

WORLD ALLIANCE FOR BREASTFEEDING ACTION



WABA ACTIVITY SHEET

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MATERNITY LEGISLATION:

Protecting women's rights to breastfeed

Today, more and more women of child-bearing age are working outside the household, in work that keeps them far from home for long hours with rigid regimes. Increasingly, women are seeing themselves and being viewed by society as independent economic units responsible for their own economic survival and well-being. In 1990, 828 million women were officially estimated to be economically active in the labour force.

Since the definition of economic activity excludes such unpaid work as subsistence agriculture, housework and child care, the actual figures for women at work are far higher.

The majority of workers are also parents; women's dual role as workers and mothers needs to be viewed in its entirety. Society must respect and accommodate women's



Graphic by Paulo Santos, Brazil

productive and reproductive roles. Child bearing is a biological function that only women can assume. Yet, society denies most women maternity benefits. Maternity benefits are basic human rights for women. Women who are employed are entitled to paid maternity leave because it is a health measure to protect mothers and infants in late pregnancy and the early post-natal period. Maternity leave is essential to allow a mother to recover from

birth, breastfeed her infant and to give her the opportunity to spend time with and provide care and nurturing for the young child to help the child adjust to a new environment. Paid maternity leave guarantees a continuing source of income and employment security following delivery.

Women who receive maternity leave are more likely to remain in the workforce: this has economic benefits for employers; social benefits for women, families and society.

"The promotion of breastfeeding must not be seen as an excuse to exclude women from the labour force. The burden should no longer fall on women to choose between breastfeeding and work. The burden is on society to facilitate breastfeeding and indeed child care." James Grant, Executive Director of UNICEF.

Traditional societies recognised the need for pregnant women and women who had recently given birth to benefit from additional social support. In many societies, the extended family provided a six-week period of rest and seclusion, or at least, help with household chores, for women who had given birth. For example, in Africa, the woman's mother-in-law looked after her and her baby in many societies for one to six months. This ensured that mother and baby bonded and breastfeeding became well established and maintained. In addition, the mother would be relieved of her normal household chores and she would be given special foods. Often a ceremony of re-integration into society marked the close of this period of social withdrawal.

Increasing urbanisation and dislocation of the extended family have weakened these mechanisms of social support to enable mother and baby to rest and recover together. Maternity legislation has been introduced in some countries as a step towards replacing these social traditions.

The International Labour Organization (ILO) regulates a wide range of international and labour issues through standards that are contained in Conventions and Recommendations adopted by the International Labour Conference.

Mother Friendly Workplaces

Existing employment policies in the formal and informal sectors generally do not promote or support optimal breastfeeding, that is, exclusive breastfeeding for four to six months. Whatever or wherever her workplace, a working woman needs support from her family, the community and society at large in her determination to breastfeed her baby. The workplace needs to be mother-friendly to ensure that the optimal breastfeeding practices initiated in hospitals and maternities are sustained when mothers return to work and in employment, remembering that for mothers, both the home and the place of employment are workplaces.

A mother-friendly workplace can support and promote breastfeeding by providing:

- paid maternity leave;
- creche facilities at the workplace;
- nursing breaks during working hours and flexible working hours to fit in with the woman's infant feeding schedule.

Conventions are like international treaties; once ratified, they create specific, binding obligations.

The 1919 Convention Number 3 of the International Labour Office provides international standards on maternity protection for women employed in industry and commerce; it calls for 12 weeks of maternity leave with cash benefits and prohibition of dismissal and one hour per

day breastfeeding breaks. In 1952, this was revised to include women workers at home and provide for higher protection: 14 weeks maternity leave, higher cash benefits including remunerated breastfeeding breaks and more employment security. Two Recommendations, one from 1921 (Number 12) and one from 1958 (Number 110) extended the scope of the protected



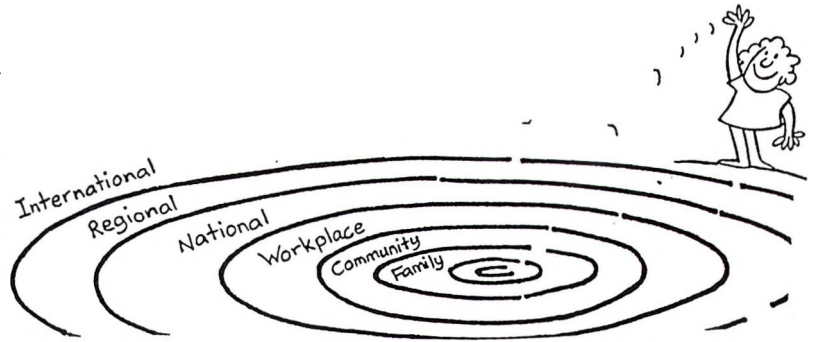
Adapted from Paulo Santos, Brazil

group of women workers to women employed in agriculture and on plantations. The 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) states *"Parties shall prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or maternity leave ... shall introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority and social allowances."*

*To date, the 1919 and 1952 Conventions have been ratified by 29 and 22 countries respectively.

Actions

In 1988, Elisabet Helsing of the WHO regional office for Europe said: "If society hinders the optimal breastfeeding by mothers who work outside the home, society needs to change, not women." This change will come about only if we mobilise action for change.



Maternity protection measures concern all of us. Whether you are a mother-to-be, or a husband, sister, brother, grandmother or grandfather of a mother-to-be, the protection of working women concerns YOU. Wherever you work, you can act to bring about changes to enable and support all mothers to breastfeed!

- If you are having a baby, or hoping and planning to have a baby, do you know your maternity rights?
- If your wife, sister or daughter is having a baby, would you help her stand up for her maternity rights?
- If you are an employer, would you grant her the rights she is entitled to?
- If you are a trade union member, would you work to improve maternity leave provisions?

Throw the stone (see figure above)

The stone represents the minimum requirements to enable women to work and breastfeed. We must throw the stone in and create the ripples of social support to change society. YOU can throw the stone to create the ripples and help to shape the laws to protect women's rights to maternity protection:

- at family level - share child care and support measures for parental leave.
- at community level - create community creches and breastfeeding counselling services.
- at workplace level - take maternity leave if you have it or mobilise support to instate maternity leave; advocate nurseries and breastfeeding

facilities in the workplace.

- at national governmental level - ratify the ILO Conventions, enact and enforce adequate maternity leave legislation.
- at regional level - support maternity leave provisions in countries in your region and adopt supranational directives (such as the European Community Directive) which are binding on member states.
- at international level - pressure the ILO to revise and update the 1919 and 1952 Conventions by 1996, in accordance with the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) which provides for revision of legislation, including maternity legislation.

Maternity

Protection

Our objectives

We need to build capacity among communities to help them learn about women's rights to maternity protection. We also need to give women the tools to understand the connections between their own situations and the prevailing conditions of their workplace.

We need to organise communities and network with others to share information and resources, create initiatives in the workplace to lobby for protective maternity benefits and to build linkages and alliances among groups with common interests.

We need to influence policy to protect and strengthen the right of women to organise in the workplace and in communities and to influence employers and governments at all levels. Women's interests must be represented in discussion and negotiations that reaffirm employers' and governments' responsibility to guarantee basic rights to maternity protection.

- Review the policies regarding maternity leave at your workplace.

READ



- Review the laws in your country: are there provisions for maternity leave? who does it cover? what are your entitlements?
- Review the 1919 and 1952 ILO Conventions and the CEDAW Convention. Summarise the information in non-technical language to help others understand the provisions.
- Learn about what your colleagues and employers think. What are likely resistance points if you pursue maternity leave?
- Learn about the maternity protection needs of domestic and agricul-

LEARN



tural workers: are they covered by legislation?

- Has your government ratified the ILO Convention, the Convention on the Elimination of all Forms of Discrimination Against Women? Has it signed the World Summit for Children Declaration? If not, then why not?
- Research maternity legislation in other countries: if the provisions are better than in your country, how did women manage to achieve them? How long did it take? Who pays for maternity leave?
- Find out about Free Trade or Tax Free Zones and how they affect national legislation. Often multi-nationals offer no form of maternity benefits and exploit local labour.

ANALYSE



- Estimate the cost of maternity leave in your place

of employment and convince employers that it is worthwhile to provide maternity benefits.

- Undertake a comparative study of maternity entitlements in other firms, NGOs or organisations. Publicise the findings!
- Produce information describing the measures of maternity protection in your country. Use straightforward language and illustrations to inform women of their entitlements and how to claim them.
- Write up case studies to demonstrate how it can be done and to show how everyone (employees and employers) can benefit.

INFORM



A Call for Action

- Inform employers of the advantages of protecting women workers, and of providing workplace nurseries with support and facilities for breastfeeding.
- Organise debates and meetings to discuss the issue so that all sides can air their positions and build consensus.
 
- Organise women to report on provisions in their workplace - develop guidelines and forms to facilitate information gathering.
- Organise training sessions for employers on the importance of optimal breastfeeding and provisions for women workers to breastfeed their babies.
- Organise a letter-writing campaign to employers, to members of parliament, to leaders of trade unions and women's organisations.
- Mobilise community action to lobby for maternity benefits.
 
- Form coalitions with allies to present a united call for action.
- Monitor your local situation: if there are laws concerning maternity protection measures in your country, are they enforced? If not, why not? Are there sanctions against employers who break the rules?
- Publicise the results of your monitoring: support good employers and identify bad ones. Involve mother-friendly employers, such as the head of a Swiss bank who said: "By providing a creche for my employees, I keep well-trained, reliable and motivated female workers on my staff and the creche in fact pays for itself by saving on training and recruitment costs."
- Mobilise support among decision-makers and employees' representatives to support mother-friendly workplace initiatives.
- Reach out to the legal community and policy makers to gain their support and assistance in drafting legislation.
- Show workers and employers how improved working hours and safety conditions for breastfeeding mothers can also improve conditions for all parent-workers and indeed the whole workforce. An extension of maternity leave can pave the way to extend the provision of parental leave to care for a sick or handicapped child.
- Pool resources and share information with others concerned with maternity benefits. Develop a network of concerned individuals and organisations and mechanisms to share information and act jointly.
 
- Share your ideas and concerns with trade union leaders, church leaders, community leaders.
- Publicise the issue in the media: give press, radio and television interviews.

Source of graphics provided by IWTC (International Women's Tribune Centre).

Existing provisions

The 1985 ILO global survey of maternity benefits analysed national legislation of 127 countries for which information was available. This review found that the average length of maternity leave in the world was between 12 and 14 weeks. Approximately 25% of the countries provided less than this average; many of these were developing countries.

In 1990, the IBFAN Latin America Coordinating Officer reviewed maternity leave provisions in 28 countries in Latin America and the Caribbean. Like the ILO survey, IBFAN found that many countries have laws and regulations concerning maternity leave. The nature and scope of the provisions varied: laws relating exclusively to maternity

protection, laws on female labour, labour codes, laws on conditions of employment in certain sectors of the economy, social security laws and labour ordinances or regulations. A large number of countries also have collective agreements to reinforce and supplement existing legislation or fill the gap where there is no such legislation.

In spite of these provisions, many women do not have maternity protection because these provisions mainly cover women who are employed in the formal sector. Also, there is very little information available about the enforcement of these provisions. There are some reports that often women do not take full advantage of maternity protection laws and regula-

tions because they themselves are not aware of them.

In Guatemala, women with social welfare coverage are entitled to 75 days of maternity leave. They are entitled to 100% of earnings during maternity leave which is to be paid by the employer if the workers are not covered by social welfare. There is prohibition of dismissal on account of pregnancy and provisions exist for nursing breaks when women return to work. The Ministerio de Trabajo y Prevision Social and Oficina Nacional de la Mujer, in collaboration with the Comision Nacional de Promocion de la Lactancia Materna has developed an illustrated booklet to inform women about existing laws.

Maternity and Paternity Leave in Belgium

In Belgium, women are entitled to 15 weeks maternity leave, of which eight weeks must be taken after the birth, with benefits equivalent to 82% of earnings for the first month and 75% of earnings for the remaining weeks up to a maximum income level. Maternity leave is paid by local authorities rather than employers, for up to 15 weeks. There are also three days of paternity leave at 100% of earnings. Public sector employees are entitled to four days of paternity leave.

The Casterman Company, a publisher that employs 650 people (40% of them are female), was experiencing high rates of absenteeism because local child care services were not open during the hours needed by part-time and shift workers. In response, Casterman set up a company creche in partnership with a regional government agency, FOREM, with funding from the Ministry of Labour. The creche is for children and grandchildren of all employees, whether working full or part time. It is open to working days from 0545 to 2230 to cater for shift workers who make up 83% of the workforce. There are, at any one time, between 25 and 30 children in the creche. Mothers can breastfeed their babies during the day and parents can be quickly contacted when necessary. There are also facilities for children who are not well. The company subsidises the creche fees; employees pay approximately 70% of the total fee for a place. Altogether, the creche costs the company US\$43,795 a year. Since the opening of the creche in 1983, recruitment difficulties have eased and absenteeism has been reduced.

Source: The Family Friendly Employer. Examples from Europe. By C Hogg and L Harker. Daycare Trust, in association with Family and Work Institute, 1992.

Costs

A central issue in the debate concerning maternity leave is who should pay for it and how. A common argument against paid maternity leave is that it is costly to the employer. To estimate the true cost of maternity leave, employers need to consider the cost of alternatives, for example, the cost of replacing the employee. Studies show that often it is far less expensive to support leave than to replace an employee. It should be noted that the taking of maternity leave would have a low incidence in the working lives of women - in Australia, it is estimated that only about 2.8% of the total labour force are potentially eligible for maternity leave annually. Models and guidelines for estimating cost can be found in the Australian document "Paid Maternity Leave" and the Family and Work Institute manual "Parental Leave and Productivity".

The discussion paper on paid maternity leave by the National Women's Consultative Council of Australia points out that where provisions are voluntary, they tend to benefit mainly highly paid women in the formal sector. Employer funded maternity leave is likely to increase retention of skilled staff, encourage employer investment in human capital and bring productivity and staff



Graphic by Paulo Santos, Brazil

morale as well as facilitate an expansion in the national skills base. Unfortunately, it could also create disincentive to employ women of child bearing age, increase casualisation of the workforce and create difficulties for small business.

The advantages of individual funding are: there are no large increases in government spending and no disincentives to employ women; casual workers are able to participate and receive benefits. However, this option does not recognise the social value of children, only more highly paid women would be likely to afford to make savings and would probably be feasible for the first baby. Government funding would ensure that maternity benefits are available to lower-paid women as well as more highly paid women. But it would involve increase in government spending, could be subject to income tests unlikely to be paid at wage rates, and so could become a targeted income support

payment not linked to employment.

Ideally, the cost for maternity leave or benefits should be shared between the government, employers and individuals. Each employer and country needs to review their policies and find the best mechanism to ensure universal access to maternity benefits - such benefits must reach the employed and unemployed. To achieve this, it is likely that legislation will be needed to issue the mandate and ensure compliance. Legislation is important but will have little or no impact if the necessary resources for implementation are not available. The role of government is to set a climate of opinion and to create an enabling environment rather than deliver all services. Governments can take a lead in acknowledging that child care is the responsibility of society as a whole. They can then encourage attitudes on the part of men and employers that ensure that they too take on their share of the task, both in the home and in the workplace.



Adapted from Paulo Santos, Brazil

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(IWTC)

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This activity sheet is part of a series produced by WABA to assist groups with their activities to protect, promote and support breastfeeding, particularly to provide action ideas that could be focused on World Breastfeeding Week.