Guidance on pregnancy and work

Labour Foundation

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Colophon

The Labour Foundation, founded in 1945, is a national consultative body of the central organizations of employers and employees in the Netherlands. Currently represented in the Foundation are the Association VNO-NCW, the Royal Dutch Association of small and medium-sized enterprises (MKB-Nederland), the Dutch Federation of Agricultural and Horticultural Organizations (LTO Nederland), Netherlands Trade Unions Federation (FNV), National Federation of Christian Trade Unions in the Netherlands CNV) and the Trade Union Federation for Professionals (VCP).

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Content

Introduction

With this *Guidance on Pregnancy and Work*, the Labour Foundation offers (future) mothers and fathers and their employers guidance on how to deal with pregnancy at work. The guidance covers the period prior to and during pregnancy up to six months after delivery. The guidance not only contains the legal rights regarding pregnancy, but also focuses on facilitating the conversation between employer and employee with the aim of creating greater mutual understanding by providing practical information.

1. Employment conditions

In principle, the employee continues to do his or her own work as much as possible during the pregnancy. If this is not possible, the employer can adjust the activities or working hours.

- No work is allowed four weeks before and six weeks after childbirth.
- During pregnancy, the employee is also entitled to extra paid breaks and a suitable lockable space to rest.
- In addition, the employee has the right not to have to do irregular work and overtime.
- Furthermore, the employer may not oblige the employee to work night work, unless the employer can demonstrate that this exemption cannot reasonably be asked of him.

If employment conditions have improved during maternity leave, these must also be applied to the employee in question. She also has the right to adjust her contractual hours, even after a pregnancy. It is important that the employer and employee discuss this with each other.

BEST PRACTICE

Afdeling Online

At the Afdeling Online, a coaching conversation takes place every six weeks with every employee: what are you doing, what do you find difficult, what do you need, which certificates are you going to obtain, do you have any tips for me or the company? The employee feels heard and supported, and management gains valuable insights into the well-being of the company. They do this so often because one assessment interview per year would be completely insufficient in their profession (online marketing). “The frequency of these types of conversations could also be increased considerably in other industries. You do it not only for your employees, but also for yourself.”

Furthermore, the Afdeling Online has noticed that many employers are not always open to problems that they are not familiar with, and which they are therefore less able to empathize with.

One in six couples has fertility problems and is therefore dependent on intensive IVF treatment, for example. Employers should pay more attention to this. Appointments with the doctor, gynecologist, medication, mental pressure... There is a lot involved and that is why customization is needed. Women want to give and take. If, as an employer, you adopt an open attitude and regularly ask what the needs are, you will regain confidence and the employee will also spend more time on her work and show commitment. If someone has to bend over backwards, mentally hits walls and cannot discuss private matters, the chance of dropping out is very high.

2. Working conditions

An employer is obliged to organize the work for the pregnant employee in such a way that it does not have harmful consequences for the pregnancy. This starts before pregnancy, because certain hazardous substances can be harmful to the fertility of both women and men. The woman and the unborn child must also be protected during pregnancy. For example, during pregnancy and up to six months after delivery, physical strain should be limited as much as possible. This also applies to working with and near hazardous substances, noise, physical vibrations and psychological strain such as high workload and stress. In addition to avoiding exposure to these hazards, the pregnant employee is entitled to extra breaks and not to be deployed for night shifts. Even after pregnancy, if the employee is breastfeeding, exposure to hazardous substances must be prevented, because they can be passed on from

mother to child through milk. If your own work negatively affects the quality of breast milk, UWV sees this as incapacity for work as a result of childbirth[1]. The occupational health and safety guidelines for pregnancy at work can be found on the *OHS-portal* of the Ministry of Social Affairs and Employment. *https://www.arboportaal.nl/onderwerpen/kinderwens-zwanger-borstvoeding-en-werk/zwanger*.

How does that work out? The SER Manual on Occupational Health and Safety Measures Pregnancy & Work explains how employers and employees can take measures regarding the pregnancy of employees. *https://www.ser.nl/nl/Publicaties/arbomaatregelen-zwangerschap*

BEST PRACTICE

Etos

Etos, through its managers, provides a pregnancy box to every pregnant employee. Etos has drawn up its own brochures for this purpose, both for pregnant women and managers. This provides guidance and provides concrete tips for starting and staying in conversation with each other during this special event in the employee's life. The agenda at the front immediately provides clarity for both parties about when and which type of conversation will take place. The brochures also contain discussion guidelines, explanations about leave and adjustments to activities. Images have also been added of exercises that pregnant women can do to counteract or reduce common complaints. Etos values staying fit and believes that this benefits the company, its employees and its customers. Remaining vital and energetic suits the retail chain, but especially the pleasant cooperation that people want to strive for. Concrete resources such as brochures help to prevent work loss and ensure mutual understanding.

3. Contact between the employer and employee

Good contact between the employer and employee during pregnancy and after childbirth is important. It is advisable that the employer or manager and the employee discuss the matter at work after the pregnancy has been announced. In such a conversation (see appendix 1), expectations can be shared and clear agreements can be made to prevent misunderstandings at a later time. This can prevent assumptions such as 'the employee will not be interested in continuing to work full-time, because as soon as she has a child all her attention will be focused on motherhood' or 'I will probably not get a promotion because of my pregnancy'.

3.1 Before pregnancy

Under the Work and Care Act (*Wet Arbeid en zorg*), prospective parents have the right to undergo fertility treatments during working hours if this cannot reasonably be planned outside working hours[2]. A woman who wishes to have children can also contact the company doctor if she is unable to become pregnant and work/working hours could be a cause.

3.2 Adjustment at work

If an employee announces that she is pregnant, it is advisable to schedule a meeting between the employer and the employee. Adjustments may be necessary in the period leading up to maternity leave. First of all, the workplace can be looked at; it may be necessary to adjust it. In addition, the range of tasks must be taken into account, what the employee can or can no longer do. For example, no more irregular work and no more physically strenuous work. Agreements can also be made about rest times. The company doctor can advise the employer and employee about this. The company doctor can also play a role if the work is not adapted, or if no other work can be offered, or if the employee

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1 Richtlijn: zwangerschap en bevalling als oorzaak van ongeschiktheid voor haar arbeid (herzien 2021), artikel 5.1.5. (*translates to: Guideline: pregnancy and childbirth as a cause of unsuitability for work (revised 2021), article 5.1.5.*)

2 Artikel 4. Kort verzuim verlof. Zie Bijlage 3 voor een link naar de Wet arbeid en zorg. (*translates to: Article 4. Short-term absenteeism leave. See Appendix 3 for a link to the Work and Care Act.*)

is ill or unfit for work due to pregnancy. In those situations she is entitled to a sickness benefit of 100% daily wage, directly or through the employer.[3]

3.3 Dismissal

The employer may not terminate the contract due to pregnancy. This also applies during the probationary period. Not renewing a temporary contract with direct or indirect reference to pregnancy is also not permitted[4]. A pregnant employee may not be dismissed in the following situations:

- During the pregnancy;
- During pregnancy leave;
- During maternity leave;
- The first six weeks after maternity leave;
- During the period of incapacity for work due to pregnancy or childbirth;
- The first six weeks after this period of incapacity.
- The ban on termination does not apply in the event of business closure or termination of a business unit if the employee has already been working at the terminated job for at least 26 weeks.

For more information, see:
https://www.diversiteitopdewerkvloer.nl/artikelen/praktische-informatie/praktische-informatie/zwangerschap-en-werk-hoe-zit-het-precies

3.4 Return to work

To ensure the smoothly return to the workplace, it is important to make agreements in advance. For example, about working hours and whether the employee plans to use parental leave. Flexibility of both the employer and the employee often benefits the working relationship. This does not alter the fact that it is important as an employer to pay attention to the sensitivity of private situations. Particularly in situations such as premature birth or miscarriage, but also for single parents where work-life balance is a challenge.

Breastfeeding and pumping
During the child's first nine months, the employee has the right to interrupt work to pump or breastfeed. This means that the employee may leave the workplace to breastfeed the child, provided that the maximum time is not exceeded. There is a maximum of one quarter of the working day or shift. A hygienic room that can be locked from the inside must be available at the workplace.

4. Leave

The woman and partner are entitled to different types of leave before and after childbirth. This is laid down in the Work and Care Act (WAZO, see Appendix 3). These leave arrangements are explained in this part of the guide.

4.1 Pregnancy and maternity leave

The employee is entitled to six weeks of pregnancy leave and at least ten weeks of maternity leave. Pregnancy leave lasts until the day of delivery and starts six to four weeks before the due date of delivery. The employee may choose to continue working during this flexibilization period, but must go on pregnancy leave no later than four weeks before the first day after the due date. The days worked are then added to the maternity leave.

The maternity leave lasts at least ten weeks and starts on the day after the birth. This is also the case if the baby is born later than the due date. The last period of maternity leave can be taken in parts.

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3 Article 29a Sickness Benefits Act.

4 See Appendix 2, section 3.

This concerns the period of six weeks after giving birth. This part of the leave can be taken spread over a period of up to 30 weeks. This is done in consultation with the employer. The collective labour agreement may contain other agreements about maternity leave. If that is the case, these agreements apply provided the collective labour agreement applies.

BEST PRACTICE

Nationale-Nederlanden

Nationale-Nederlanden wants to help people take care of what they find really important. The arrival of a child is such an important moment. In our society we see more and more diverse family forms. Nationale-Nederlanden believes that all children have the right to attachment and bonding within the family, regardless of the composition of that family.

Nationale-Nederlanden has bundled all relevant information about health and vitality on its intranet, in order to promote the importance of staying physically and mentally healthy. You can also find practical information about pregnancy here, such as what you need to agree with your manager, which leave arrangements apply and where the breastfeeding rooms are located. There is also a link to their own vitality platform where tips, videos, training and advice can be found. For example, an appointment can be made with a work-life coach via this platform.

This coach examines with the employee what is needed, both in the work and private situation. Moreover, it sometimes happens that an employee experiences an event that the manager has no experience with. A work-life coach then helps you to quickly share concerns and ask for advice, and possibly refer you to a company doctor. Every Nationale-Nederlanden employee can use this without permission. The coaches are external but have often worked for Nationale-Nederlanden for years and know the company well.

“Focusing on prevention is a win-win for everyone involved,” says Nationale-Nederlanden. “Making the offer accessible is essential. As a small company you naturally have to deal with a different business context. In that case, relatively simple solutions are still possible, for example by using an online vitality platform. Find a partner that offers the services you want to offer to your employees.”

4.2 Partner leave

The length of maternity leave for partners who are employed is the number of working hours for one week. The employer continues to pay wages in full during this leave. These days can be taken at your discretion, but within four weeks after the birth of the child. For example, a partner's working week is 40 hours. He or she is then entitled to 40 hours of maternity leave. The employer may not refuse this leave.

Since July 1st, 2020, partners can take a maximum of five weeks of additional partner leave. This additional partner leave must be taken within six months of the birth of the child, spread out or consecutively. The employee must report this to the employer at least four weeks before the start of the additional partner leave. It can only be changed to other days or weeks if there is a compelling business or service interest; this is only allowed in consultation with the employee. The legislation does not regulate what exactly constitutes an important business or service interest. These are situations where the employee's absence has serious consequences for the company. During this leave, wages will not continue to be paid, but partners will receive a benefit from UWV. The amount of this benefit is 70% of the daily wage and a maximum of 70% of the maximum daily wage. The employer applies for the benefit from UWV and pays the employee. The maternity leave must first be taken before you can claim additional partner leave.

4.3 Parental leave

Parental leave is leave that can be taken to care for a child under the age of eight. Working parents are both entitled to parental leave of 26 times the number of hours the parent works per week. In principle, parental leave is unpaid leave, but other agreements have been made in some collective labour agreements. In that case, these regulations apply above the statutory regulations. The leave must be requested in writing from the employer at least two months in advance.

As of August 2nd, 2022, parents can take nine weeks of paid parental leave in the first year of the child's life. The amount is 70% of the employee's daily wage, up to 70% of the maximum daily wage. The employer applies for this on behalf of the employee from UWV. This is only possible once the leave has started. The employer can choose to continue paying wages during the leave, or wait until UWV has paid the benefit to him.

4.4 Special forms of maternity leave

Multiple birth leave

If an employee is pregnant with twins or multiple births, she is entitled to at least 20 weeks of maternity leave. Maternity leave is taken between ten and eight weeks before the first day after the due date. This period is called the flexibilization period. The employee may choose to continue working during the flexibilization period. The days worked are then added to the maternity leave.

Incubator leave

If the newborn child has been in hospital for more than a week after birth, the maternity leave is supplemented with incubator leave of a maximum of ten weeks. The employer must apply for this leave and a hospital statement showing the duration of the admission is required. The employer continues to pay the wages and is reimbursed by UWV.

Maternal mortality

If the employee dies in childbirth or during maternity leave, the partner is entitled to the remaining maternity leave with full pay. This concerns the right to paid leave from your own employer.

4.5 Requesting leave: step-by-step plan

1) The employee applies for maternity leave from the employer no later than three weeks before the leave commences. This is thus no later than seven weeks before the due date of delivery.

2) The employer applies for a WAZO-benefit at the online employer portal via the *UWV website*.

3) The employer continues to pay the employee's full wages during the leave, UWV pays the benefit to the employer. In situations where the employee earns more than the 'maximum daily wage' (*maximumdagloon*), it depends on whether the collective labour agreement or the individual employment agreement provides for full continued payment of wages.

4) If the employee has given birth, this will be reported to UWV by the Personal Records Database (BRP). The employer or employee does not have to do that.

5) The mother's partner informs their own employer as soon as possible after the birth when the maternity leave will be taken. The partner also informs their employer four weeks in advance when he/she wants to take additional partner leave.

6) As with the mother's maternity leave, the partner's employer applies for the benefit for additional partner leave via the UWV online employer portal.

5. Illness related to pregnancy

In the event of illness related to pregnancy or childbirth, the employee can receive a sickness benefit of 100% of the daily wages. The normal continued payment of wages in the event of illness only applies if the illness has nothing to do with the pregnancy. Unless the employee becomes ill during the flexibilization period, between six and four weeks before the due date. In that case, materially speaking, maternity leave commences immediately.

If the employee is or becomes ill after maternity leave in connection with the pregnancy or childbirth, the employee must report this within two days and the employer must immediately apply for sickness benefit. If the employee becomes ill and has no employer, she must immediately report to UWV for benefits.

In addition to financial support, it is important for the employer and employee to keep communicating with each other. Engage in regular discussions to determine whether adjustments are necessary and whether expectations match the possibilities and wishes of both parties. This allows adjustments to be made if it appears that the employee does not feel understood or supported. By explaining their decisions, the employer ensures that the employee better understands them.

5.1 Miscarriage and absence

If the employee has a miscarriage during the first 24 weeks, she can report sick. This sick report is then regarded as an illness related to pregnancy with the right to a sick pay benefit of 100% (capped) daily wage. If the employee has a miscarriage after 24 weeks or the baby is born prematurely, he or she is entitled to a total of 16 weeks of paid leave under the Work and Care Act. Just as with a fully completed pregnancy, the employer applies for benefits from UWV and continues to pay the salary. If it is not possible to return to work after the 16 weeks, the employee can report sick. Then you are entitled to a sickness benefit of 100% daily wage if the UWV insurance doctor determines that there is a relationship with the pregnancy or childbirth.

6. Pregnancy and equal treatment

The Dutch Equal Treatment of Men and Women Act (WGB) offers protection to women so that they are not disadvantaged when (looking for) work due to pregnancy, motherhood or the desire to have children (see Appendix 3). Pregnancy and motherhood should not play a detrimental role in job applications, contracts, promotions, training and performance evaluations.

6.1 Applying

A woman may not be rejected for an application because of pregnancy or the desire to have children. An employer is not allowed to ask about this and a woman does not have to answer if she is asked about it. If the applicant indicates during the job interview that she is pregnant, she may not be rejected for that reason. This also applies to temporary employment contracts or when applying through an employment agency.

6.2 Pregnancy and work

The employee may not be disadvantaged at work in any way during her pregnancy. For example, she must be given just as many opportunities for a promotion or following a training course. The employer may also not terminate the contract due to pregnancy or maternity. This also applies to probationary contracts and temporary contracts.

After the leave, the employee returns to her old position. If the employment conditions have improved during the leave, she is also entitled to this. A deterioration of working conditions or conditions due to pregnancy is not permitted.

6.3 Netherlands Institute for Human Rights

The Netherlands Institute for Human Rights highlights, monitors and protects human rights and promotes compliance with them in practice, policy and legislation. Anyone who thinks they are being discriminated against can file a complaint with the Institute. It then conducts an investigation, hears both the complainant and the employer and makes an assessment. The decisions of the Institute are - unlike a court decision - not legally binding. If an employer does not comply with the Institute's decision, the complainant can initiate legal proceedings. The judge cannot deviate from a decision of the Institute without giving reasons. In appendix 2, the Institute provides a summary of statements in relation to pregnancy and work.

A *study* by the Netherlands Institute for Human Rights into pregnancy discrimination shows that almost half of women in the labour market experience pregnancy discrimination. In this study, the Institute asked 1,150 women who are active in the labour market and had a child in the past four years (2016-2020) whether they have experienced certain situations at work or when looking for work that are related to their pregnancy or motherhood. This research shows that 43% of women have experienced situations that indicate pregnancy discrimination. Only 34% of women recognize pregnancy discrimination, which shows that there is still a lot to be gained in terms of awareness. The research points to the fact that every year a new generation of employees becomes pregnant. The target group therefore changes continuously.

The Netherlands Institute for Human Rights recommends four measures to prevent pregnancy discrimination and that are also consistent with good employment practices.

1. Facilitate an environment in the workplace where pregnancy and work can be discussed.
2. Make an inventory of the needs of employees who become pregnant to continue to perform their work properly.
3. Make a specific person or body responsible for this. Employees are dependent on their employer and, for fear of sanctions, will not always dare to sound the alarm themselves if problems arise.
4. Inform employees about their rights and obligations and facilitate discussions about pregnancy and work.

Appendix 1. Discussion guide

This Guidance has repeatedly emphasized that regular contact between employer and employee is important to share expectations and make concrete agreements. But when do you start such a conversation and which topics should definitely be discussed? This conversation guide can help both the employer and the employee to start the conversation.

Pregnancy announcement
Officially, the employee only has to announce that he or she is pregnant three weeks before the start of maternity leave. It is commendable to make this announcement earlier. The employee's rights only take effect when the employer is informed about the pregnancy.

Rights during pregnancy
The employee can indicate to his employer which rights, as described in this guidance, he or she wishes to make use of. Agreements can then be made about what steps will be taken to grant these rights.

Maternity leave
In order to apply for leave, the employer requires a pregnancy declaration from the employee. This statement is drawn up by the general practitioner, obstetrician or gynaecologist. The employee then informs the employer when she wants to go on paid maternity leave. This may also be the time for the employee to indicate that he or she wishes to take parental leave after the child is born.

Arrangements about returning to work
Agree on what date the employee will return to work and whether the employee wants to continue working on the same days and at the same times. It is good to also take into account any pumping or breastfeeding during working hours. During the conversation with the employer, the employee can also indicate that he or she wishes to work less. This is of course not a given.

Contacting the employee towards the end of the leave period
Everyone involved will hope for a successful birth without complications. Unfortunately, that is not always the case. It may be that the employee has not yet recovered sufficiently after the end of maternity leave to be able to resume work. Therefore, the employer and employee should agree to contact each other towards the end of the leave period to discuss how things are going and whether it is important to call in the company doctor. Recording such contact moments can be useful to demonstrate the relationship between pregnancy and delivery and any disability, also to the UWV insurance doctor. This makes it possible to secure the sickness benefit of 100% daily wage in the event of permanent disability.

Appendix 2. Judgments of the Netherlands Institute for Human Rights

The Netherlands Institute for Human Rights highlights, monitors and protects human rights and promotes compliance with them in practice, policy and legislation. Anyone who thinks they are being discriminated against can file a complaint with the Institute. It then conducts an investigation, hears both the complainant and the employer and makes an assessment.

Below, the Institute provides a summary of its opinions on pregnancy in relation to:
1) recruitment, selection and appointment,
2) working conditions (on the work floor),
3) termination of the employment relationship.

The full statement can be found via a link in the title of each summary. The Institute has been the legal successor to the Equal Treatment Commission since October 2012. Some of the Commission's opinions are also included below.

For all assessments, see the Institute's website: *https://www.mensenrechten.nl/english*

1) Recruitment, selection and appointment

Judgment 2022-118 Rejection of position due to upcoming maternity leave
VodafoneZiggo Group B.V. discriminated against a woman by rejecting her for a position because of her upcoming maternity leave.

Judgment 2022-107 Rejection of position due to pregnancy
Childcare organization Partou discriminated against a woman on the basis of gender, because the woman was rejected for the position of HR business partner due to her pregnancy.

Judgment 2021-12 The application procedure and delivery date
A pregnant woman applies for the position of assistant professor. Part of the application procedure is a trial lecture. The woman is asked to keep a day free for this. The woman indicates that she expects to give birth within two weeks. This also happens. The woman then asks the selection committee to hold the job interview and trial lecture approximately 10 days later. The committee decides not to move the trial lecture. The woman indicates that she is unable to attend. The woman is then rejected for the position. The Institute ruled that the university should have consulted with the woman to find a solution. The requested postponement was so short that it would have fit within the university's application schedule. The Institute concludes that the university has made prohibited discrimination on the grounds of gender by not taking the woman's date of birth into account in the application procedure, as a result of which she was rejected for the position.

Judgment 2021-10 Absence due to maternity leave
A pregnant woman is nominated for a position by a temporary employment agency. The duration of the maternity leave is discussed during the introductory meeting with the company. The branch manager later emails that although the woman is the right candidate, it is not realistic to use her because she will be absent again in a few weeks. (Foreseeable) absence due to, among other things, pregnancy and childbirth must be seen as a direct and inseparable consequence of the pregnancy and therefore be equated with the pregnancy itself. Expected absence due to maternity leave should therefore not play a role in a decision to reject someone for a position. The Institute ruled that there was pregnancy discrimination.

Judgment 2017-147 A temporary instead of permanent contract 1

A woman works on a temporary contract as an account manager. She will receive a new agreement, again for a specific period. The woman states that she has not received a permanent contract in connection with her pregnancy and future motherhood of twins. The woman received a good assessment. A month later she had to go on early maternity leave. During the conversation about this, the manager expresses doubts about her performance and makes a comment about the difficulty of a twin pregnancy in combination with her home situation and work. The Institute finds it likely that there is a connection between the woman's pregnancy and the fact that she has not received a permanent contract. The company must therefore prove that there is no discrimination. The company states that, due to future strategic developments, the function of women will change and that different competencies are therefore expected from her. The company does not demonstrate that it has been discussed with the woman that she cannot meet these requirements and that she cannot develop in this regard. The Institute rules that there is pregnancy discrimination.

Judgment 2017-125 A temporary instead of permanent contract 2

A woman works on a temporary contract as a dental assistant. This contract will be extended for one year. The woman states that she has not been given a permanent contract due to her maternity leave and future motherhood. The dental practice states that the woman was given a temporary contract because there were problems in collaboration with colleagues and this was also discussed. The latter is also evident from statements from the woman's colleagues. The Institute finds that there is no pregnancy discrimination.

Judgment 2018-10 Contract hours offered with new contract

A pregnant woman works forty hours a week as a flower binder. At the end of her temporary contract, she will be offered a permanent contract for two days a week. Four other temporary employees were offered permanent contracts around the same period. The company cannot explain why the pregnant woman was not offered a contract of forty hours per week and other employees were offered a permanent contract for greater hours than the woman. The Institute rules that there is pregnancy discrimination.

2018-127 Disadvantage after complaining about discrimination

A woman works as a psychomotor therapist. The woman drops out due to pregnancy-related complaints. Her contract is not extended by the employer because she was unable to provide continuity of care to her patients, which is important because of the patients' psychological problems. After her maternity leave, the employer consults with the woman about a possible new position within the organization, but this consultation is stopped when the employer learned that the woman had complained to the Institute about pregnancy discrimination. The Institute ruled that the woman was discriminated against not only because her contract was terminated, but also because the employer no longer wanted to discuss a new position after she had complained to the Institute.

2) The working conditions (in the work place)

Judgment 2023-21 No extension due to reduced production

The Institute considers that the defendant was already aware of the applicant's pregnancy in January 2022. She subsequently failed to sufficiently demonstrably fulfill her resulting duty of care. Moreover, it has not been shown that the defendant carried out the assessment procedure in a transparent, controllable and systematic manner. The Institute considers this combination of factors sufficient to support the suspicion that the reason for dismissal stated by the defendant - the low work pace - is so related to her pregnancy that there is prohibited discrimination on the grounds of gender by not having offered the applicant a new employment contract.

Judgment 2018-106 Right to return to your own or equivalent position

A woman works as a financial manager. During her maternity leave she will be replaced by a colleague. When she returned to work, this colleague continued in her position. The woman indicates that she wants her position back. The employer states that this is not possible because the woman's position is now performed by two people in connection with the continuity of the work. The Institute is of the opinion that for certain positions it will not always be possible for an employee returning from maternity leave to immediately resume her full duties. In this sense, it cannot be avoided that the circumstances for the woman when she returns are less favourable than before her leave. However, the employer's efforts must be aimed at bringing this to an end within a reasonable period. The woman has the right to return to her own position or to an equivalent position under terms and conditions no less favourable to her. In this case, the employer had not made enough efforts in this regard and the Institute therefore established that there was pregnancy discrimination.

Judgment 2021-24 Right to return to your own or equivalent position 2

A woman has been hired as a financial employee. The woman states that before her maternity leave she performed the duties of a financial advisor/controller and after her maternity leave she was only given the duties of a financial employee. A woman who is on maternity leave has the right to return to her own position or to an equivalent position at the end of her leave period under terms and conditions no less favourable to her. The woman did not prove that she performed work at the level of a financial advisor/controller in the period prior to her maternity leave. The Institute therefore rules that there was no pregnancy discrimination in this case.

Judgment 2000-19 Change in the number of working hours

A woman works full-time and agrees with her employer to work 80% for a trial period of six months. The woman explains that she is pregnant and wants to return to work full-time after the trial period. The employer refuses the expansion to 100% because a 'yo-yo effect' due to constantly changing working hours is considered undesirable. The Equal Treatment Commission finds that the employer, in expecting that the woman would be less employable after pregnancy, was wrongly guided by generally known data that women with children often work part-time. These data may not simply be applied to the individual situation of the woman. There is therefore a prohibited discrimination based on gender by taking pregnancy into account when not honouring the request to return to full-time work.

Judgment 2020-7 Pumping during working hours 1

After returning from maternity leave, a woman takes parental leave and exercises the right to feed her child during working hours. As a result, she is at work three days a week, for six hours a day, instead of eight hours a day. The employer decides not to renew the woman's contract because her absence cannot be covered by colleagues due to the schedule. The fact that women can be at the workplace not eight hours but six hours per working day is a direct consequence of the fact that she makes use of the right to feed the baby. Therefore, there is discrimination on the basis of gender due to the woman's motherhood.

Judgment 2018-116 Adjusted work

A woman works as a commercial service employee at a real estate agent. She does, among other things, viewings. The woman asks her employer to temporarily limit more than three viewings per day due to her pregnancy, with breaks in between and no more viewings in houses with steep stairs or polluted houses. The woman further asked for an adapted chair. According to the woman, the employer did not do enough with her wishes. For example, she had to order and pick up the chair herself. The Institute finds that the company has taken sufficient account of the woman's pregnancy. For example, the woman made fewer and only second viewings, where the woman did not have to walk through the entire house. The woman also received an adapted chair.

Judgment 2015-19 Reduced production
A woman has been absent a lot due to pregnancy complaints. The employer decides not to renew her contract. She was also not invited to apply for an internal vacancy and for an internal training program that offered the prospect of a new job. The employer's reason for this is that the woman's production was too low. The woman has shown on the basis of weekly production reports that she was performing well before the pregnancy complaints started. Women should not be disadvantaged because of the time they cannot work or have less time to work due to their pregnancy. This also applies to absenteeism due to pregnancy complaints. There was therefore pregnancy discrimination by the employer.

Judgment 2008-7 Targets and gratuities
A woman states that she cannot achieve previously set targets due to her pregnancy. The Equal Treatment Commission rules that absence due to pregnancy or pregnancy-related complaints may not lead to a disadvantage for a pregnant employee. If there is reduced productivity due to pregnancy, the extent to which a target should be reduced must be determined based on the specific circumstances of a case. Failure to take pregnancy into account in any way when assessing an employee's productivity, while pregnancy-related complaints are known to the employer, is contrary to equal treatment legislation.

Judgment 2018-35 Postponement of assessment of salary increase in connection with maternity leave
During her appraisal interview, a woman is told that the assessment of a salary increase will be postponed until a later time. This is due to the limited opportunity for assessment in connection with her absence due to her maternity leave. The Institute concludes that the organization made direct discrimination on the grounds of gender in the decision to postpone the award of the salary increment.

Judgment 2021-61 Following a training course
A woman receives permission from her employer to follow an expensive multi-day training course. The woman says that she is pregnant. The training is on before her maternity leave. Just before the start of the training, the manager advises the woman to postpone the training until after her maternity leave, because she can then immediately put what she has learned into practice. The woman refuses this and follows the training. The Institute is of the opinion that there is no unequal treatment on the grounds of gender because, from a didactic point of view, comparable conversations are held in the company with employees who are absent for a long time after training for other reasons and the woman has been able to undergo training. The Institute would have judged differently if the manager had not advised the woman to take the training at a later time, but had completely refused approval to take the training. The equal treatment legislation does not allow female employees to be excluded from following training in connection with their maternity (leave).

Judgment 2019-69 Pregnancy-related illness and transferred work
A woman works as an independent yoga teacher in a physiotherapy practice. The woman becomes ill as a result of pregnancy-related complaints. The practice announces that its lessons have been transferred to another yoga teacher and that this will remain the case for the time being for the sake of continuity. After her maternity leave, the woman reports that she is available to teach again. The practice does not respond to this. The Institute finds that the woman's lessons have been transferred in connection with the woman's pregnancy-related illness and her upcoming absence due to maternity leave. Had the woman not been pregnant, the woman's lessons would not have been transmitted. The physiotherapy practice therefore discriminates against the woman by no longer allowing her to give lessons during her pregnancy and after her maternity leave.

Judgment 2019-1 The substantive handling of discrimination complaints
A woman complains to her employer that she believes her contract will not be extended because of her pregnancy. An employer has an obligation to carefully investigate complaints about discrimination. Careful complaint handling requires a proper and objective investigation. This means that in any case

the principle of *audi alteram partem* must be applied. In this case, the complaint was handled by the manager who made the decision not to renew the woman's contract. There was therefore no objective investigation. To achieve this, the complaint must be handled by a person other than the person being complained about. Failure to carefully handle a complaint about pregnancy discrimination leads to prohibited discrimination on the grounds of gender.

3) Termination of the employment relationship

Judgment 2022-161 Termination of hiring
The Employee Insurance Agency (UWV) has discriminated against a woman on the basis of her gender by terminating the hiring.

Judgment 2022-104 Withdrawal of employment contract offer due to pregnancy
Bauhuis Solutions B.V. discriminated on the basis of gender by not offering a new employment contract after a bankruptcy due to a woman's pregnancy.

Judgment 2022-77 Non-renewal due to pregnancy
Relaxed Hospitality Group B.V. has made unlawful discrimination against a woman because of her pregnancy by not renewing the employment contract and in the payment of her salary.

Judgment 2022-28 Non-renewal due to pregnancy
A poulterer's company discriminated against a woman on the grounds of gender by not renewing her employment contract.

Judgment 2022-4 Non-renewal due to pregnancy
Fides Services Management B.V. discriminated against a woman on the grounds of gender by not renewing her fixed-term employment contract because of her pregnancy and impending motherhood.

Judgment 2021-11 The probationary period 1
An employment contract can be terminated during the probationary period without there being any reasonable grounds for this, but an employer may not abuse this. A woman is on probation and reports that she is pregnant. Her employment contract was terminated six days later. The woman thinks this is because she is pregnant. The company indicates that the corona crisis had an influence and the woman performed inadequately. The woman could not prove or substantiate her statements. The Institute therefore rules that there was no pregnancy discrimination.

Judgment 2017-83 The probationary period 2
A woman is hired for a project through a recruitment and selection agency. The recruitment and selection agency indicates that it is very important that the woman is present throughout the project. During her probationary period, the woman reveals that she is pregnant. A week and a half later, both her hiring and the employment contract with the recruitment and selection agency are terminated. The woman is asked by the client if she wants to continue working on the project temporarily. According to the recruitment and selection agency, the hiring during the probationary period was terminated because there were doubts about the woman's performance. The Institute is not convinced that the reason for terminating the contract was solely or mainly the woman's inadequate performance. The Institute rules that there is pregnancy discrimination.

Judgment 2021-60 Poor performance 1 (no extension)
A pregnant woman works on the basis of a one-year employment contract. No officially documented performance reviews will be conducted during this year. The woman is called unannounced to her manager and is told that her contract will not be extended because she is not performing sufficiently and because her maternity leave will start soon, there is not enough time for her to work on the areas

for improvement. The Institute rules that there is a presumption of discrimination. The company must therefore prove that the woman's pregnancy did not play a role in the decision not to offer her a new contract. The manager indicates that he spoke with the woman several times during the year about her performance. This is disputed by the woman and the Institute therefore cannot establish these statements as evidence. The Institute rules that there is pregnancy discrimination.

Judgment 2021-61 Poor performance 2 (dismissal)
A manager makes the comment during a meeting that he does not want a half-pregnant implementation of a project. A woman who recently announced that she is pregnant is working on this project. She complains to her employer about this comment. Two days later, the manager reports that he wants to terminate the employment contract with the woman due to poor performance. The Institute rules that there is a presumption of discrimination on the basis of gender (pregnancy) because the woman received good assessments before that time. The company must prove that the woman's pregnancy did not play any role in the decision to terminate the employment contract. The company cannot do this. All statements from colleagues about the woman's performance date from after the decision to terminate the agreement. The Institute rules that there is pregnancy discrimination.

Judgment 2016-148 Poor performance 3 (dismissal)
A woman works as a student ICU nurse. The woman's employment is terminated prematurely. According to the woman, because of her pregnancy. According to the hospital, because the woman exhibits inappropriate behaviour and a breach of trust has occurred. As proof that her dismissal is related to her pregnancy, the woman points to an e-mail from the manager in which maternity leave is mentioned. However, according to the Institute, it cannot be deduced from this email that maternity leave was one of the reasons for the decision to terminate the appointment prematurely. The fact that the woman received a negative assessment after it was known that she was pregnant cannot serve as proof of this because the woman has previously had assessments in the past in which the same points of interest were mentioned. The Institute rules that there is no pregnancy discrimination.

Judgment 2020-119 Poor performance 4 (stopping hiring)
A woman is on secondment and tells the hirer that she is pregnant. The hirer informs her the same day that her secondment will be stopped at the end of the month. The Institute finds that there is a suspicion of discrimination. The hirer must therefore prove that it has not discriminated. The hirer provided two internal emails in which the termination of the woman's secondment was mentioned. These emails date from before the hirer became aware of the woman's pregnancy. The hirer thus proves that the woman's pregnancy did not play a role in the decision to stop the secondment and that there was therefore no discrimination.

Judgment 2019-67 Dangerous work for pregnant women
A woman works as a temporary worker in the meat processing and food industry. The woman works at a hiring company that works with raw meat. The woman becomes pregnant and the hirer terminates the hire for that reason. The hirer has a policy that pregnant employees are not allowed to process raw meat due to health risks for mother and child. The woman believes this is discrimination by the hirer and states that the employment agency should have protected her against this. The Institute believes that in this case it is understandable that the employment agency did not enter into discussions with the hirer, but made efforts to employ the woman elsewhere.

Judgment 2018-38 Absence due to illness (temporary employment clause)
A woman works through a temporary employment contract. The temporary employment contract states that it ends by operation of law in the event of illness. The Collective Labor Agreement for Temporary Workers also contains a similar provision. The woman is pregnant and is admitted to hospital. Her employment contract is terminated. The Institute rules that an employer must assume that a pregnant employee reporting sick is related to her pregnancy, unless there are indications to the contrary.

In addition, an employment contract may not be terminated due to a pregnancy-related illness. The concepts of 'disease' and 'disability' may not be applied in full to pregnancy-related illness or disability. There was therefore pregnancy discrimination.

Judgment 2020-104 Absence due to illness 2 (discrimination protection)
A seconded woman was (often) absent due to illness. The hirer complains about this to the employment agency. The woman's hiring is stopped. The employment agency has a duty of care to protect the woman against discrimination by the hirer. Unless there are indications to the contrary, the agency must assume that the woman's reports of illness are pregnancy-related in nature. The employment agency therefore had to ask the hirer whether the woman's pregnancy might play a role in the termination of the hire. The agency did not do this. There is therefore pregnancy discrimination.

Judgment 2007-120 Absence due to IVF treatments
A woman says that she will undergo IVF treatment. She thinks that her contract will not be extended because the employer makes a connection between IVF treatment and future absenteeism due to illness. The Equal Treatment Commission rules that IVF treatment is equated with pregnancy in the context of equal treatment legislation, since IVF is intended to achieve a pregnancy. Discrimination on the basis of (absence due to) IVF treatment is therefore a form of direct discrimination on the basis of gender. It has been established that the employer's future absenteeism due to illness was a factor in the decision not to renew the woman's contract. There is therefore prohibited discrimination on the grounds of gender.

Judgment 2015-92 Pumping during working hours 2
A woman works through an employment agency. The woman is told by the hirer that she did not provide relevant information during the job interview by not stating that she wanted to pump. At a later time, the hirer accuses her of not being open and transparent by not telling her that the employment agency will cover the costs of pumping. The hirer terminates the hire on the same day. The hirer states that this was not because the woman wants to pump, but because the woman has not been open about this and this has created a lack of trust. The Institute is of the opinion that the lack of trust experienced by the hirer is inextricably linked to the woman's wish to exercise her legal right to pump during working hours with full pay. If the woman had not pumped, the loan would not have stopped. There is therefore discrimination on the basis of gender.

Appendix 3. Relevant legislation and regulations

Work and Care Act ('Wet arbeid en zorg')
The legally required leave regulations are laid down in the Work and Care Act (WAZO).

Sickness Benefits Act ('Ziektewet')
Article 29a ZW stipulates that an employee who at any time prior to her maternity leave becomes unfit to perform her work under the Work and Care Act and that unfitness has its origins in the pregnancy is entitled to sick pay equal to her maximum daily wage. (member 1).
If, after the maternity leave ends, the employee is subsequently unfit to perform her work and that unfitness is caused by childbirth or the preceding pregnancy, she is entitled to sick pay equal to her maximum daily wage as long as the incapacity for work continues with a maximum of 104 consecutive weeks (paragraph 4).

Guideline: pregnancy and childbirth as a cause of unfitness for her work (revised 2021)
UWV/Social Medical Affairs – Central Expertise Centre
Is the cause of the unfitness to work exclusively due to factors other than the current pregnancy or the last birth?
If not, this means that there is incapacity to work as a result of pregnancy and childbirth. The female insured person is entitled to sickness benefit under Article 29a ZW.

Working Hours Act ('Arbeidstijdenwet')
The Working Hours Act contains rules about working hours, rest periods, breaks and night shifts.

European pregnancy guideline
This European directive has been partly implemented in the Working Conditions Act.
The Pregnancy Directive firstly provides in Article 11, opening words and paragraph 1, in order to ensure that pregnant workers can exercise the rights recognized in this Article with regard to the protection of their safety and health, as follows: 5, 6 and 7, the rights linked to the employment contract, including the retention of remuneration for pregnant workers, must be guaranteed in accordance with national laws and/or practices.
Furthermore, Article 6 of the Pregnancy Directive refers, among other things, to the European framework directive in the field of safe and healthy working (Directive 89/391/EEC). This is not surprising, because the Maternity Directive is a directive 'on the implementation of measures to promote improvements in the safety and health at work of workers during pregnancy, after childbirth and during lactation'. The Pregnancy Directive is the 'tenth individual directive within the meaning of Article 16(1) of Directive 89/391 /EEC'. Reference is made, among other things, to Article 6 of that directive. Article 6(5) states: "The measures regarding safety, hygiene and health at work may under no circumstances impose a financial burden on employees." This provision is implemented in Article 44 of the Working Conditions Act: "The costs associated with compliance with the rules laid down by or pursuant to this Act will not be charged to the employees."
The provisions of the European framework directive apply, by virtue of Article 16, paragraph 3, to all special directives, including the pregnancy directive: "The provisions of this directive apply in full to all areas covered by the special directives, without prejudice to more stringent directives contained in those special directives." and/or specific provisions."

Working Conditions Decree ("Arbeidsomstandighedenbesluit')
The Working Conditions Decree is an elaboration of the Working Conditions Act. This contains the rules that both employer and employee must adhere to to prevent occupational risks. Articles 1.42 and 3.48 are, among others, relevant.
1.42 Organization of work

1. Without prejudice to Article 4:5 of the Working Hours Act, the employer shall organize the work of a pregnant employee and an employee during lactation in such a way, design the workplace in such a way, apply such a production and working method and have such work equipment used, that the work cannot pose any danger to that employee's safety and health and cannot have any adverse effects on pregnancy or lactation.
2. If compliance with the first paragraph is not reasonably possible, a temporary adjustment to the work or a temporary adjustment to the working and rest times will prevent danger to the safety and health of the pregnant employee and the employee during -the lactation is caused, and it is prevented that a setback can be caused to the pregnancy or lactation.
3. If compliance with the second paragraph is not reasonably possible, the pregnant employee and the employee during lactation will be temporarily given other work.
4. If compliance with the third paragraph is not reasonably possible, the pregnant employee and the employee during lactation will be temporarily exempted from performing work.
3.48 Rest areas
A suitable, lockable, enclosed space is available for pregnant employees and employees during lactation, where there is or can be an immediate opportunity to take a rest. In such a room a proper bed, foldable or not, or a proper couch is available.

General Equal Treatment Act (‘Algemene wet gelijke behandeling‘ AWGB)
The law offers protection to people who are discriminated against, including in the field of employment. Such as treatment at work, during recruitment and selection, mediation, dismissal, employment conditions and promotion.

Equal Treatment of Men and Women Act (‘Wet gelijke behandeling mannen en vrouwen’)
This law addresses the difference in treatment between men and women at work. An employer may not discriminate when entering into an employment contract, employment conditions, working conditions, promotion and dismissal.