discrimination",[4] which is also available in a version for people with visual impairments[5]. Leaflets have also been created to explain practical issues related to employment and parenthood: for example, a leaflet on long-term carer's allowance,[6] parental allowance[7], and options for resolving employment disputes[8]. I believe that the present Recommendation will answer a number of questions many parents encounter in the labour market.

I wish you a pleasant read.

JUDr. Stanislav Křeček
veřejný ochránce práv

3. Work or family? Let's have both! Available at www.ochrance.cz/uploads-import/Letaky/Sladovani-v-pracovnim-pomeru.pdf.
4. Sex-based discrimination. Available at www.ochrance.cz/uploads-import/Letaky/Diskriminace-z-duvodu-pohlavi.pdf.
5. Sex-based discrimination. Version for people with visual impairments. Available at www.ochrance.cz/letaky/diskriminace-z-duvodu-pohlavi/diskriminace_z_duvodu_pohlavi_-_verze_pro_osoby_se_zrakovym_postizenim.docx.
6. Long-term carer's allowance. Available at www.ochrance.cz/uploads-import/Letaky/Dlouhodobe-osetrovne.pdf.
7. Parental allowance. Available at www.ochrance.cz/letaky/rodicovsky-prispevek/rodicovsky-prispevek.pdf.
8. Labour-law relationships and labour inspection. Available at www.ochrance.cz/uploads-import/Letaky/pracovnepravni-vztahy.pdf.

Brief recommendations for parents in the labour market

1) Know your rights

The Labour Code protects employees in many situations – e.g. against termination at a time when the employee is ill or on maternity leave. The guide will help you find your way around basic legislation.

2) Do not get discouraged

Whether you have an unpleasant experience, ran into an inappropriately phrased advertisement or fear to ask for a part-time job. Many employers are happy to accommodate parents, so do not let fears or a bad experience put you off.

3) Be proactive

Do you have any special requirements at work or are you unsure what your employer is planning? Do not be afraid to ask how you are doing, or ask for anything that would help you at work. You might be surprised by the employer's positive response.

4) Stay in touch with your employer

It is always a good idea to stay in touch with your employer during maternity and parental leave (as well as in case of other long-term absence at work). Make it clear in time that you intend to continue working when you return. Invitation to a party at work can help you stay in touch with your colleagues and renew the relationships once you return.

5) Beware of termination by agreement

Always take a few days to think about the situation and figure out your options. Do not let yourselves be pushed into something you are not sure about. It is difficult to contest an agreement you have signed. That being said, a unilateral notice of termination can be accepted without worries.

6) Keep track of health insurance payments

You must report any changes between your employer and the State in case of a transition between work and maternity/parental leave to your insurance company. Otherwise, you might be in default with payments. You should also pay attention to the grounds on which the State pays for your insurance – for example, if you finish drawing your parental allowance but continue to care for a small child at home, the State will continue to pay, but you must report the change.

7) Do not wait unnecessarily to register with the Labour Office

Timely registration with the Labour Office after termination of employment can make a great difference in your unemployment benefits. Register before the end of your last job or within three days of its termination.

8) Ask for advice

If you find yourselves in any suspicious situation, do not hesitate to contact a legal counselling centre or a lawyer. The chances of success increase if the situation is dealt with in due time.

9) Discuss problems with your employer first

An amicable solution can foster healthy relationships; litigation usually has the opposite effect.

10) Do not be afraid to defend yourself

If an amicable solution fails, do not be afraid to stand up for yourself and take legal action.

11) Pay attention to deadlines

If you decide to sue your employer for wrongful termination, you must file the lawsuit within two months of the termination.

12) Gather underlying documents

Conflicts at work and especially situations involving discrimination are often difficult to prove. As soon as you suspect trouble, it is wise to start gathering any evidence to support your claim.

13) Are you lost? Contact the Defender

The Defender's task is to provide methodological assistance to victims of discrimination. He will help you get oriented in your situation and will direct you to the most suitable solution. It is simple: you can also file a complaint by e-mail at podatelna@ochrance.cz.

Glossary of terms: discrimination

Anti-discrimination action (anti-discrimination lawsuit) is an action (lawsuit) by virtue of which the plaintiff asserts his or her rights under the Anti-Discrimination Act. The plaintiff can claim refrainment from discrimination, remedying the consequences of discrimination, reasonable satisfaction and financial compensation for intangible damage.

Discrimination (also referred to as "unequal treatment") is different treatment of people in comparable situations

- in one of the areas defined by the law; and
- on the basis of one of the grounds ("protected characteristics") specified by the law.

Discrimination is assessed primarily under the Anti-Discrimination Act. In labour-law relationships, it is also covered by the Labour Code, which contains many references to the Anti-Discrimination Act, and expands on some of its provisions. Discrimination might not be intentional. What is important is the result, not the intent.

Protected characteristic is a characteristic based on which a person may not be placed at a disadvantage. According to the Anti-Discrimination Act, these characteristics include the following: race, ethnicity, nationality, sex, sexual orientation, age, disability, religion, belief or worldview, and in some cases citizenship (in Czech: státní příslušnost). Some legal regulations (e.g. the Labour Code) may also contain other grounds (e.g. political convictions or trade union membership).

Indirect discrimination is an act or omission where a group of individuals protected by the law (a group defined by a protected characteristic, e.g. people with disabilities) is put at a disadvantage based on a seemingly neutral provision or practice. This provision or practice cannot be reasonably justified. Where indirect discrimination is suspected, it is always necessary to examine whether the contested practice is justified by a legitimate objective and, if so, whether the means of achieving this objective are proportionate and necessary.

Example: The employer provides language training only to full-time employees. This may, on the face of it, be a measure that is not related to any protected characteristic. However, if part-time jobs at the employer are occupied predominantly by parents balancing work and childcare, such a rule may constitute indirect discrimination on the grounds of parenthood.

A special type of indirect discrimination is a **failure to take reasonable accomodation** for a person with a disability. These are specific situations where the employer can be required to adopt measures or make adjustments that will enable a person with a disability to perform work.

One can imagine, for example, building a ramp on a staircase, purchasing a special ergonomic chair or adjusting working hours. Discrimination is not involved in cases where such a measure would be disproportionate for the employer, e.g. if it would impose an excessive financial burden.

Harassment is improper conduct that is aimed at or results in diminishing the dignity of a person and creating a hostile, humiliating or offensive environment. If it relates to one of the protected characteristic, this may constitute discrimination.

Example: A senior employee assigns demanding tasks with impossible deadlines to a female employee because he, in fact, wants her to quit – the senior employee does not want to have parents of small children on his team.

Discrimination by association may arise if a person who is being treated unfavourably has a close relationship to a person identified by a protected characteristic.

An example would be a parent of a child with a disability who is being penalised by their employer for absences related to the care for that child, although the employer tolerates the same behaviour by other employees-parents.

Sex/gender is one of the protected characteristics listed in the Anti-Discrimination Act. While the Act itself uses the term "sex", the recommendation uses the term "gender" where more suitable. Discrimination may concern women as well as men. The Act states that discrimination on the grounds of sex also includes discrimination on the grounds of pregnancy, parenthood (motherhood or fatherhood) and/or gender identity. Manifestations of motherhood may include not only the actual fact that a woman has given birth to a child, but above all the resulting consequences, including the duty to care for the child.

Victimisation is unfavourable treatment, punishment or disadvantage following after the victim of discrimination has decided to defend themselves against such conduct – e.g. by means of a complaint to their superior or by taking the case to court.

In employment relationships, victimisation can take the form of bullying or termination of employment.

Direct discrimination is the basic type of discrimination. This is an act or omission where someone is treated differently than another person in a comparable situation, based on one of the protected characteristics specified by the law. Discrimination in the area of work and employment does not occur in cases where different treatment is based on an objective ground consisting in the nature of the work performed and the requirements on the given employee are proportionate to this nature.

An example of direct discrimination could be the case of an employer who seeks only women for the position of assistant.

Sexual harassment is based on the definition of harassment, but is specific in its sexual nature.

Examples include any unsolicited touches, as well as sexual innuendo that is uncomfortable and inappropriate in a work environment.

Glossary of other terms

Confidentiality clause is a provision in an employment contract which prohibits an employee from disclosing the amount of their salary to other persons. The Defender believes that such a clause has no legal consequences and employers should refrain from using it altogether.

Gender pay gap shows the average difference between the earnings of women and men. The 2020 value of 15.9% for the Czech Republic means that women in this country earned on average more than a sixth less per hour of work than men in that year.

Labour Inspectorate (State Labour Inspectorate) is a governmental authority tasked with checking compliance with labour-law regulations by employers, especially with the Labour Code. If it finds that the relevant duties have been breached, it can impose fines and require that the shortcomings identified be remedied.

Maternity leave is leave that the employer must give to an employee after she gives birth to a child. It lasts for 28 weeks for one child, and 37 weeks for two or more children. Of this period, six to eight weeks are already due to the employee before giving birth.

Salary is remuneration for work in an employment relationship provided by a private sector employer. In addition to the basic salary, it also includes extra pay and often also motivational components (e.g. bonuses).

Protection period is a period during which an employer may not give notice to an employee, save for certain exceptions. This includes, in particular, a time when an employee is found temporarily unfit to work, or when an employee is pregnant, on maternity leave or on parental leave.

In this Recommendation, **remuneration** refers, in general, to both pay (remuneration for civil servants and employees of regional and local governments) and salary (remuneration for work in the private sector) and remuneration under agreements outside employment. In addition to the basic component, it also includes all extra pay, personal bonuses, extraordinary bonuses and also benefits provided by the employer (meal vouchers, culture allowance, etc.).

The Recommendation refers primarily to salaries, but the equal pay duty applies to all types of remuneration.

Maternity benefits are sickness insurance benefits related to care for a newborn child, typically paid during maternity leave. These benefits are subject to a condition of prior employment or voluntary sickness insurance payments. Except for the first six weeks after birth, these benefits may also be received by fathers who take care of their child.

Pay is remuneration for work paid by public employers. This Recommendation focuses on salaries, but most of its conclusions are also applicable to pay.

Parental leave is leave granted to any of the parents. In the case of the mother, it follows maternity leave; the child's father may apply for this kind of leave at any time until the child reaches 3 years of age. Parental leave may also be taken once the parental allowance has been fully utilised.

Parental allowance is an allowance for a parent who cares for a child under 4 years of age, and is paid typically during parental leave. Its total amount is fixed, and equals CZK 300,000 for the year 2021.

The concept **"Švarc system"** denotes a scheme where people working for an employer are formally self-employed, although their work in fact meets the criteria of an employer-employee relationship. Although such a scheme can be financially more advantageous for the "employer" and sometimes even for the "employee", it evades the law.

Trial period is a contractually pre-determined period during which it is easy for the employer and the employee to terminate the employment. It is usually agreed from the date of commencement of work and may not exceed 3 months, or 6 months for senior staff. It cannot be subsequently extended, but is interrupted in case of impediments to work (e.g. in case of unfitness to work or parental leave).

Overview of applicable regulations

The **Anti-Discrimination Act** (Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination, as amended) prohibits discrimination in the areas defined in the Act (e.g. work and employment, access to goods and services). It lays down the basic definitions of discrimination and of related terms.

The **Labour Code** (Act No. 262/2006 Coll., the Labour Code, as amended) lays down the mutual rights and obligations of employers and employees. It contains an explicit prohibition of discrimination and a broader list of grounds (protected characteristics) than the Anti-Discrimination Act. It contains many references to the Anti-Discrimination Act, especially as regards the forms of discrimination.

The **Employment Act** (Act No. 435/2004 Coll., on employment, as amended) deals with the State employment policy and protection against unemployment. It provides that the State, the Labour Office of the Czech Republic and employers are required to ensure equal treatment of all people exercising the right to employment. Here again, the list of protected characteristics is broader than in the Anti-Discrimination Act, and similar to the Labour Code, the Employment Act refers to forms of discrimination under the Anti-Discrimination Act.

The Anti-Discrimination Act is based on a number of **European Union directives[9].** Compliance with EU law in the Member States is supervised by the Court of Justice of the European Union, which takes the opportunity to specify in the individual cases referred to it how EU law should be interpreted in individual Member States. Rulings of the Court of Justice of the European Union are thus also a valuable source for national application of the right to equal treatment, and are therefore also used in this Recommendation.

9. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

   Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

   Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

   Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

   Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

   Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

   Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

   Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

Chapter 1: Commencement of work

Seeking a job is one of life's major milestones – whether it is the first job after school or a career change. However, unforeseen complications may occasionally enter the process of reconciling one's own ideas with the market offer and the employers' expectations. Can the employer choose employees based on gender or ask whether one plans to start a family in the near future?

1. Commencement of work

1.1 Selection among job seekers by gender

The Anti-Discrimination Act requires equal treatment in access to employment and prohibits discrimination, i.e. treating someone less favourably. The grounds on which discrimination is prohibited (i.e. protected characteristics) include sex/gender.[10] Employers should always choose from job seekers according to their abilities, experience and other personal qualities that will be relevant to the job. This must not be based on stereotypes, for example, that women are more suited to childcare or cleaning, while managerial positions require men. Employers may make an exception only in narrowly defined cases (see below).

When can a requirement for a specific gender of job seekers be legitimate?

Exceptionally, an employer's requirement for a specific gender can be lawful. This may include situations where:

» there is an objective ground consisting in the nature of the work performed.[11]

The requirement for a specific gender for a theatre role can be mentioned as an example. Religious reasons may also justify an exception, e.g. in the case of clergy. The Court of Justice of the European Union has considered the question of what falls among such substantive grounds many times since the 1980s, most

10. Further prohibited grounds (protected characteristics) include, for example, age, ethnicity and disability. For all protected characteristics, see Glossary of terms: discrimination.

11. Section 6 (3) of the Anti-Discrimination Act.

often in the context of employing women in the armed forces.[12] The main principles that need to be followed in seeking exemptions from the prohibition of discrimination can be inferred from its case law. According to the Court of Justice, such exemptions must be applied as narrowly as possible, have to be proportionate and must be assessed in the light of social developments. [13] Many its rulings issued over the past four decades have thus lost their general applicability in specific situations.

» the purpose is to protect women on the grounds of pregnancy and maternity.[14]

This exemption was reflected directly in the Labour Code, which prohibits the employment of women in jobs that endanger their maternity.[15] This applies to employees who are pregnant, breastfeeding and mothers up to the end of the ninth month after childbirth. A list of these types of work is published by the Ministry of Health in the form of a decree.[16] Protection of women on the grounds of potential, rather than actual maternity, could again constitute discrimination on the grounds of sex.

Can the employer justify the requirement for a male job seeker based on the physical demands of work?

It is true that, on average, strength, height and other physical characteristics tend to be higher among men. Such physical criteria are crucial for some occupations. However, if the work requires strength, physical stamina, etc., the employer should assess the fulfilment of these specific criteria instead of gender. Just as it is not true that every man is tall and strong, a woman who easily meets these criteria can apply for the job. In such a situation, the essential requirement is not gender, but rather the individual abilities of the candidates required for the performance of the given position.[17] Excluding one group of job seekers on the grounds of assumed, stereotypical characteristics of the whole group may be discriminatory.

What if an employer has to decide between two equally good candidates – a man and a woman?

If an employer is forced to decide between two equally good candidates of different gender, the employer can make an exception and base the decision on gender. In such a situation, the employer may accept a candidate of the gender that is underrepresented in the team. In fact, a practice that compensates for disadvantages arising from a protected characteristic of a person[18] – in this case, unequal representation of a certain gender – is not considered discrimination. Thus, out of two equally suitable candidates, an employer may, for example, recruit a man to a predominantly female team of teachers in a primary school, while in an IT department with predominantly male employees, the employer may prefer a woman.

12. E.g. judgement of the ECJ of 15 May 1986, Johnston v. Chief Constable of the Royal Ulster Constabulary, 222/84, ECR I-1651, concerning the access of women to police work in the UK. At the time in question, the government required police officers to be armed because of the troubles in Northern Ireland, but simultaneously prevented female police officers from carrying weapons. Another relevant judgement, specifically of 26 October 1999, Sirdar v. The Army Board, Secretary of State for Defence, C-273/97, ECR I-7403, dealt with access by women to employment in the Royal Marines. The complainant had applied for the position of chef, but the UK argued that all members of the Royal Marines had to be fit for combat at any given time, a condition women did not meet, in its opinion.
13. BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KÜHN, Zdeněk. § 6 [Přípustné formy rozdílného zacházení]. (Section 6 [Permissible Forms of Different Treatment].) In: BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KOLDINSKÁ, Kristina, KÜHN, Zdeněk, KÜHNOVÁ, Eva, WHELANOVÁ, Markéta. Antidiskriminační zákon. (Anti-Discrimination Act.) 2nd ed. Prague: Nakladatelství C. H. Beck, 2016, p. 285.
14. Section 6 (4) of the Anti-Discrimination Act.
15. Section 238 (1) of the Labour Code.
16. Decree No. 180/2015 Coll., on prohibited types of work and workplaces, as amended.
17. This conclusion is also supported by literature. The Commentary on the Anti-Discrimination Act states with regard to requirements on strength and other criteria that "if the required quality can be separated from a protected characteristic, the employer should indeed require this quality ... [I]f an employer needs certain physical strength, fitness or agility on the part of its employees, the employer may not, although the given requirements will be more likely met by men among the average population, use gender as a 'shortcut' and require only men. Such action would constitute prohibited direct discrimination against women. The correct procedure is to identify physical strength, fitness or agility as a requirement, and then specifically examine each candidate's personal abilities. Indeed, the determinative requirement here is not gender, but rather the individual abilities of the candidates in terms of physical fitness." 17BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KÜHN, Zdeněk. § 6 [Přípustné formy rozdílného zacházení]. (Section 6 [Permissible Forms of Different Treatment].) In: BOUČKOVÁ, Pavla, HAVELKOVÁ, Barbara, KOLDINSKÁ, Kristina, KÜHN, Zdeněk, KÜHNOVÁ, Eva, WHELANOVÁ, Markéta. Antidiskriminační zákon. Komentář. (Anti-Discrimination Act. Commentary.) 1st ed. Prague: Nakladatelství C. H. Beck, 2010, p. 225.
18. Section 7 (2) of the Anti-Discrimination Act.

Women are typically mentioned in the context of employment discrimination. Does this mean that an employer should always give them priority to prevent them from being disadvantaged?

No. Employers should always assess candidates based on their actual skills and qualifications, regardless of their gender or whether they have or care for children. If a man proves to be the most suitable candidate in an interview, then it is appropriate to hire the man. Not hiring a man just because of his gender would be just as discriminatory as not hiring a woman because of her gender.

1.2 Job advertisements and public statements

An employer may already commit discrimination by publishing an advertisement, although a labour-law relationship has yet to be established with a potential victim of discrimination. The Defender focused on job advertisements in 2011[19], where he found that 17% of advertisements were discriminatory, often in terms of gender. Unequal treatment lay most often in the fact that an employer sought an employee of a specific gender, without such a requirement being closely related to the position to be filled. Discrimination on the grounds of gender was present in 7% of the advertisements examined. In 2019, the Labour Inspectorates inspected compliance with the duties in employment at 264 employers. They found a total of 269 violations, of which 195 consisted in publication of discriminatory job offers.[20]

Examples of wording in job advertisements that may be discriminatory:

- "We are looking for a man to fill the position of..."
- "The position is only suitable for women (or women on maternity leave)."
- "The position is only suitable for men because of the greater physical demands."

Is an advertisement written in the masculine discriminatory?

It is not. Generic masculine is a masculine form that the Czech language traditionally uses to refer to both women and men. It follows from the Defender's conclusions that its use in itself is not discriminatory. However, it is good practice for employers to use both the masculine and the feminine in any form (e.g. "we are looking for employees" (in Czech: hledáme zaměstnance/zaměstnankyně) or "we are looking for an assistant" (in Czech: hledáme asistenta nebo asistentku)).

Is an advertisement written in the feminine discriminatory?

Generally not, but it can be discriminatory in certain circumstances. Unlike the generic masculine, the generic feminine (a feminine form referring to both women and men) is not commonly used in Czech. Nevertheless, the linguistic custom also recognises such situations, e.g., the job title "nurse" (in Czech: zdravotní sestra), which is commonplace and often refers to all persons in the profession, regardless of gender. However, if the employer actually intended to recruit only women for the position, without it being clear that there is a legitimate reason for doing so based on the nature of the work performed, this could amount to discrimination. It will always be important what the employer intended by the wording of the advertisement and whether the employer actually followed the recruitment procedure in accordance with the advertisement.

Can I challenge a discriminatory advertisement even though I am not really interested in the job?

Labour Inspectorates can inquire into advertisements formulated in a discriminatory manner on the basis of a mere complaint or even on their own initiative. However, help from the Defender and the courts will be

19. Survey of the Public Defender of Rights – manifestations of discrimination in job advertisements of 15 June 2011, File No. 110/2010/DIS/MČ, available at: www.ochrance.cz/fileadmin/_user_upload/DISKRIMINACE/Doporuceni/Doporuceni-Inzerce.pdf.
20. 20 Annual summary report on the results of inspections carried out by the Inspectorates in 2019; available at: www.suip.cz/_files/suip-ff57ab22e75b0e506741d3b6dace9e9c/suip_rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2019.pdf.

more effective if discrimination in hiring employees is claimed directly by a victim of such discrimination – a person genuinely interested in the job. In that case, it is advisable not to be discouraged by the wording of the advertisement and to apply for the position. It may be that the employer has worded the advertisement inappropriately, without intending to actually give preference to a candidate of one gender, and will in fact be proceeding in accordance with the principle of equal treatment.

From the Defender's practice: In 2012, the Defender dealt with a case where a man had encountered discrimination in job recruitment. The complainant tried to get a job as a salesman in five different clothing and shoe stores. In all of them, he was told that the company only hired women as sales assistants. The Defender noted that systematic rejection of male job seekers in cases where there existed no objective ground for doing so, consisting in the nature of the work performed, constituted direct discrimination on the grounds of sex.

Report of the Public Defender of Rights of 25 July 2012, File No. 264/2011/DIS/JKV

Why are discriminatory advertisements harmful?

Stereotypical gender requirements on job seekers can often be understood from an employer's perspective, and are based on established patterns and relationships in society. However, they exclude from the labour market a group of people who could easily fill the positions offered. The wording of an advertisement itself can be a deterrent if it is clear that the advertisement is targeted exclusively at the opposite gender. The negative consequences are borne not only by these job seekers and their family budgets, but also by employers, who lose a substantial part of their potential workforce.

Our tip: Do not be discouraged by the wording of an advertisement. If you are interested in the position, try your luck in the selection process. You can bring the wording of an inappropriately worded advertisement to the attention of the Labour Inspectorate, but the latter will have limited powers in this regard: it can fine the employer, but cannot force them to hire you for the job.

1.3 Job interview

The Labour Code states that when selecting job seekers, an employer shall assess individual candidates in terms of qualifications, necessary requirements and/or special abilities.[21] It also provides that an employer may only ask the candidates or other persons (for example, a former employer when requesting a reference) to provide information that is directly relevant to the conclusion of the employment contract.[22] The Employment Act also explicitly states that employers may not request information on the job seeker's ethnicity, religious beliefs or, for example, sexual orientation, and other information that is unrelated to the performance of the employer's statutory duties.[23] The State, Labour Office of the Czech Republic and employers themselves are obliged to ensure equal treatment of all (including potential) employees.[24]

Prohibited questions in an interview

During a job interview, employers are generally not allowed to ask job seekers questions about parenthood and childcare. In cases where the job offered involves, for example, irregular working hours and travel (which may be more problematic for parent employees), the employer may draw attention to this aspect and ask whether the job seekers are able to adapt to these requirements. However, the employer should not ask about details of the job seekers' personal lives.

21. Section 30 (1) of the Labour Code.
22. Section 30 (2) of the Labour Code.
23. Section 12 (2) of the Employment Act.
24. Pursuant to Section 4 of the Employment Act, the right to employment cannot be denied on the grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship (in Czech: státní příslušnost), social origin, birth, language, health condition, age, religion or faith, property, marital and family status, and relationship or duty to the family, political or other opinions, membership and activities in political parties or political movements, trade union organisations or employers' organisations. Discrimination on the grounds of pregnancy, motherhood, fatherhood and/or gender identity is considered discrimination on the grounds of sex.

The following questions are inadmissible, for example:

- when (and whether at all) the job seeker plans to have children;
- whether the job seeker is pregnant or uses contraception;
- how the job seeker has arranged for childcare.

Can similar questions give rise to discrimination?

In some cases, questions concerning parenthood that are unrelated to potential employment can be classified as harassment, which is one of the forms of prohibited discrimination.[25]

Harassment means improper conduct related to one of the protected characteristics (sex or parenthood, in this case) that is aimed at or results in diminishing the dignity of a person and creating an intimidating, hostile, humiliating or offensive environment. But not every unpleasant question can be considered harassment.

When assessing potential harassment, it is necessary to examine:

- **Subjective and objective aspects of the harassing conduct.** While the subjective aspect depends on the victim's own perception of the situation, the objective aspect requires assessment of the situation through the eyes of another person in a position similar to the victim. In order for it to constitute harassment, the conduct observed must be harassing both subjectively and objectively.[26]
- **Intensity of such conduct.** Harassing behaviour often consists of multiple acts which, over a period of time, form an adverse environment in their totality. A particularly objectionable behaviour may, however, in view of its intensity, qualify as harassment even in its individual manifestation (in the case of verbal harassment, also in the case of an individual statement), although such excessive cases are quite exceptional. Another factor to be taken into account when assessing the intensity of certain conduct is the relationship between the harassed person and the person who allegedly committed the harassment (e.g. conduct of a person in a position of power may have a greater impact on the victim's mental health).[27]

Is it possible to refuse to answer questions concerning parenthood?

Yes. If a job seeker refuses to answer such questions, this must not be held against them during the interview. If the employer ends the interview because of such refusal, this can constitute direct discrimination on the grounds of sex. Direct discrimination could also be involved if the employer decided not to hire a job seeker because of answers they gave to these questions.

> Our tip: If you are uncomfortable with getting into a dispute with the employer, there is nothing wrong about answering the questions. A question about children need not always be driven by a condemnable intention to disfavour parents: for example, the employer might want to entice you by offering a children's group or an open work-life balance policy. In such a case, questions that are otherwise "prohibited" can be perfectly legitimate.
>
> Illustrative example: Anna met a classmate from university in a selection procedure. Unlike Anna, he was eventually hired for the position. In a conversation during a chance encounter, he told Anna that on his first day at work, he overheard that the employer was glad that "he wasn't about to go on maternity leave". Anna suspected that she had not been hired because she was a young woman and might become pregnant.

25. Report of the Public Defender of Rights of 25 February 2013, File No. 146/2012/DIS/JKV, available at: http://eso.ochrance.cz/Nalezene/Edit/1700.
26. Report of the Public Defender of Rights of 4 December 2017, File No. 1494/2017/VOP; available at https://eso.ochrance.cz/Nalezene/Edit/5844; or Report of the Public Defender of Rights of 28 March 2018, File No. 1047/2017/VOP; available at https://eso.ochrance.cz/Nalezene/Edit/5952.
27. Defender's Report of 7 May 2019, File No. 3639/2018/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/6998.

Can this constitute discrimination?

It can. If information on parenthood or care for children becomes the basis for a decision not to hire the candidate, this represents direct discrimination on the grounds of sex.

How can one tell whether a potential employer discriminated against a job seeker during an interview?

It is often very difficult to determine whether a decision not to hire a job seeker amounts to their discrimination. And it is even more difficult to prove such potential discrimination. That being said, answers to the following questions can serve as certain guidance:

- Did the employer expressly state that they did not wish to employ a woman/man or that they were trying to reduce staff turnover due to parental leave?
- Did the employer end the interview when the candidate refused to answer questions about parenthood?
- Did the employer hire a male job seeker although a female candidate was better qualified for the position and did well during the interview?

From the Defender's practice: The Defender inquired into a case where a woman approached him with a complaint against discrimination on the grounds of sex/gender. The complainant stated that she had a daughter who was about to turn five. In her job interviews, she was repeatedly asked questions about whether she would have children in the future, whether she already had children, how old they were, who cared for her children, whether she had been on maternity leave and, if so, for how long, and why she did not state these facts in her CV, and she was asked to describe her work involvement shortly after her child had been born. The Defender noted that such conduct could be discriminatory and the employer should not ask such questions.

An affirmative answer to these questions may suggest the existence of discrimination on the employer's part. However, each situation needs to be assessed individually. It may be that the reason for the job seeker's failure was legitimate, rather than discrimination. See Chapter 9 to learn what to do in this situation. How to defend yourself?

1.4 Offering fixed-term jobs and labour agreements other than an employment contract because of potential maternity

In certain cases, potential discrimination may lie not only in the question of whether an employer prioritises persons of one gender or whether men and women hold equally important positions; it may also be important what types of contracts the employer issues to its employees – e.g. whether women work primarily based on fixed-term contracts, while men's contracts are for an indefinite term, and whether employees of one gender are usually employed using the "Švarc system" (regular employment disguised as self-employment).

The position of an employee may differ significantly under the individual types of contracts. The employer may conclude with an employee any contract the parties deem appropriate. However, in doing so, the employer must comply with the prohibition of discrimination.

Contractualisation of work can have significant implications employees. For example, if neither the employee nor the employer pays premiums for sickness insurance because the employee works based on a labour agreement other than an employment contract or as a self-employed person, the employee loses the possibility to draw maternity benefits. To be eligible, the employee must have been covered by sickness insurance for at least 270 calendar days in the previous two years. There are also differences in whether the employer will be obliged to allow the employee to return to their job once they decide to end parental leave. While in the case of a fixed-term contract, the employer has such a duty only until the expiry of the set term, the same obligation continues to exist under a contract for an indefinite term. In the case of agreements other than an employment contract and self-employed persons, the employee might not be able to return at all.

Illustrative example: Barbora has been with the same employer for several years. She started with a fixed-term contract for two years. She hoped that, once the initial contract ran out, she would be offered employment for an indefinite term. She wants to start a family in the near future, and would like to return to her position and continue working once her parental leave ends. But her employer has merely offered to extend her contract for another two years. Barbora's male colleague, who joined the employer at the same time, has been given an indefinite-term contract.

Can this constitute discrimination?

It can. It is up to the employer to decide what kind of contract they will offer to employees. It is also absolutely legitimate to offer an indefinite-term contract to retain certain employees because of their performance, ratings or skill, while others are offered only a fixed-term contract. However, in doing so, the employer must not distinguish between employees based on discriminatory criteria such us gender or parenthood.

When is a fixed-term contract (or agreement to complete a job or to perform work) discriminatory?

If it turned out that an employer is more likely to use fixed-term contracts (or agreements other than regular employment contracts) for women because they are expected to go on parental leave, this could amount to gender discrimination. A useful guidance in assessing whether discrimination occurs at an employer is whether the employer makes such distinction between employees systematically, and not on the basis of particular qualifications of individual employees.

1.5 Confirmation of not being pregnant

Illustrative example: Petra works as a primary school teacher. She has recently moved and has been hired as a teacher in another school. She signed an employment contract there and was sent for an initial medical examination before starting work. In addition to the doctor's certificate, the headteacher also asked her to present a certificate from a gynaecologist stating that she was not pregnant.

Can this constitute discrimination?

It can. If an employer requires female job seekers to certify that they are not pregnant prior to the inception of employment, the employer is unlawfully collecting sensitive data. If the employer then decides not to hire the job seeker because she has not provided such a certificate, this constitutes discrimination based on gender. The Defender dealt with such a case in 2013.[28]

28. Report of the Public Defender of Rights of 25 January 2013, File No. 167/2012/DIS/JKV, available at: http://eso.ochrance.cz/Nalezene/Edit/1460. The Court of Justice of the European Union has already ruled that pregnancy cannot be a ground for not hiring a job seeker in its judgment of 8 November 1990, E.J.P. Dekker v. Stichting Vormingscentrum voor Jong Volwassen (VJV-Centrum) Plus, C-177/88. In that case, the job seeker herself had advised the employer during a job interview that she was pregnant.

Chapter 2: Conditions in employment

There are great inequalities between male and female employees in the way they are paid for their work and what chances they have of career advancement. Initial differences in the set-up of employment tend to grow as responsibilities increase. How can it be determined whether an employee is being correctly remunerated, and when can gender or parental status affect employee's prospects in the eyes of the employer?

2. Conditions in employment

2.1 Lower salary compared to male colleagues

The concept of gender pay gap (GPG) is frequently used with regard to equal pay. GPG shows the average difference between the earnings of women and men. The value of 18.9% for the Czech Republic means that women in this country earned, on average, almost a fifth less per hour of work than men in 2019, which was the fifth largest gap in Europe.[29] In 2020, the GPG dropped to 15.9%. However, this year-on-year difference may have been influenced, especially in the healthcare sector, by extraordinary remuneration related to the COVID-19 epidemic, and may not show a long-term trend.[30]

There are many factors that affect this difference and not every such factor can be easily influenced. In addition to discrimination and application of gender stereotypes, a significant role is also played by a division of the labour market. Women are more likely to work in occupations with lower salaries (e.g. nursing, school and pre-school education, cleaning) and are less likely to hold managerial positions. An unequal distribution of childcare also has a major impact on occupational choices and the possibilities of career advancement.

29. Eurostat. Gender pay gap statistics. Data from February 2021. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics.

30. 3Czech Statistical Office. As long as employees kept their jobs, their salaries rose. Available at: www.czso.cz/csu/czso/pokud-si-zamestnanci-udrzeli-praci-jejich-mzdy-rostly?fbclid=IwARopHcOLZ6nRvWkTV5hrsr6AkOsypFQWGjasmYoZPoIu6H1ngDPT6_BIDyg.

Along with the general GPG, we can also monitor adjusted gender pay gap. Adjusted GPG ignores systemic inequalities and shows the difference between salaries paid to women and men doing the same job for the same employer.[31] This net difference is approximately 10% in the Czech Republic.[32]

Inequalities in remuneration can already arise during a job interview if it involves negotiations on future salary. Future salary is also determined by internal remuneration systems used by the individual employer. These might be set in a discriminatory way, often based on seemingly neutral criteria. For example, remuneration systems that disadvantage employees based on short-term absences are suspicious from the non-discrimination perspective. Such absences are more likely in the case of parents caring for young children, mainly women. Another such aspect may be frequent part-time work at a given employer if this option is used mainly by parents in view of the need to achieve work-life balance. The same effect can occur if the employer has no remuneration system in place and decides on the remuneration of each employee individually. For example, an employer may act on perception that employees-parents spend more time caring for children and less time working, without taking into account the actual results of their work. A good way to prevent pay inequalities is therefore to set up a transparent remuneration system that employs objective criteria for calculating the salaries of all employees, including all extra pay and bonuses.

Employees are legally entitled to equal pay for equal work or work of equal value.[33] In this context, remuneration refers to both pay (remuneration for civil servants and employees of regional and local governments) and salary (remuneration for work in the private sector) and remuneration under agreements outside employment. In addition to the basic component, it also includes all extra pay, personal bonuses and extraordinary bonuses. The prohibition of discrimination must also be observed in the provision of various benefits (meal vouchers, culture allowance, etc.). The Recommendation refers primarily to salaries, but the prohibition of discrimination applies to all types of remuneration.

Work of equal or comparable value is work:

- of equal or comparable complexity, responsibility and effort;
- performed under the same or comparable working conditions;
- with equal or comparable job performance and results.[34]

What if the employee themself negotiates a low salary?

Although salary negotiation is now a normal part of the recruitment process, employers are obliged to remunerate employees according to the work they actually do, not according to how much they are able to negotiate with the employer.[35] If an employer offers a female job seeker a lower salary than a male candidate (or vice versa) on the basis of their gender, even though their qualifications and experience are similar, the employer could be committing discrimination.[36] By way of exception, this does not apply in cases where such different treatment is based on an objective reason consisting in the nature of the work performed and the requirements are proportionate to this nature.[37]

31. The Court of Justice of the European Union already heard the first sex discrimination case involving unequal pay for men and women doing the same job for the same employer in the 1970s. In that case, the Court of Justice identified the principle of equal pay as one of the fundamental principles of the European Union (judgment of the Court of Justice of 8 April 1976, Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena, 43/75).
32. Gender pay gap in the Czech Republic: Study for the project "Equality of women and men in the labour market with a focus on (un)equal pay for women and men" of the Ministry of Labour and Social Affairs. Available at: www.rovnaodmena.cz/www/img/uploads/34c5639c.pdf.
33. Section 110 (1) of the Labour Code.
34. Section 110 (2) of the Labour Code.
35. Statistically, men are able to negotiate a higher remuneration than women. See the Analysis of the causes and processes leading to the gender pay gap: qualitative survey. Project 22% TOWARDS EQUALITY of the Ministry of Labour and Social Affairs. Available at: www.rovnaodmena.cz/www/img/uploads/501c18172.pdf.
36. Section 2 (3) of the Anti-Discrimination Act.
37. Section 6 (3) of the Anti-Discrimination Act.

Our tip: What salary should one ask for during an interview? A salary calculator is a practical tool for finding out what salary is appropriate to a specific position. In addition to the average salary, it will also reveal the gender pay gap in your region.[38]

Illustrative example: Jana works as a cashier. She has learned from her colleague Pavel that he earns two thousand a month more in the same position. Jana is convinced that they do the job equally well, and she has worked in the shop longer than her colleague. Jana was dissatisfied with the difference and asked her employer why she earned less. The employer responded to her in writing that the respective amounts of their salaries were negotiated during the job interviews, when they were asked what remuneration they expected for their work. Pavel quoted a higher amount and so he was able to negotiate better terms with his employer.

Can this constitute discrimination?

It can. The Labour Code itself states that all employees at the same employer are entitled to equal salary for work of equal value.[39] When assessing whether work is of equal value, the employer should take into account the complexity and difficulty of the work, with comparable performance and results. If two employees who meet these criteria receive different salaries, the employer violates the duty of equal treatment of all employees.[40] If the reason for the difference is that one of the employees is of a different gender, the employer is also acting in violation of the Anti-Discrimination Act.

2.2 Confidentiality clause

Illustrative example – continued: When Jana asked about her salary, Paul was called to see his supervisor. The supervisor reminded him that his employment contract forbade him from disclosing the amount of his salary to anyone. In case of non-compliance, the employment contract provided for a contractual penalty of CZK 50,000, which the employer now demanded from Pavel.

Employment contracts unfortunately tend to comprise confidentiality clauses that prohibit the employee from disclosing their salary to a specific group of people or to anyone in general.[41] The Defender[42] and the Ministry of Labour and Social Affairs[43] agree that such a clause lacks legal consequences.

With regard to these clauses, employers tend to refer to the employees' duty not to act at variance with justified interests of the employer.[44] This means that they may not disclose business secrets or harm their employer in any other way. However, the Defender expressly states that the employer's interest in maintaining confidentiality of the amount of salaries cannot be considered legitimate if this obligation is set in absolute terms (the employee may not disclose the amount of salary to anyone) or if this obligation is imposed with regard to other employees of the employer.[45] Moreover, the Labour Code explicitly prohibits contractual penalties that are not explicitly permitted in this Code.[46] However, no case concerning a breach of the salary confidentiality clause has yet reached the court.

38. Salary and pay calculator. Project 22% TOWARDS EQUALITY of the Ministry of Labour and Social Affairs. Available at: www.rovnaodmena.cz/rovne-odmenovani/kalkulacka.
39. Section 110 of the Labour Code.
40. Section 16 of the Labour Code.
41. Analysis of the causes and processes leading to the gender pay gap: qualitative survey. Project 22% TOWARDS EQUALITY of the Ministry of Labour and Social Affairs. Available at: www.rovnaodmena.cz/www/img/uploads/501c18172.pdf.
42. Recommendation of the Public Defender of Rights of 27 July 2020, File No. 2/2020/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/8426.
43. You can tell anyone how much you earn. Available at: www.rovnaodmena.cz/novinky/36-o-vysi-sveho-platu-muzete-rici-komukoliv.
44. Section 301 (d) of the Labour Code.
45. Recommendation of the Public Defender of Rights of 27 July 2020, File No. 2/2020/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/8426.
46. Section 346d (7) of the Labour Code.

Confidentiality clauses contribute to non-transparent remuneration.[47] Employees often have no idea what their colleagues earn and they thus cannot defend themselves against pay inequality.[48]

2.3 Calculation of salary after returning from parental leave

> Illustrative example: Petra worked as a technician in a small company. Five years ago, she started parental leave with two children in succession. She recently went back to work. She was surprised that she would be paid the same salary she had received five years ago, even though her colleagues were now earning several thousand more, including colleagues who had been hired recently, without any previous experience. She was also stripped of personal bonuses because, according to her employer, she would not be able to achieve the same results after such a long working break as she had before starting parental leave.

Can this constitute discrimination?

It can. In the Defender's opinion, employers should take the salary development into account in order to avoid a disadvantage for employees who have cared for children.[49] In accordance with European law[50], these employees have the right to improved working (including pay) conditions.

The current salaries paid to employees doing similar work as that which the employee will be doing once they return to work should therefore be used to calculate their salary. This also follows from the Labour Code, which provides that "[a]ll employees employed by the same employer are entitled to the same salary or pay, or remuneration under an agreement, for the same work or work of the same value".[51]

If, however, salaries paid by the employer have dropped in the meantime due to the general economic situation, it is appropriate to also analogously reduce the salary of an employee who is returning to work after childcare leave.

The situation is more problematic in cases where the employer grants personal bonuses based on the number of years of work, without including the years spent on maternity or parental leave. Neither the Defender nor the courts have dealt so far with a disparity in remuneration between two such employees.

2.4 Career advancement

Not only in the recruitment process, but also during the employment relationship, any distinction possibly made by an employer between employees has to be based on criteria that are not discriminatory.

> Illustrative example: Adéla has worked for the same employer for five years. Her annual evaluation shows that her superiors are satisfied with her, she is very diligent, and also gradually improves her qualifications. She was therefore surprised when her colleague, who has only been on the job for a few months, was promoted to the position of supervisor. Moreover, she only found out about the vacancy retrospectively, after her colleague's promotion. When she went to ask her employer about the situation, she learned that the key criteria were reliability and time flexibility, and that they had not even considered Adéla, as she was a mother of two small children.

47. Analysis of the causes and processes leading to the gender pay gap: qualitative survey. Project 22% TOWARDS EQUALITY of the Ministry of Labour and Social Affairs. Available at: www.rovnaodmena.cz/www/img/uploads/501c18172.pdf.
48. The www.rovnaodmena.cz portal was created within the project "22% TOWARDS EQUALITY" organised by the Ministry of Labour and Social Affairs; this portal offers a wealth of details on the topic of equal pay, including information on the meaning of gender pay gap and how it arises, and qualitative surveys in this area.
49. Defender's Report of 19 August 2013, File No. 75/2012/DIS/JKV, available at: https://eso.ochrance.cz/Nalezene/Edit/1600.
50. Article 15 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
51. Section 110 of the Labour Code.

Can this constitute discrimination?

It can. Even in the case of career advancement, the employer must make decisions on the basis of non-discriminatory criteria. The decision should always be made based on the personal qualities and aptitudes of individual candidates, rather than according to gender or parental status.[52]

While mothers are usually expected to be constrained at work by childcare, in the case of men, employers are less likely to give the same weight to their parenthood. However, in particular cases, family responsibilities may affect an employee-father as much as an employee-mother. For example, while time flexibility may be a legitimate requirement for a particular job, the employer should not automatically assume that women will be less flexible than men.

52. This conclusion was reached by a Czech court in a highly-publicised discrimination case. In 2006, Pražská teplárenská (the Prague heating company) did not hire a female employee for a management position because she was a woman. In 2019, the court concluded that this had indeed constituted discrimination and granted the woman an apology. However, the claimant has yet to succeed with her other claims. See iRozhlas. Apology for discrimination. Pražská teplárenská rejected a woman for a director position because of her gender. Available at: www.irozhlas.cz/zpravy-domov/omluva-diskriminace-kvuli-pohlavi-prazska-plynarenska-marie-causevicova_1903070921_dbr.

Chapter 3: Pregnancy

Expecting a child can really disrupt work life. Both male and female employees will have to make decisions regarding the division of parental responsibilities, and when and how much they want to return to their jobs. When should the employer be notified of pregnancy? And what if a pregnant employee is unable to perform her job or the pregnancy is incompatible with the employer's idea of an ideal employee?

3. Pregnancy

What are the employer's duties towards pregnant employees?

Pregnancy of an employee is one of the protected characteristics based on which the Labour Code explicitly prohibits different treatment.[53] But there are exceptions. Pregnant women are prohibited from performing work that could endanger their pregnancy (and later their motherhood). A list of these types of work is given in a decree.[54] This may also be a job for which the given employee is not medically fit. If the employee still performs such work, she should ask the employer to reassign her to some other job. The employer is obliged to comply with such a request.[55]

Pregnant employees (as well as parents taking care of a child under one year of age) may not be ordered to work overtime.[56] A pregnant woman (or parents caring for a child under 8 years of age) may be sent for a business trip only with her (their) consent.[57]

53. Section 16 (2) of the Labour Code.
54. A list of these types of work is given in Decree No. 180/2015 Coll. They include, for example, high-risk work under the Public Health Protection Act (Section 39 (1) of Act No. 258/2000 Coll., on the protection of public health, as amended), work requiring the use of insulating respiratory devices, work associated with a risk of impact or high vibrations, and work with a high risk of injury.
55. Section 41 of the Labour Code. However, according to the CJ EU, such a reassignment may entail a partial reduction in remuneration, especially as regards extra pay granted for the actual performance of work: for example, for medical emergencies in the judgment of 1 July 2010, Susanne Gassmayr v Bundesminister fürWissenschaft und Forschung, C-194/08, and for work in the air in the judgment of 1 July 2010, Sanna Maria Parviainen v Finnair Oyj, C-471/08. However, extra pay for years of work or senior position must be maintained.
56. Section 241 (3) of the Labour Code.
57. Section 240 of the Labour Code.

At what point must the employer be notified of pregnancy?

The law does not expressly order an employee to notify the employer of her pregnancy. On the other hand, an employee is required to perform work in accordance with the employer's justified interests[58] and is also obliged to report impediments to work[59]. It is possible to imagine situations in which a deliberate failure to notify the employer of pregnancy could be detrimental to the employer, for example, if the pregnant employee held a position where an appropriate replacement would not be available if she went suddenly on maternity leave.

The Labour Code also prohibits employing pregnant women in jobs that endanger their maternity.[60] If such work is performed, it is advisable to notify the employer of the pregnancy as soon as possible, or else the employer cannot be blamed for not taking the necessary precautions.

The commencement of maternity leave must be reported before the employee actually goes on such leave (usually 6 to 8 weeks before expected date of childbirth). In case of premature birth, this has to be done as soon as possible.[61]

> Our tip: By announcing your pregnancy early, you can help your employer find a suitable replacement for your position and thus contribute to good relations in the workplace. However, if you suspect that announcing your pregnancy would involve a risk of discrimination, it is up to your discretion when you decide to inform your employer about the pregnancy.

When is a pregnant employee protected from dismissal?

The period of pregnancy represents a protection period, during which the employer may not, subject to a few exceptions, give notice to the pregnant employee.[62]

The protection period runs:

- during pregnancy;
- during maternity leave;
- during parental leave (applies to both parents);
- during the period when a carer's allowance or long-term sickness benefits are drawn.

If an employee is dismissed at a time when the employer is unaware of her pregnancy, she will have to claim that her termination be declared invalid – inform the employer that she is pregnant and therefore considers the termination invalid.[63] The protection period also applies if the employee becomes pregnant during the notice period. In that case, the notice period is interrupted and runs out only after the protection period expires.[64]

> Our tip: The protection period does not apply to termination of employment by expiry of the agreed term, typically in the case of a fixed-term contract. In that case, the contract ends on the previously agreed date.

58. Section 1a (d) of the Labour Code.
59. Section 206 (1) of the Labour Code.
60. Section 238 (1) of the Labour Code.
61. Section 195 (2) of the Labour Code. The commencement of maternity leave must be reported or else it is not possible to take the leave.
62. Section 53 (1)(d) of the Labour Code. However, this protection is not absolute – it does not apply, for example, if the employer is being dissolved.
63. In its judgement of 22 February 2018, Jessica Porras Guisado v Bankia SA, C-103/16 , the Court of Justice of the European Union dealt with the employer's argument that he was unaware of the employee's pregnancy at the time of her dismissal. The CJ EU noted that it was undisputed that the employee had already been pregnant and that she had informed her superiors of her pregnancy at the time of her dismissal. The court took this to be unrebutted by the employer and extended the protection to the employee. It follows that the CJ EU considers it necessary for the employee to inform the employer of her pregnancy not later than at the time of dismissal, and not earlier.
64. Unless the employee has explicitly told the employer that she does not insist on extension of the employment relationship. See resolution of the Supreme Court of 28 August 2018, File No. 21 Cdo 1975/2018, or PTÁČEK, Lubomír. § 53 [Zákaz zaměstnavatelovy výpovědi v ochranné době]. (Section 53 [Prohibition of Employer's Termination During the Protection Period].) In: BĚLINA, Miroslav, DRÁPAL, Ljubomír et al. Zákoník práce. (Labour Code.) 3rd ed. Prague: C. H. Beck, 2019, p. 332.

3.1 Termination of employment during the trial period in case of pregnancy

Termination of employment during the trial period is one of the most complicated situations in terms of protection of a pregnant employee. Indeed, the Labour Code provides explicit protection to pregnant women only with regard to dismissal. However, termination of employment during the trial period is technically not a case of dismissal (termination by notice).[65] It holds in general that both the employer and the employee may terminate employment during the trial period for any reason or even without stating a reason.[66]

By way of exception, this does not apply to cases where such termination is motivated by protected characteristics (in terms of discrimination). In 2009, the Supreme Court already ruled that even such a simplified dismissal was covered by the prohibition of discrimination.[67] Thus, an employer may not dismiss a woman due to her pregnancy alone, even during a trial period.[68] However, such termination can be quite difficult to challenge, as the employer need not state any reason for the termination.

> Illustrative example: Denisa started working in a warehouse a month ago, but then got unexpectedly pregnant. She knows that she must not lift heavy goods while being pregnant, and so she decided to notify her employer of her pregnancy during the trial period, along with a request for reassignment to another position. The employer responded by saying that there was no other work available for Denisa, and noted that he had no choice but to terminate her employment. Because Denisa was on a three-month trial period, the employer dismissed her on the spot without written justification.

Can this constitute discrimination?

It can. It holds in general that both the employer and the employee may terminate the employment relationship during the agreed trial period with immediate effect and without stating a reason.[69] However, the Defender has already noted in the past that, even in this case, the employer is bound by a prohibition of discrimination.[70] The employer may therefore dismiss an employee during the trial period because they are not satisfied with the employee's work, but may not make this decision based on discriminatory criteria. If the employer decided not to

From the Defender's practice: The Defender inquired into a case where a woman approached him with a complaint against discrimination on the grounds of pregnancy. The complainant had already worked for the employer in the past and had never received any criticism. When she returned to the employer in another position, she and the employer agreed on a three-month trial period, during which the complainant became pregnant. After having unsuccessfully asked for reassignment to another type of work, the complainant stopped working due to impediments on the part of her employer, who subsequently terminated her employment during the trial period without giving a reason. The Defender assessed the complainant's case as direct discrimination on grounds of sex/gender, and more specifically pregnancy. He also raised the question of whether or not the Czech Labour Code, which allows for dismissal of a pregnant employee during the trial period, was not in breach of the EU directive. The case was recently heard by the Supreme Court, which concluded that the real reason for the termination of employment had been the employee's pregnancy, and that the employer had thus committed discrimination. Therefore, the case was referred back to the first-instance court, which upheld this conclusion. The Supreme Court did not address the question of compliance with European law.

Defender's complaint of 9 May 2018, File No. 3126/2018/VOP/JS, and judgement of the Supreme Court of 16 March 2021, File No. 21 Cdo 2410/2020-138

65. Section 48 (1)(d) of the Labour Code.
66. Section 66 (1) of the Labour Code.
67. Judgement of the Supreme Court of 21 April 2009, File No. 21 Cdo 2195/2008.
68. The Court of Justice of the European Union came to the same conclusion in a judgment dealing with interpretation of the relevant directive. The Court interprets it not only in terms of the prohibition of giving notice as one possible means of dismissal, but extends this prohibition to any dismissal of a female employee (Council Directive 92/85/EEC of 19 October 1992 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). This was the Court of Justice's judgement of 22 February 2018 in case C-103/16, Porras Guisado.
69. Section 66 (1) of the Labour Code.
70. Complaint to the Defender of 9 May 2018, File No. 3126/2018/VOP/JS.

further employ, for example, a pregnant woman, even though there was no substantive reason to do so, this would be in breach of the equal treatment obligation.

How can I determine that my employer dismissed me because of my pregnancy?

Time sequence often plays a role in cases of discrimination on the grounds of pregnancy. If the dismissal (whether during or after the trial period) directly followed the notification of pregnancy to the employer, there might be a connection between these two events. Another indication could be what the employer directly told the employee – for example, that if the employer had known that the employee was pregnant, she would not have been hired in the first place.

> Our tip: Termination of employment during pregnancy may affect whether you will be entitled to maternity benefits. This is because these benefits are tied to participation in sickness insurance. However, you are also entitled to the benefit if you start maternity leave after expiry of your sickness insurance during the protection period, which is 180 calendar days from the date when your insurance ends. If the insurance lasted for a shorter period of time, the protection period is only as many calendar days as the number of days of insurance.

3.2 Termination of employment due to possible pregnancy

> Illustrative example: Jana works as an accountant in a dynamically growing company. When she learned that she could not become pregnant, she arranged for gynaecological surgery and a stay in a spa for several weeks to recover. She informed her employer so that they could find a replacement for the necessary period of time. The employer accepted this at first, but a few days later they called Jana and told her she had no future at the firm. The employer expressed their concern that Jana would get pregnant after the treatment, she would take sick leave due to high-risk pregnancy, and they would then have to look for someone new. After this conversation, the employer gave her a written notice. The employer later claimed that they had to terminate Jana's position due to redundancy, but then hired a new accountant with the same job description as Jana's.

Can this constitute discrimination?

It can. In a similar case, the Defender found that an employee who was not pregnant but was undergoing treatment for medical complications aimed at increasing future likelihood of pregnancy could also be a victim of pregnancy discrimination.[71] What is important is not whether the employee was actually pregnant at the time of termination, but whether her (possible) pregnancy was the reason for the decision to terminate her employment.[72]

Does the same apply if the employer just thought the employee was pregnant?

Yes. If the employer thought the employee was pregnant and gave her notice for this reason, it is irrelevant whether or not she was actually pregnant. This can constitute discrimination on the basis of a presumed protected characteristic.[73]

71. Defender's Report of 11 January 2013, File No. 35/2012/DIS/JKV, available at: https://eso.ochrance.cz/Nalezene/Edit/1704.
72. The Court of Justice of the European Union considered a similar situation in its judgment of 26 February 2008 in Case C-506/06, Sabine Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG. At the time of her dismissal, the plaintiff was undergoing in-vitro fertilisation. The Court said that the employee could not yet enjoy the same protection as if she were already pregnant. However, if she had been dismissed because she had been undergoing in-vitro fertilisation, this could amount to sex discrimination.
73. Section 2 (5) of the Anti-Discrimination Act.

3.3 Removal from a senior position before maternity leaveu

Can an employer be guilty of discrimination by removing an employee from a senior position?

They can. According to the Defender, the removal of a senior employee from her position due to her maternity or pregnancy amounts to direct discrimination within the meaning of the Anti-Discrimination Act. While a senior employee may be removed from the given position at any time and for any reason, the employer must refrain from discrimination even in this case. Therefore, an employee may not be removed from such a position, for example, just to avoid the need to hold a job for a pregnant employee during the time of her maternity leave.

From the Defender's practice: The Defender investigated the case of a woman who worked in a senior position at a public authority. One week before going on maternity leave, she was removed from her position without any justification from her employer. A selection procedure was then announced for her original position. The complainant objected that, because of the employer's steps, she would not be able to return to the same position after her maternity leave, as the law allows. The Defender concluded that the employer had indeed erred and committed direct sex discrimination by removing the complainant from her senior position. The complainant subsequently also turned to the court. The latter acknowledged that the dismissal was invalid and ordered the employer to provide a written apology.

Report of the Public Defender of Rights of 25 August 2014, File No. 1594/2014/VOP/ZO, available at: http://eso.ochrance.cz/Nalezene/Edit/2018, and judgement of the District Court for Prague 1 of 15 March 2019, Ref. No. 23 C 146/2014-264

3.4 Non-renewal of employment contract

Can an employer commit discrimination by not renewing an employee's fixed-term contract?

They can. There is no legal entitlement to renewal (extension) of an employment contract, just like there is no entitlement to be hired. However, even here the employer must comply with the principle of equal treatment and must not disadvantage the employee or job seeker on the basis of one of the prohibited grounds. If the employer did not renew an employment contract on the grounds of the employee's pregnancy, this could constitute discrimination on the grounds of sex.

Chapter 4: During maternity and parental leave

The time of maternity and parental leave tends to be a turning point for families. Instead of the traditional forms of maternity leave, where the mother stays with the offspring at home for three years, and repeats the process if she has several children, families are increasingly opting for more flexible arrangements that better reflect their real needs. What is the difference between maternity and parental leave in terms of employees' rights? And how to deal with situations where agreement with the employer cannot be reached?

4. During maternity and parental leave

After childbirth, parents are entitled to a leave for childcare. In the case of the mother, this is first maternity leave and then parental leave, and in the case of the father, these are 14 days after his partner gives birth – paternity leave – and then parental leave. While the phrase "three-year maternity leave" is not uncommon, correct distinction between these concepts is crucial.

Only the mother is entitled to **maternity leave.** It lasts for 28 weeks for one child and 37 weeks for twins or multiple births. It must never be shorter than 14 weeks and end sooner than 6 weeks after birth.[74] This leave provided by the employer is not dependent on drawing maternity benefits. Even a mother who is not entitled to maternity benefits or has already stopped drawing such benefits thus remains entitled to such leave.

Maternity leave is linked to **maternity benefits.** After the end of the puerperium, these benefits may also be drawn by a father caring for the child. In order to receive them, it is necessary to have been covered by sickness insurance for 270 days in the two years before the maternity benefits are to be drawn. Employees participate in the insurance by operation of law provided that they earn at least CZK 3,500. For persons working based on an agreement to complete a job, the threshold is CZK 10,000. Self-employed persons participate in sickness insurance voluntarily, which is why they must register and pay premiums at least for the required period of time. The amount of maternity benefits depends on previous earnings.[75]

74. Section 195 of the Labour Code.

75. For a calculation of maternity benefits, see the Czech Social Security Administration. Detailed information on maternity benefits. Available at: www.cssz.cz/podrobne-informace-o-penezite-pomoci-v-materstvi.

What to do if a woman does not meet the conditions for being granted maternity benefits?

If a woman does not become eligible for maternity benefits, she may receive sickness benefits from the sixth week before the expected date of childbirth. For this, she needs a certificate stating that she does not qualify for maternity benefits. Such a certificate is issued by the District Social Security Administration. A physician will then declare her temporarily unfit to work. Six weeks after the date of childbirth, the physician will then end this temporary unfitness.[76]

On the other hand, **the paternity postnatal benefit** ("paternity benefit") is a sickness insurance benefit payable to the father. Eligible for this benefit is the child's father registered in the child's birth certificate and it may be drawn for a period of 4 days if, as of that day, the father pays sickness insurance premiums either himself or through his employer,[77] and starts drawing the benefit during the mother's puerperium. For this period of time, the father must ask his employer for parental leave.[78]

Parental leave is leave granted to any of the parents or both of them. In the case of the mother, it follows maternity leave; the child's father may apply for this kind of leave until the child reaches 3 years of age.[79] The duration of parental leave can be chosen and changed during the leave. Colloquially, it is often confused with maternity leave, which however is only granted to the mother for a short period before and after childbirth.

The period during which an employee takes parental leave need not fully coincide with the period during which the **parental allowance** is received. Its total amount is fixed – from January 2020, it equals CZK 300,000, and for two or more children born at the same time, CZK 450,000. It is not based on the parent's earnings, but these do affect the maximum monthly allowance.[80] The amount of the monthly allowance will also depend on the rate of its drawing – the allowance can be drawn for a longer period of time in lower monthly amounts or faster, with higher monthly amounts. At the same time, parental allowance can only be received for the youngest child. Parents who are unable to draw the whole allowance for the first child before the date of birth of their second child may thus lose their entitlement to the remaining part of the allowance.

> Our tip: Both the mother and the child's father are entitled to parental leave. Both parents can be on parental leave at the same time if they wish. However, only one of them can receive parental allowance at any given time.

4.1 Working on maternity or parental leave

Working while receiving maternity benefits

Receiving maternity benefits does not prevent the employee from working part-time along with caring for the child. Such work can be based on an agreement to perform work or an agreement to complete a job. Work may also be performed for the former employer, but this must be different work than under the original employment contract[81] – for example, instead of working as an accountant, the employee can help her employer with administrative work.

Working while receiving parental allowance

While receiving parental allowance, a parent can work almost without limitation, either based on an agreement other than employment contract or in a standard employment relationship. This is conditional on proper

76. The situation is described in detail, for example, in the Aperio handbook, available at https://aperio.cz/nemocneska-penezita-pomoc-v-manzelstvi-rodicovsky-prispevek/.
77. Employees participate in the insurance by operation of law provided that their income exceeds a certain threshold. Self-employed persons participate in sickness insurance voluntarily, which is why they must register and pay premiums at least for the required period of time, as is the case with maternity benefits.
78. Section 38a of Act No. 187/2006 Coll., on sickness insurance.
79. Section 197 (3) of the Labour Code.
80. The amount of the parental allowance is determined according to the daily assessment base for determining maternity benefits.
81. Section 16 (a) of the Sickness Insurance Act.

personal care for the child throughout the day. Such care can be arranged through another adult (e.g. a family member or another caregiver). A child under two years of age may also attend a nursery or children's group, but not more than 4 hours a day. Parental allowance can be received simultaneously with work under a new or the original employment contract.[82]

Is an employer obliged to allow an employee to work during maternity or parental leave if the employee so requests?

They are not. While the law allows such an employee to work, if the employer does not wish to agree on this option, they cannot be forced to do so. In general, however, maintaining collaboration during parental leave is beneficial and useful for both parties. It helps parents to stay in touch with the work environment, allows the employer to maintain the relationship with an experienced employee, and prevents turnover in the staff. It can also be good practice for employers to invite employees to staff parties and similar events where employees on parental leave can keep in touch with their colleagues.

4.2 Drawing employee benefits during parental leave

The provision of employee benefits to employees on parental leave has repeatedly proved problematic. Indeed, every employer must comply with the prohibition of discrimination in remuneration of employees. Employee benefits provided by an employer voluntarily and beyond the scope of the duties imposed on the employer by the Labour Code are also considered such remuneration.[83]

As regards work-related benefits, it can be stated in general that the employer has the option to exclude parents on maternity or parental leave from this option. However, if the employer chooses to do so, it is essential to treat all employees in a comparable position identically. These can be, e.g., long-term sick employees, employees taking unpaid leave, employees caring for a family member on in the long-term carer's allowance regime, etc. Mutual comparability of these employees must also be assessed on a case-by-case basis with regard to the nature of the given benefit.

Exclusion from employee benefits could be considered discriminatory if it could have a negative impact on further employees' performance after returning from maternity or parental leave (e.g. a benefit in the form of education). However, this issue is also quite complicated and must be considered on a case-by-case basis.[84]

> Illustrative example: Hana works at an IT company that prides itself on the breadth of benefits for its employees. One of them is the Christmas bonus as a reward for the previous year's work. When she went on maternity leave, she discovered that she had not received the bonus, even though she had worked for her employer for most of the year.

Can this constitute discrimination?

It can. If the bonus is defined as remuneration for work done for the employer in the previous year, employees who worked for the employer for at least part of that year should also be eligible for a proportional part of the bonus. If an employer systematically excluded employees who started maternity or parental leave during the year from eligibility to such a bonus, the employer could be committing discrimination on the grounds of parenthood.[85]

> Our tip: Is it difficult for you to find out whether your employer is restricting the provision of employee benefits legitimately or whether the employer's rules are problematic? Contact the Defender with a request for advice.

82. The situation is described in detail, for example, in the Aperio handbook, available at https://aperio.cz/vydelecna-cinnost-behem-materske-rodicovske-dovolene/.
83. Section 5 (1) of the Anti-Discrimination Act. In the past, the Defender also used this prism to assess contributions from the cultural and social needs fund (FKSP); see the Defender's report of 20 January 2011, File No. 117/2010/DIS/JKV, available at: https://eso.ochrance.cz/Nalezene/Edit/2186.
84. Defender's Report of 27 January 2020, File No. 5973/2019/VOP/HB, available at: https://eso.ochrance.cz/Nalezene/Edit/7784.
85. Judgment of the Court of Justice of 21 October 1999, Susanne Lewen, C-333/97, ECR I-07243.

Chapter 5: Returning to work after maternity or parental leave

It is not easy to return to work after maternity or parental leave, especially if the time off to care for the child lasted several years. Moreover, parents may choose family planning strategies such that parental leave is accumulated into one long period of being outside the labour market, overwhelmingly for women. How significant is the difference between returning from maternity leave and parental leave? What if my employer does not want me anymore?

5. Returning to work after maternity or parental leave

5.1 Returning from maternity and parental leave

It is generally believed that employers must allow employees returning from maternity or parental leave to return to their work. However, the employer's specific obligations depend on the type of employment contract, as well as on whether employees return immediately after their maternity or parental leave.

Returning from maternity leave

The employer must "hold the spot" for women who return to work immediately after maternity leave. The employee must thus be able to return to the same position as the one she had before leaving for maternity leave.[86] Where this is not possible, because the work has ceased to exist or the workplace has been abolished, the employer must assign them to some other job corresponding to the employment contract.[87]

Returning from parental leave

When employees return after parental leave lasting no more than 3 years, they are not legally entitled to return to their original position, but have the right to be assigned the type of work and job description as set out in the employment contract.

86. Section 47 of the Labour Code.
87. Section 38 (1)(a) of the Labour Code.

What if an employee stays home with the child until the child's fourth birthday?

If an employee wants or needs to stay at home with the child longer than until the child's third birthday, it is possible to agree with the employer on the provision of compensatory time-off without compensation for salary. However, the employer is not obliged to accept such an arrangement.[88] During the time-off, employees are no longer covered by protection granted to parents on parental leave.

Our tip: The State pays for your health insurance while you are receiving parental allowance. If you draw the whole amount of parental allowance and remain on parental leave, you need to report this fact to the insurance company. Health insurance will continue to be paid for you by the State, but on different grounds – the State also pays insurance premiums for persons who care for at least one child under the age of 7 personally and properly all day long.

Do the rules on return to work apply equally to fixed-term and indefinite-term contracts?

This depends on each specific contract. If the employee entered into a fixed-term contract, this contract terminates on the originally agreed date. If this happens before the employee returns from maternity or parental leave, the employer is no longer obliged to guarantee their return to work. The same is true of work based on an agreement other than employment contract. Employees with a contract concluded for an indefinite term are thus in a more favourable position.

How to proceed when changing jobs? Is it necessary to state on the CV that the job seeker has spent the last few years at home?

It is not. Just as the employer has no right to ask whether the job seeker plans to become pregnant in the near future or whether they already have children, there is no need to state that they have been on maternity or parental leave. If the employee is worried that this will be obvious from the CV, they can, for example, simply state the duration of each job instead of specific dates of previous employment. It is also legitimate to respond to an explicit question by indicating that the job seeker would prefer not to answer.[89]

From the Defender's practice: The Defender dealt with a complaint filed by a female police officer who, after returning from parental leave, was assigned to a different post. While she had worked originally as a traffic police officer, and had years of experience in the field and wanted to improve her skills, she was assigned after her return to the position of peace officer. The reason, according to the police, lay in full capacity, which made it impossible to assign the complainant to the original department. As the police officer was returning from parental leave, and not maternity leave, and her new post was of the same rank and corresponding pay grade, the employer had fulfilled their legal obligation. It was not established in the given case that the reassignment had been motivated by discrimination against the complainant as a mother.

Report of the Public Defender of Rights of 1 September 2017, File No. 752/2016/VOP/KS

Our tip: Should you leave your job after returning from parental leave for any reason and your child is under 4 years of age, you should register with the Labour Office within 3 days of the end of your employment. This will help you get higher unemployment benefits.[90]

5.2 Pressure to terminate employment by agreement

It happens that when an employee is returning from parental leave, the employer is no longer interested in employing them and thus tries to force the employee into termination by agreement. However, terminating

88. However, where an employee had no other option than to stay at home because of a lacking capacity of kindergartens, this, according to the Supreme Court, should not be a reason for their dismissal. See the judgment of the Supreme Court of 10 October 2008, File No. 21 Cdo 4411/2007.
89. The employer cannot punish you for refusing to answer questions about your family. For more details, see Chapter 1: Commencement of work, which covers, among other things, job advertisements and interviews.
90. 90 For more information, see the Defender's press release of 2 January 2019, available at: www.ochrance.cz/aktualne/problem-s-podporou-v-nezamestnanosti-kdyz-skoncite-v-zamestnani-po-navratu-z-rodicovske-1/.

employment by agreement should be an option only in those cases where the employee actually agrees with the termination of the employment relationship.

However, the situation is complicated in practice. The employer makes it clear that an employee is no longer wanted, and if agreement is not reached, the employer resorts to coercion, which can irreversibly disrupt the working relationship. In the Defender's experience, if employees are well equipped with legal arguments, they at least have a better bargaining position regarding the specific terms of departure. ochránce plyne, že pokud jsou zaměstnanci dobře vybaveni právními argumenty, umožňuje to často alespoň lepší vyjednávací pozici pro konkrétní podmínky odchodu.

Our tip: Does your employer want you to sign a termination agreement? Do not sign anything on the spot. Always take the document home, read it calmly and do not be afraid to consult a lawyer.

From the Defender's practice: The Defender dealt with the case of a woman who had worked as a primary school teacher based on an indefinite-term contract. On her return from parental leave, her employer refused to offer her a full-time job, while indicating that she would not be able to dedicate herself fully to her job because she would have to care for the child, and threatened her with dismissal. Although no discrimination was found in the specific case, the Defender concluded that if an employer pressures employees returning from maternity or parental leave to terminate their employment, this constitutes at least harassment. Depending on the intensity of this pressure, it could also be direct discrimination based on sex.

Report of the Public Defender of Rights of 25 January 2013, File No. 167/2012/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/1460

5.3 Dismissal for redundancy

Another solution is for the employer to terminate employment on the grounds of redundancy. The Labour Code states that an employer may give notice to an employee if the employee becomes redundant in view of the employer's decision to change their tasks, technical equipment, reduction of the personnel for the purpose of increasing the efficiency of work, or other organisational changes.[91]

This ground for termination is based on the following conditions:

- adoption of a decision to reduce the number of staff in order to increase efficiency;
- redundancy of the specific employee;
- a causal link between the decision on the organisational change and the employee's redundancy.[92]

Feigned redundancy

Employers occasionally try to dismiss employees on this ground although they, in fact, are not redundant. The above-listed statutory conditions for dismissal on the grounds of redundancy are thus not met. This is a way to get rid of "inconvenient" employees, e.g. when they are returning from maternity or parental leave.[93]

Defence is available against such a procedure. However, it may be difficult for an employee to recognise that this is a case of "feigned redundancy", where it makes sense to mount a defence. Moreover, invalidity of the notice of termination must be pleaded in court in due time. Otherwise, if the employee fails to claim invalidity of the termination in court in time, the employment relationship terminates although the legal conditions for giving notice were not met.

91. Section 52 (c) of the Labour Code.
92. BĚLINA, Miroslav. Zákoník práce: komentář. (Labour Code: Commentary.) 2nd ed. Prague: C. H. Beck, 2015. Velké komentáře. (Major Commentaries.) ISBN 9788074002908, p. 320.
93. Report of the Public Defender of Rights on inquiry of 25 January 2013, File No. 167/2012/DIS/JKV; available at: http://eso.ochrance.cz/Nalezene/Edit/1460, or the Defender's report of 1 March 2017, File No. 1206/2015/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/5764.

Our tip: A claim for declaring the termination invalid must be brought to court within two months from the date on which the employment relationship was to end by the termination, so do not hesitate. If you intend to defend yourself against invalid termination of your employment, you have to advise the employer without delay in writing that you insist on being further employed. If you are successful, you can claim compensation for salary in court.

The employer may not give notice to an employee on the grounds of redundancy if the employee becomes "redundant" for the employer just because someone else has been hired as a replacement for the time of the employee's absence. This also applies if the employer does not have enough work for both employees to match their employment contracts. In this case, the employer cannot terminate either employee on the grounds of redundancy, as the employees' "redundancy" did not arise as a result of the employer's decision to make an organisational change.[94] In the case of "replacements" of employees on maternity or parental leave, the employer must think ahead to ensure that such a situation does not arise. It is advisable to offer to the new employee a fixed-term contract, which will only last for the necessary period of time.

That the employer' argument of redundancy was merely feigned is also indicated by the fact that the employer hires someone else to replace the dismissed employee, either before or shortly after the decision to terminate the collaboration, without any change in the circumstances.[95]

Invalidity of termination on the grounds of redundancy may also be pleaded if the employer could have resolved the situation of redundancy caused by an organisational change other than by making one of the employees redundant. For example, the employer should not have renewed the employment contract of an employee holding the same position as the one who the employer wants to make redundant.[96]

Our tip: The employer gave you a notice on the grounds of redundancy after you had returned from maternity or parental leave, and you suspect that the employer was merely trying to get rid of you? Ask a trade union, lawyer or ombudsman for advice. But do not hesitate. If you want to bring the matter to the court, you must file a lawsuit within two months of the end of your employment.

Organisational change leading to genuine redundancy

If the employer really needs to reorganise, it may be that more than one employee is working in the job being abolished and the employer has to choose which employees to make redundant. In that case, the employer may not use discriminatory criteria for the selection of employees who will be dismissed. The employer thus cannot dismiss, for reasons of redundancy, a mother with small children or parents who are to return from parental leave without having a reason for doing so based on their performance at work. Even in such a case, even if all the legal conditions for dismissal on the grounds of redundancy are otherwise met, it is possible to challenge the termination of the employment in court with reference to alleged violation of the prohibition of discrimination.[97]

What if the employer claims redundancy, but insists on termination by agreement?

When employment is terminated by agreement, it is not necessary to state the reasons for termination. But if the employer claims that the reason is redundancy, it is a good idea to insist that this be stated in the agreement. Indeed, in that case, employees are entitled to severance pay[98] and also higher unemployment benefits.[99]

94. This is not an organisational change within the meaning of Section 52 (c) of the Labour Code, as this change does not constitute a means of reducing the number of staff with a view to increasing work efficiency (i.e. "job cuts" aimed, for example, to make production more efficient) or a change in their qualification composition, but rather a solution to a situation caused by the employer's error in recruiting a replacement employee. The Supreme Court reached this conclusion in its judgement of 12 April 2005, File No. 21 Cdo 2095/2004.
95. For example, in case File No. 1206/2015/VOP/VB, the Defender considered it suspicious that, just 4 weeks later, the employer had announced a selection procedure for the originally cancelled job. Defender's Report of 1 March 2017, File No. 1206/2015/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/5764.
96. For more details, see the judgment of the Supreme Court of 27 April 2004, File No. 21 Cdo 2580/2003.
97. Judgment of the Constitutional Court of 30 April 2009, File No. II. ÚS 1609/08.
98. Section 67 (1) of the Labour Code.
99. Section 50 (3) of the Employment Act.

Our tip: Employers sometimes try to force their employees to sign an agreement on termination of their employment, while claiming that they are redundant, i.e. if they do not sign the agreement, they will be given notice. However, it may be very difficult to contest the validity of termination by agreement. The employer may also conceal from you that you would become entitled to severance pay if you were given notice. Claiming back severance pay is complicated. Therefore, always consider carefully whether to sign the agreement, especially if your employer does not offer you anything extra when you sign it (e.g. a higher severance pay than you are legally entitled to).

5.4 Calculation of severance pay in cases where the employee is dismissed after returning from parental leave

It may happen that the employer undergoes such an organisational change during the time of an employee's parental leave that it is objectively impossible for the employee to return. Notice should be given in that case on the grounds of redundancy and with severance pay. The amount of the severance pay depends on the employee's previous salary and the duration of employment. Similar to the calculation of salary after the employee's return from parental leave,[100] the current salary conditions at the employer must also be taken into account in these cases.[101]

From the Defender's practice: The Defender has repeatedly emphasised that the employer must respect the principle of non-discrimination if employees are made redundant due to organisational changes. If the employer abolishes merely the job of an employee who is on maternity or parental leave or is returning from maternity or parental leave under suspicious circumstances, this might indicate that the organisational change was actually purpose-driven.

Report of the Public Defender of Rights of 25 January 2013, File No. 167/2012/DIS/JKV, available at http://eso.ochrance.cz/Nalezene/Edit/1460, or the Report of the Public Defender of Rights of 1 March 2017, File No. 1206/2015/VOP, available at: https://eso.ochrance.cz/Nalezene/Edit/564.

From the Defender's practice: The Defender was contacted by a woman who had been employed since 2002 and had gone on maternity and then parental leave in 2004. She was a housewife with three children until 2012. During that time, the employer underwent organisational changes and was therefore no longer objectively able to employ the complainant on her return. It was necessary to calculate the severance pay, which the employer did based on the claimant's last earnings in 2004. However, earnings have increased in the company by 20% in the meantime.1 The complainant took the Defender's advice to negotiate with her employer and managed to achieve a 15% increase in her severance pay.

Report of the Public Defender of Rights of 19 August 2013, File No. 75/2012/DIS

100. For more details, see Chapter 6.

101. Defender's Report of 19 August 2013, File No. 75/2012/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/1600.

Chapter 6: Work-life balance

Returning to work after parental leave or the need to take care of a sick parent or grandparent. There can be countless reasons to try and achieve a better balance between work and family life, whether it concerns a female or male employee. What are the options when trying to reconcile all your life roles? Where does the employer have to accommodate to your needs, and when is this merely at the employer's discretion?

6. Work-life balance

In many situations, the Labour Code requires employers to take special account of employees providing care for children and other family members, and thus contribute to work-life balance of their employees.

What specific duties does an employer have?

- In the case of pregnant employees and employees who are mothers up to nine months after giving birth or employees who are breastfeeding, the employer must temporarily reassign the employee to work that will not endanger her pregnancy or maternity.[102]
- If these women work at night, the employer must reassign them to day work at their request.[103]
- Breastfeeding women must be provided with breaks for breastfeeding.[104]

And above all:

- Shift assignments should take into account the needs of workers who care for children.[105]
- The employer should allow employees caring for children or family members to adjust their working time provided that this is possible in the employer's operation.

102. If the employee receives a lower salary as a result of the reassignment, she is entitled to a "compensation allowance".

103. In this case, too, the employee is eligible for a compensation allowance.

104. Section 242 of the Labour Code.

105. Section 241 (1) of the Labour Code.

Enabling balance between work and childcare in cases where this is practically possible can benefit both the employee and the employer. Work-life balance measures may also be used by parents with small children who, thanks to such measures, can already participate in the work process during their parental leave. Part-time work can help just as well as working from home – this is up to the individual employee and employer and their mutual needs.

Our tip: A brief overview of work-life balance measures and means of defence in cases where the employer is not willing to allow this can be found in the Defender's leaflet "Work or family? Let's have both!".[106]

6.1 Adjustment of working time

The Labour Code expressly provides that if employees caring for a child under 15 years of age[107] request shorter working time or other appropriate adjustment of the fixed weekly working time, the employer must grant the request unless this is prevented by serious operational reasons.

The following options can typically come into play as adjustments of working time:

- shorter working time, i.e. the provision of part-time work;
- adjusting working time so that employees can do the same amount of work, but at times that allow for better balancing of work and care (for example, leaving work early to pick up a child from kindergarten);
- a compressed work week, where employees work longer shifts on fewer days.

If the employer were to generally allow the use of part-time or other arrangements, but not for employees who request this for childcare, the employer could be guilty of discrimination on the grounds of parenthood.[108]

Our tip: Is the employer's decision insufficiently reasoned? File a written complaint with the employer. The employer has to discuss the complaint with you[109] and provide you with a reasoned answer. Failing this, the employer could be fined by the labour inspectorate.

What are serious operational reasons preventing such an adjustment?

According to the Supreme Court, such reasons exists only in cases where granting the employee's request would prevent, disrupt or seriously jeopardise the proper operation (performance of tasks or activities) of the employer.[110] If the employee can perform the job equally well with the adjustment of duties, or the limitations arising from the adjustment can be easily resolved by the employer in some other way, the employer should have no reason to deny the request.

The Defender has repeatedly pointed out the need for work-life balance.[111] In his opinion, employers have an active duty to avoid unequal treatment of employees. Such duties also include adjustment of working time to meet the needs justified by childcare. He stressed that parent employees are at a disadvantage compared to other employees in that, because of childcare and the resulting constraints, such as kindergarten operating hours, they cannot adapt to the employer's needs as easily as employees who are not caring for another person.[112]

106. Work or family? Let's have both! Available at: www.ochrance.cz/uploads-import/Letaky/Sladovani-v-pracovnim-pomeru.pdf.
107. The same applies to a pregnant employee or an employee who proves that they are predominantly caring themselves for a dependent person in the long term. This may include not only childcare, but also care for other family members.
108. Section 5 (3) of the Anti-Discrimination Act.
109. Section 276 (9) of the Labour Code.
110. Judgement of the Supreme Court of 17 December 2003, File No. 21 Cdo 1561/2003.
111. The Defender extensively addressed the topic of work-life balance in the Bespoke Civil Service project. Although the outputs of the project (available at www.ochrance.cz/kancelar-vop/projekty-spoluprace/sluzba-sita-na-miru/) focused not on the staff at private employers, but rather on employees in service relationships, many conclusions are valid universally. This is true, for example, of the leaflet "Work or family? Let's have both." Available at: www.ochrance.cz/fileadmin/user_upload/Letaky/Sladovani.PDF. On the other hand, employers can draw inspiration from Work-life balance stories in the Defender's Office. Available at: www.ochrance.cz/fileadmin/user_upload/projekt_ESF/2018_0157_Ochrance_LetakA4_Pribehy_sladovani_04_web.pdf.
112. Defender's Report of 17 June 2015, File No. 211/2012/DIS, available at: https://eso.ochrance.cz/Nalezene/Edit/2906.

6.2 Working from home

Although partial work from home (telecommuting, homeworking or home office) may be the most suitable solution for achieving work-life balance for many employees, employers are not required to allow this. Employers can be asked to allow telecommuting, but it is up to the employer to decide whether they are willing to agree to it.[113]

> Illustrative example: Dana works as a department manager and is currently on maternity leave. Upon her return, she would like to work temporarily from home on Mondays and Fridays to be able to balance care for a young child with her work life. She believes that there is nothing to prevent her from working from another location because, as the head of department, she need not be physically present in the office every day. She routinely communicates with her subordinates by phone or email. But the employer disagrees. They argue that it is important for Dana to be available at the workplace so that she can respond flexibly, sign contracts and deal with her colleagues in person, which the employer believes is quicker and more convenient.

Is the employer obliged to satisfy the request?

They are not. While the Labour Code requires employers to allow employees to adjust their working time, there is no such duty as regards homeworking. This, of course, does not preclude the employer from allowing homeworking on a voluntary basis.

> Illustrative example: Dana's subordinate addressed an identical requirement to the employer. Unlike in Dana's case, her employer decided to accommodate to her needs.

Can this constitute discrimination?

This may constitute a breach of the duty of equal treatment of all employees as provided by the Labour Code.[114] However, it must be determined whether or not Dana's situation was different from that of her subordinate. It is possible that this employee's duties did not have to be performed from a specific location, and it was therefore acceptable for the employer to have her work from home. If the two employees were in different positions and the importance of their presence at the workplace differed, the employer's decision could be legitimate. This is because while arbitrary distinctions between employees are prohibited, this is not true if there exists an objective justification.

From the Defender's practice: The Defender was approached by a woman who complained about discrimination at work. The employer refused to adjust her working time so that she could accompany her child to a kindergarten. The plaintiff worked as an administrative clerk and her duties included primarily billing the customers. Her employer offered her shift work as the only option for her return from parental leave. The employer argued that their needs would not be covered if the working time were adjusted and they would therefore have to recruit a new employee. Serious operational reasons were supposed to lie in the billing hours, which were from Monday to Friday between 5:45 a.m. and 7:00 p.m. The schedule of shifts is tailored to these times to ensure coverage of the busiest times, i.e. from 5:45 a.m. to 9:30 a.m., and then from 4:00 p.m. to 7:00 p.m. At least two employees are needed in the billing department during these times to cover the volume of business. If the complainant did not accept this arrangement, the employer would propose a termination agreement. In that case, the Defender found no discrimination, with reference to the employer's operational reasons. The employer cannot be forced to hire another employee in order to adjust the working time of one employee.

Report of the Public Defender of Rights of 17 June 2015, File No. 211/2012/DIS/VP, available at: https://eso.ochrance.cz/Nalezene/Edit/2906

From the Defender's practice: The Defender also advised a civil servant who attempted to agree with her employer on shorter working time of 6 hours a day. After much negotiation and consultation with the Defender, she was able to achieve a reduction to 6.5 hours per day. She noted in this regard that the employer was generally not open to any benefits enabling better work-life balance, such as delaying the start of working hours to enable employees to accompany their children to a kindergarten.

Complaint to the Defender of 22 July 2017, File No. 6049/2017/VOP/HB.

113. Section 317 of the Labour Code.

6.3 Business trips

The law defines a business trip as a situation where an employer sends an employee for a short period of time to work outside the agreed place of work.[115] Pregnant employees and employees caring for children up to 8 years of age may be sent on a business trip outside the municipality of their workplace or place of residence only with their consent. The same rule also applies to single parents of children under 15 years of age and employees who care for another dependent person.[116]

From the Defender's practice: The Defender was approached by a woman asking how to deal with her situation at work. Her employer wanted to send her for several days of training. However, the complainant was caring for a 10-year-old child and had no baby-sitting options; yet the employer insisted on the business trip. The Defender equipped the complainant with legal arguments. The employer then acknowledged that the employee could only be sent on a business trip with her consent and stopped pressuring her.

Complaint to the Defender of 10 January 2020, File No. 209/2020/VOP/JKV

114. Section 110 of the Labour Code.

115. Section 42 of the Labour Code.

116. Section 240 of the Labour Code.

Chapter 7: Caring for a sick child or a child with a disability

Long after the end of maternity and parental leave, parents may find themselves having to deal with balancing work and childcare. What are the specifics of caring for a child who is sick? And in what ways should your employer accommodate to your needs if you care for a child with a disability?

7. Caring for a sick child or a child with a disability

7.1 Allowing care for a sick child

The Labour Code provides several different ways of reconciling the employee's duties with the need to care for a child, whether in the case of acute sickness or long-term illness of the child. The Labour Code envisages that employees-parents must sometimes take care of sick children. Therefore, employers must excuse the absence of such employees while the child is being treated. They must allow employees to accompany their children to a doctor and the Labour Code also foresees the possibility of hospitalisation. While the absence of employees may place a certain burden on the employer, this does not mean that the employer could penalise employees for childcare-related absences.

The employer is obliged to grant leave – to excuse the absence of employees during the time when they are taking care of their offspring.[117]

Employees are entitled to a carer's allowance from the State as a sickness insurance benefit, for a maximum of 9 days. In the case of single parents, this period is extended to 16 calendar days.[118] Parents (or other caregivers) may alternate once during this time. The amount of the allowance equals 60% of the reduced daily assessment base.[119]

117. Section 191 of the Labour Code. The same option is also available to the employee when caring for another member of the household whose health condition, by reason of illness or injury, necessitates treatment by another person (Section 39 of the Sickness Insurance Act).

118. Details on utilisation of the carer's allowance can be checked on the website of the Czech Social Security Administration, available at: www.cssz.cz/osetrovne.

119. The Ministry of Labour and Social Affairs offers a calculator for the individual types of benefits. Available at: www.mpsv.cz/web/cz/kalkulacka-pro-vypocet-davek-v-roce-2021.

What to do if the child is sick for more than nine days?

Leave intended for taking care of a child is not linked to drawing of carer's allowance; therefore, leave can be taken for a longer period of time even if there is no longer an entitlement to this allowance. Eligibility for further allowance does arise even if the child becomes sick for the second time. The entitlement to an additional nine-day (or sixteen-day) allowance arises only if at least one day elapses between these two instances of care.

What is the difference between a carer's allowance and long-term carer's allowance?

Long-term carer's allowance means a separate sickness insurance benefit intended for employees who care for a close person with a serious illness or after a serious accident. Its amount is calculated in the same way as for the basic carer's allowance, but can be collected for 90 days. Further entitlement arises only after expiry of 12 months. The person being cared for must receive a medical certificate regarding the need for long-term care. The entitlement to such care arises in case of hospitalisation lasting at least 4 days and if the care is required for at least 30 days.[120]

> Illustrative example: Iva works as a supermarket clerk and takes care of her four-year-old son. He has impaired immunity and commonly brings a virus from kindergarten. Iva lives alone and often has to take time off at work to care for her sick son. If possible, she tries to report absences to her supervisor in advance or switch shifts with a colleague. Yet sometimes she is unexpectedly absent from work, which her supervisor does not like. She therefore told Iva that she would have to make other arrangements for her son's care, or else she would have to end their collaboration.

Can this constitute discrimination?

It can. The employer is obliged to accommodate parents if they need time-off with a view to caring for a child up to 10 years of age. In the case of older children, this duty applies if their medical condition makes such care absolutely necessary. If the employer decides to terminate the employment relationship because the employee exercises this right, this could constitute direct discrimination on the grounds of parenthood. The same applies if the employer treated the employee unfavourably in some other way for the same reason (e.g. bullying).

From the Defender's practice: The Ombudsman was approached by a man who alleged unfavourable treatment by a supervisor, motivated by the fact that the complainant had taken leave to care for a minor child. The supervisor thus allegedly used various forms of coercion against the complainant, such as frequent checks on the complainant while on duty, excessive assignment to night shifts, exclusion from social events, etc. In the given case, the Defender was unable to conclude, beyond any doubt, that the complainant had been treated less favourably than his colleagues who were not parents. If this were so, the employer would have committed direct discrimination on the grounds of parenthood.

Report of the Public Defender of Rights of 16 December 2014, File No. 231/2012/DIS/VP, available at: https://eso.ochrance.cz/Nalezene/Edit/1994

7.2 Employer's obligations towards employees caring for a disabled child

The Labour Code provides that if an employee caring predominantly themselves for a person dependent on help requests shorter working time or other appropriate adjustment of the fixed weekly working time, the employer must grant the request unless this is prevented by serious operational reasons.[121]

120. Details on utilisation of the long-term carer's allowance can be checked on the website of the Czech Social Security Administration, available at: www.cssz.cz/web/cz/dlouhodobe-osetrovne.

121. Section 241 (2) of the Labour Code.

The following options can typically come into play as adjustments of working time:

- shorter working time, i.e. the provision of part-time work;
- adjusting working time so that employees can do the same amount of work, but at times that allow for better balancing of work and care (for example, leaving work early to pick up a child from kindergarten);
- a compressed work week, where employees work longer shifts on fewer days.

If the employer were to generally allow the use of part-time or other arrangements, but not for employees who request this for childcare, the employer could be guilty of discrimination on the grounds of parenthood.[122]

These employees may be sent by the employer on business trips only with their consent.[123]

Can this constitute discrimination if the employer terminates employment on the grounds of care for a child with a disability?

It can. If the reason for termination were not, e.g., redundancy, but the employer's dissatisfaction with the fact that the employee requires arrangements to be made for them to take care of a child with a disability, this could amount to direct sex discrimination.

122. Section 5 (3) of the Anti-Discrimination Act.

123. 123 Section 240 of the Labour Code.

Chapter 8: Termination of employment

8. Termination of employment

The various options for termination of employment are addressed throughout the Recommendation. Below you will find links to the individual chapters grouped by subject: termination during the trial period; expiry of the contract term; termination by notice; and termination by agreement.

8.1 During the trial period

Trial period is a contractually pre-determined period during which it is easy for the employer and the employee to terminate the employment. It is usually agreed from the date of commencement of work and may not exceed 3 months, or 6 months for senior staff. It cannot be subsequently extended, but is interrupted in case of impediments to work (e.g. in case of unfitness to work or parental leave).

It holds in general that both the employer and the employee may terminate the employment relationship during the agreed trial period with immediate effect and without stating a reason. However, the Defender has already noted in the past that, even in this case, the employer is bound by a prohibition of discrimination. The employer may therefore dismiss an employee during the trial period because they are not satisfied with the employee's work, but may not make this decision based on discriminatory criteria. If the employer decided they did not wish to employ, for example, a pregnant woman, this would be in breach of the equal treatment obligation.

Discriminatory termination of employment during the trial period may occur, for example, if the employer discovers that the employee is pregnant. Discrimination could also be present if the employer terminated the employment relationship in this way after discovering that the employee is caring for a young child (e.g. the employee has been caring for a family member during the trial period).

For further details, see Chapter 3.1 Termination of employment during the trial period in case of pregnancy.

8.2 By expiry of the contract period

The simplest reason for termination of employment is the expiry of its term – the employment terminates as of the end date of the fixed-term contract or agreement. A specific situation occurs in cases of recurrent employment contracts for a fixed period: it may be questionable under what circumstances the employer may change their mind regarding a previously promised extension of the employment contract.

> Our tip: A fixed-term employment relationship is not interrupted during maternity or parental leave. If you are interested in continuing in your position after the end of your contract, it is advisable to contact your employer in due time and try to reach mutual agreement.

For further details, see Chapter 3.4 Non-renewal of employment contract.

Everything that applies to non-renewal of an employment contract on the grounds of pregnancy is also true of non-renewal of a contract on the grounds that the employee is taking care of a child.

8.3 By notice

Both the employee and the employer may terminate the employment by notice. However, while an employee may give notice on any grounds whatsoever, the employer may do so only on grounds explicitly listed in the Labour Code.

An employer may give notice to an employee if:

- the employer's company or its part is being dissolved;
- the employer's company or its part is being relocated;
- the employee has become redundant;
- the employee may no longer perform their work for health reasons;
- the employee does not meet the legal requirements for the performance of this work;
- the employee seriously breaches their obligations.[124]

An employer may not give notice to an employee during the protection period even on these grounds (with the exception of dissolution or relocation of the employer). For more details, see the introduction to Chapter Pregnancy. In that case, the employer may attempt to convince the employee to sign an agreement; for more details, see chapter Pressure to terminate employment by agreement.

For further details, see Chapters 3.2 Termination of employment due to possible pregnancy, 3.3 Removal from a senior position before maternity leave, 5.4 Calculation of severance pay in cases where the employee is dismissed after returning from parental leave and 5.3 Dismissal for redundancy.

8.4 By agreement

An employee and their employer may also terminate employment by mutual agreement.[125] Such termination should occur exclusively based on genuine consensus of the parties. However, agreements may sometimes be used by employers with the aim to evade their duties in cases where the termination is, in fact, unilateral.

For more details, see Chapter 5.2 Pressure to terminate employment by agreement.

124. Section 52 of the Labour Code.

125. Section 48 (1)(a) of the Labour Code.

Chapter 9: How to defend yourself?

9. How to defend yourself?

9.1 Defence options by individual authorities

Knowing your rights is a good start, but soon the question will arise as to how you should actually deal with the situation. The defence options may vary not only from case to case, but also depending on the outcome you want to achieve. Would you like to stay at work and try to settle the disagreements? Or are the relationships harmed irreparably, but you do not want the situation to occur again with your employer and someone else in the future? Would you rather get an apology or compensation? And are you interested in resolving a specific dispute, or do you want primarily to contribute to a systemic solution for the future?

9. 1. 1 Negotiating with the employer

The Defender's experience proves that informal negotiations with the employer can bring unexpected results. Read the legal regulations, along with manuals and articles from trustworthy sources, and go talk to your superiors. You may find that the employer did not even realise the unsuitability of their conduct or that they may be willing to find a compromise. Even if you cannot achieve the ideal result, it is possible to at least improve your position. The Labour Code explicitly states that employees have the right to have their complaints discussed by the employer.[126]

What can I achieve? By negotiating with the employer, you can improve your position and, ideally, eliminate the conflict altogether. An amicable solution is the least demanding in terms of both time and money. Moreover, unlike litigation, it need not completely rule out good relations in the future.

> Our tip: Do you suspect discrimination and do not know how to argue your case to your employer? You can contact the Defender with a request for advice.

126. Section 276 of the Labour Code.

9. 1. 2 Trade union organisation

Trade union organisations serve for the protection of employees' rights and have the right to hear, not only collective grievances, but also complaints raised by individual employees. If a trade union operates at the employer, it is advisable to contact the union with a request for resolution of the dispute. Thanks to its position, a trade union can be a valuable mediator for an amicable solution or compromise.

What can I achieve? In the union, you get a bargaining agent. You can benefit from the experience and long-standing relationship between the union and the employer. As in the case of individual negotiations, there remains hope for an amicable solution and good relations.

> Our tip: If a trade union is established at the employer, it is suitable to ask the union to try and resolve your conflict with the employer.

9. 1. 3 Mediation

If you are trying to settle a dispute out of court, you can use a mediator – an impartial intermediary who will guide you in seeking agreement with your employer. The whole mediation process is based on voluntary involvement of both parties and should yield a result acceptable for both parties. This route can be faster and cheaper than litigation, and has the potential to calm the relationships rather than further escalating the conflict.

What can I achieve? Mediation may help you agree with the employer to the satisfaction of both parties. It can also be faster and cheaper than a court dispute. A constraint may be that the whole process is based on the willingness of both parties to engage in mediation.

> Our tip: How mediation is usually carried out and how to choose a suitable mediator is described in the leaflet "Mediation".[127]

9. 1. 4 Labour Inspectorate

Compliance with labour-law regulations is supervised by 8 District Labour Inspectorates (hereinafter the "DLI"). They can address not only discrimination, but also compliance with duties in the area of remuneration, occupational safety, etc. If you believe that the employer is proceeding at variance with the Labour Code, you can contact the DLI. The inspectorate may decide to carry out an inspection at the employer based on your complaint. It should inform you of its decision, and also about the outcome of any potential inspection. In the complaint, you can explicitly state that, in accordance with Section 42 of the Code of Administrative Procedure[128], you request information within 30 days on how the complaint has been handled.

If you are dissatisfied with the inspection, file a complaint with the head inspector of the District Labour Inspectorate. The head inspector may reconsider the conclusions reached by the DLI. You can then contact the State Labour Inspectorate as the superior authority. If even this does not lead to a remedy, you can ask the Defender to inquire into the inspectorate's procedure.

What can I achieve? The Labour Inspectorate can fine the employer and ask them to remedy the situation. However, it cannot help you with personal claims against your employer (for example, it cannot award you unpaid salary or get your dismissal overturned; only a court can do that).

> Our tip: How to proceed if you decide to contact the inspectorate? Take a look at the leaflet "Employment relationships and the Labour Inspectorate".[129]

127. Mediation. Available at: www.ochrance.cz/letaky/mediace/mediace.pdf.

128. Section 42 of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

129. Employment relationships and the Labour Inspectorate. Available at: www.ochrance.cz/letaky/pracovnepravni-vztahy/pracovnepravni-vztahy.pdf.

9. 1. 5 Ombudsman

The Public Defender of Rights works to protect people from illegal actions or inaction by the authorities. The Defender also provides methodological assistance to victims of discrimination. This means in practice that he will first explain whether discrimination might be involved and then guide you to the most effective way of dealing with the situation.

If the suspicion of discrimination is strong enough, the Defender can ask the employer to provide a statement. However, employers are generally under no obligation to co-operate with the Defender or to respond to his questions. If the Defender's activity does not seem effective, the Defender may suggest to you a different, more suitable procedure. For an overview of the Defender's procedure, see the leaflet "Equal treatment".[130]

You can use the Defender's findings to further negotiate with your employer or as a basis for litigation.

The Defender also has the option to inquire into the procedure of inspection authorities. In that case, it is first necessary to contact the District Labour Inspectorate and send the documents obtained from that authority to the Defender as an attachment to the complaint.

What can I achieve? The Defender may advise you on the most suitable defence in a specific situation. If it makes sense, he can approach the employer with questions and assess the discrimination claim himself. The Defender can then advise the employer on how to remedy the situation. However, the employer cannot be forced to adhere to the recommendation. You can use the Defender's conclusions for further negotiations with the employer or possible litigation..

> Our tip: The Defender's information leaflets can help you to get a basic understanding of your situation. Check, for example, the "Equal treatment"[131] and "Sex-based discrimination" leaflets.[132] For a general overview of what the Defender can deal with, see the leaflet "Ombudsman". Do you want to know whether the Defender has already dealt with a case similar to yours? Check the records of the Defender's opinions.[133]

9. 1. 6 Courts

Courts play an irreplaceable role in assessing discrimination: only through an anti-discrimination action can you obtain a final decision to the effect that discrimination has actually occurred.

You can file an anti-discrimination action to claim:

- refrainment from discrimination;
- remedy of the consequences of discrimination;
- an apology;
- financial compensation for intangible damage.[134]

130. Equal treatment. Available at: www.ochrance.cz/uploads-import/Letaky/Rovne-zachazeni.pdf.

131. Equal treatment. Available at: www.ochrance.cz/uploads-import/Letaky/Rovne-zachazeni.pdf.

132. Gender-based discrimination. Available at: www.ochrance.cz/uploads-import/Letaky/Diskriminace-z-duvodu-pohlavi.pdf.

133. Ombudsman's Opinions Register. Available at: https://eso.ochrance.cz/.

134. Section 10 of the Anti-Discrimination Act. The Court of Justice of the European Union has also dealt with possible penalties for violation of the non-discrimination principle. If a Member State chooses to penalise breach of the prohibition of discrimination between male and female workers by the award of compensation, that compensation must be such as to guarantee real and effective judicial protection, have a real deterrent effect on the employer and must in any event be adequate in relation to the damage sustained (judgement of the Court of Justice of the EU of 22 April 1997, C-180/95, Draehmpaehl). The Czech Constitutional Court recently noted the same when it stated that the State is obliged to provide victims of discrimination in access to employment with legal remedies that are effective, proportionate and deterrent in their entirety. Resolution of the Constitutional Court of 19 February 2021, File No. II. ÚS 1148/20.

All of the above or a combination of some of the claims may be demanded depending on the specific situation. You may also file other types of lawsuits, typically an action for the protection of personal rights or an action for annulment of a notice of termination. Your steps may also be of considerable benefit to other people in a similar situation in the future.

A lawsuit may be filed even without legal counsel; however, it is always preferable to contact an experienced lawyer. For legal aid options, see the leaflet "Legal aid".[135]

However, along with the benefits of a successful legal defence, it is also necessary to mention some drawbacks. Litigation can take several years and involve financial risk – lawyer's fees if you are successful (unless the court orders the adversary to pay your costs), and also the adversary's costs should you fail. A court decision cannot be challenged with the Defender – for more information, see the leaflet "Courts".[136]

What can I achieve? By bringing an anti-discrimination action, you can claim primarily termination of discrimination, an apology or financial compensation; other types of lawsuit may aim, e.g., at declaring your dismissal invalid.

> Our tip: Do you want to go to court? Keep in mind that you must comply with the relevant deadlines, as short as 2 months in some cases. Therefore, do not hesitate and contact the Defender or a lawyer as soon as possible.

What if I cannot afford a lawyer?

In some cases, the Defender may try to arrange pro bono, i.e. free, legal representation. The Defender has this option thanks to co-operation with the Pro Bono Alliance. The aim of the co-operation is to help victims of discrimination who would be unable to obtain legal services themselves because of their lack of means or other disadvantages. Since 2012, the Defender has submitted a total of 19 cases for free legal representation.

Are anti-discrimination lawsuits common?

In 2020, the Defender published a survey in which he analysed the decision-making of Czech courts in discrimination disputes between 2015 and 2019.[137] Out of 90 lawsuits, the courts assessed discrimination in the area of work and employment in a total of 59 cases, of which 15 cases were based on gender.

Reversal of the burden of proof in discrimination disputes

It is usually difficult for the victim to prove discrimination. A special rule of evidence, called reversal of the burden of proof, therefore applies in discrimination cases before the courts.138 This levels the playing field for the victim of discrimination, who is in a difficult evidentiary situation.

Thanks to the reversal of the burden of proof, it is sufficient if the plaintiff proves that they were disadvantaged, and this occurred under suspicious circumstances. The defendant (in this case, the employer) must then adduce evidence to refute the presumption of discrimination.[139]

This principle differs from the general procedure in taking of evidence in court, where each of the parties has to prove the veracity of its assertions. However, victims of discrimination often lack access to information that could prove not only what happened, but also why – what the employer's motivation was for the given conduct. If there was no discrimination, it should be easier for the defendant to prove the actual (non-discriminatory) reasons for its action.

135. Legal aid. Available at: www.ochrance.cz/letaky/pravni-pomoc/pravni-pomoc.pdf.

136. Courts. Available at: www.ochrance.cz/letaky/soudy/soudy.pdf.

137. A survey conducted by the Public Defender of Rights in 2020: Decision-making of Czech courts in discrimination disputes 2015–2019. Available at: www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/2020-vyzkum_judikatura-DIS.pdf.

138. 138 Section 133a of the Code of Civil Procedure.

139. 139 The Constitutional Court noted in this regard that not all situations where two employees (where one is a member of a vulnerable group) are treated unequally by an employer necessarily constitute unlawful discrimination. The discrimination victim must provide the court with other circumstances (evidence) to support a reasonable suspicion that the employer's conduct in the given case was motivated by a discriminatory intent. The Constitutional Court mentions the doctrine of "reasonable likelihood" (or "balance of probabilities") commonly applied by British courts. See the judgement of the Constitutional Court of 8 October 2015, File No. III. ÚS 880/15.

9.2 Defence options by individual situations

Whatever the situation, you can contact the Defender with a request for advice. The law requires the Defender to provide victims of discrimination with methodological assistance – along with assessing discrimination as such, the Defender can thus help them understand the whole situation.

You can also consult NGOs and counselling centres dealing with labour law.

9. 2. 1 Rejection of a job seeker

You failed in a recruitment procedure and believe this was due to discriminatory criteria used by the employer. What can you do?

- Gather clues that may confirm this suspicion.
- You can try to approach the employer with a request for explanation as to why you did not succeed in the selection procedure.[140]
- Contact the Labour Inspectorate with a request for inspection at the employer. The Inspectorate's options can be found in the first part of this chapter. Please note: the Labour Inspectorate can fine the employer and ask them to remedy the situation. However, it will not help you with your individual claims against the employer, and in particular, it will not force the employer to hire you.
- You can also consider a court action. In that case, it is advisable to consult a lawyer. For details, see the first part of this chapter.

9. 2. 2 Remuneration

You have learned that your colleagues earn more without any objective reason. How to defend yourself?

- If possible, find out what salaries are paid to your colleagues. Comparing multiple salaries can reveal patterns – for example, that the employer systematically undervalues mothers with young children, but also that the differences are spread evenly among employees.
- You may also contact your trade union, to whom the employer must disclose information that is otherwise considered confidential.[141]
- Contact the Labour Inspectorate with a request for inspection at the employer. The Inspectorate's options can be found in the first part of this chapter.
- You can also consider a court action. In that case, it is advisable to consult a lawyer. For details, see the first part of this chapter.

9. 2. 3 Work-life balance

You need to agree with your employer on adjustment of your working time or on the option of working from home in order to take care of a child or family member, but your employer will not allow this. What now?

140. However, the Court of Justice of the European Union has held that the law does not make it possible for an applicant who meets the requirements set out in an advertisement offering employment and whose application has been rejected to obtain information as to whether the employer recruited another job seeker for the post in question following the selection procedure. The employer is not obliged to disclose this information to the employee. If the employer refuses to disclose all information on the selection procedure to the job seeker (or does not respond to the job seeker's request), the court should take this fact into account in the context of establishing facts from which it may be presumed that there has been discrimination (judgment of the Court of Justice of 19 April 2012, Galina Meister v Speech Design Carrier Systems GmbH, C-415/10).

141. Section 276 of the Labour Code.

- Inspect the leaflet "Work-life balance in employment"[142] or "Work-life balance in civil service"[143].
- Find out in what cases the employer has to satisfy your request and when this is up to the employer's discretion. An overview of work-life balance measures is given in Chapter Work-life balance.
- Find out if the needs of any of your colleagues have been accommodated to by your employer, even though you were in a similar situation. If both cases involved parents, the employer could be guilty of general unequal treatment of employees. If, on the other hand, the employer systematically fails to allow work-life balance with regard to childcare, although they would accommodate to the needs of employees who are not parents, this could constitute discrimination on the grounds of parenthood.
- Contact the Labour Inspectorate with a request for inspection at the employer. The Inspectorate's options can be found in the first part of this chapter.
- You can also turn to the Defender or to a court.

9. 2. 4 Bullying vs. discrimination

Your supervisor at work is hostile towards you, even though there is no objective reason for this. How to define and defend against such behaviour?

Bullying can be defined as any conduct of another person creating a hostile environment. This conduct need not always be discriminatory. If a supervisor treats subordinate employees unfavourably, this is denoted as bossing. The opposite (bullying a manager by subordinates) is called staffing. Mobbing is bullying within a team among similarly situated employees. These types of bullying may, but need not, simultaneously represent discrimination. This will depend on whether the unfavourable treatment is motivated by one of the protected characteristics or by personal animosity.

- Read the leaflets "Workplace bullying"[144] and "How to help victims of workplace bullying"[145].
- First, try to resolve the conflict directly with the employer.
- If you fail, contact the Labour Inspectorate with a request for an inspection at your employer. If you believe that the reason for the hostility is your protected characteristic, highlight this suspicion in your complaint. The Inspectorate may address (un)equal treatment of employees both in general (i.e. without any discriminatory element) and in situations where bullying simultaneously represents discrimination. The Inspectorate's options can be found in the first part of this chapter.
- If you disagree with way the Inspectorate handled the case, you may contact the Defender. The Defender may investigate possible errors on the part of the Labour Inspectorate. But the Defender cannot deal with the bullying as such.

9. 2. 5 Termination of employment

Your employer intends to dismiss you or has already done so. How to defend yourself in time and who to contact in such a situation?

- Read the leaflet "Termination of employment".[146]

142. Work-life balance in employment. Available at www.ochrance.cz/uploads-import/Letaky/Sladovani-v-pracovnim-pomeru.pdf.
143. Work-life balance in civil service. Available at: www.ochrance.cz/letaky/sladovani-ve-statni-sluzbe/sladovani-ve-statni-sluzbe.pdf.
144. Workplace bullying. Available at: www.ochrance.cz/letaky/sikana-na-pracovisti/sikana-na-pracovisti.pdf.
145. How to help victims of workplace bullying. Available at: www.ochrance.cz/uploads-import/Letaky/Sikana-na-pracovisti_rady.pdf.
146. Termination of employment. Available at: www.ochrance.cz/letaky/skonceni-pracovniho-pomeru/skonceni-pracovniho-pomeru.pdf.

- Do not sign a termination agreement on the spot, especially if you have not actually reached consensus with the employer. Take the documents with you to read carefully and, if necessary, consult a lawyer.
- Do not be afraid to contact a counsellor or lawyer as soon as possible.
- Ask the employer about the reasons. If you intend to conclude an agreement, make sure that the reason for your dismissal is stated in the agreement – this may affect the amount of the unemployment benefit.
- Proceed quickly. While the Defender or the Inspectorate can assess the situation, the loss of your employment can only be prevented by courts.
- Pay attention to deadlines: an action for declaring a notice of termination invalid may only be filed within two months of termination of the employment relationship.
- Do not neglect registration with the Labour Office unless you have some other job. You must register as a jobseeker within three days of the end of your employment. Later registration may lead to lower unemployment benefits.

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