

# MATERNITY LEAVE AND SELF-EMPLOYMENT. PARENTHOOD SUPPORT OR INDIVIDUAL RIGHT? A TWO COUNTRIES COMPARISON

Alessandra COCAINA

## ABSTRACT

Maternity and paternity leaves and benefits are a crucial tool in order to gain the so called “reconciliation between work and life” pursued by EU social policies. Indeed, at a EU level, the directive 92/85/CEE, obliges Member States to provide a maternity allowance for a minimum period of at least 14 weeks for employees, to be paid before or after confinement in accordance with national legislations, of which at least 2 weeks are compulsory. A Proposal for a directive of the European Parliament and of the Council [COM(2008) 637 final] proposed to change Article 8 of the Directive 92/85/CEE, improving the minimum maternity benefit weeks to 18, including a compulsory leave of at least six weeks after the child’s birth. When it comes to self-employment, the Directive 2010/41/EU, which replaces Directive 86/613/CEE, establishes a period of at least 14 weeks which can be covered by a maternity allowance for self-employed women, but at the same time Member States “may decide whether the maternity allowance (...) is granted on a mandatory or voluntary basis” (article 8, second paragraph). As self-employed workers are not always obliged to have this rest period, according to their freedom to organize their economic activity, in some cases they decide to continue working in order not to lose their clients. Nevertheless, when they are economically depend on a principal client, they tend to have a compulsory period of rest in some Countries. In Spain the statutory “rest” period consists of 6 weeks for workers of all kinds, while a recent law has provided the right to maintain a principal client for the so-called TRADE who hires an employee. In Italy a recent law project aims at providing a benefit for one more category of self-employed whether they effectively take their maternity leave or not. Examining legislations and case law of these two Countries, this paper reflects on the protection of maternity within the self-employment area, stressing on the two necessities of income and job safeguard on one side, and of mother and newborn’s health protection on the other.