

IASP-AIPS

DP 08/2025 MATERNITY PROTECTION: THE COLOMBIA CASE

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SUMMARY: 1. Introduction. – 2. International Labour Standards. – 3. National Standards. – 4. Jurisprudential Contributions. – 5. Draft Reform of Labour and Pension Law. – 6. Conclusions.

1. Introduction

There is no doubt about the efforts and concern of the International Labour Organisation (ILO) since its inception to protect women, exempting them from night work and improving their working conditions through various conventions, such as: Convention 3 of 1919 on maternity protection1, Convention 103 of 1953, which protects women during pregnancy, childbirth and postpartum, and Convention 183 of 2000 on breastfeeding, which proposes a reduction in the working day, allowing mothers to take one or more breaks to breastfeed their children for up to six months after giving birth

(Normlex, 2024, *Ratifications by Colombia).* All of this takes into account the task assigned to women by the nature of human reproduction, a task that is undoubtedly exhausting in all its stages.

1 Treaties relating to the protection of women: compendium of information for legal practitioners no. 1, Government of Colombia.

This process generates countless physical, emotional and mental demands and irrefutably requires time, patience and dedication on the part of the mother. However, Colombia has gone further by granting paternity leave, which is provided for in Article 236 of Colombian legislation. This leave allows for 2 paid time off for the birth of a child. However, in 2021, through Law 2114, the estimated period of leave was increased to two weeks, and the current highly proselytising and rights-based government is proposing 12 weeks.

That being the case, with all due respect to fathers, beyond increasing the workload of women due to the machismo that characterises our societies, inherited from the Spanish, our colonisers, who in turn were influenced by four centuries of Arab domination, what contribution are they going to make in the domestic sphere?

While it is true that ILO Convention 156 and Recommendation 165 (Normlex, 2024, *Ratifications of Colombia)* draw attention to the needs of workers with family responsibilities, and that this entails the harmonisation of work, personal and family life, this cannot be taken to unnecessary and ineffective extremes, such as increasing paternity leave. It is worth noting that Convention 175 of the same organisation (*Ibid*), already provides for the possibility of agreeing on part-time work to attend to these responsibilities, as long as it does not affect productivity, which is already low in developing countries.

To illustrate this phenomenon, I always refer to the wise statement that originated with Baltasar Cavazos in his work *La Concertación Social y el Pacto Económico de Solidaridad* (Social Agreement and the Economic Solidarity Pact) and was adopted and adapted by several emblematic figures such as Néstor De Buen Lozano in his text *La Decadencia Del Derecho Al Trabajo* (The Decline of the Right to Work): ‘All protectionism can be excessive if economic and social realities are forgotten.’ (2001, p.36).

The increase in maternity and breastfeeding leave from 4 to 12 and then to 18 weeks became a factor in employment discrimination, which is prohibited by ILO Convention 111 (Normlex, 2024, *Ratifications by Colombia)*. However, this discrimination has been imperceptible, which gives full validity to the statement by this prominent Mexican jurist. The intentions to protect and support women by extending the 3 periods of maternity and breastfeeding leave may have counterproductive effects. Despite legal provisions seeking to eradicate employment discrimination, reality shows that the increase in weeks of leave has contributed, in a subtle but significant way, to the perpetuation of discriminatory practices in the workplace. Far from guaranteeing equality and equity, this situation has created an environment in which workers face additional obstacles to entering and remaining in employment, reinforcing the validity of Baltasar Cavazos' assertion. It is thus clear that, paradoxically, excessive protection

can lead to a lack of protection that undermines women's rights and opportunities in the workplace.

2. INTERNATIONAL LABOUR STANDARDS

As stated in the introduction to this presentation, the ILO's main concern was women, based on their designation as the “weaker sex”, which we certainly do not share, as it is very difficult to find greater demonstrations of strength than the very fact of motherhood and child-rearing, which guarantees the survival of the human race and which, given the decision of most couples today not to have children and to form beautiful families with pets of various species, will lead to a very significant demographic change that must begin to be given very special consideration due to its socio-political and economic effects.

It is not only the protective standards of the ILO, but also the treaties relating to the protection of women, with an emphasis on the period of maternity and breastfeeding, which, during the time of Marta Lucia Ramírez as Minister of Foreign Affairs in Colombia, were compiled and published in a booklet aimed at legal practitioners, highlighting the different international standards relating to the issue that concerns us.

3- NATIONAL REGULATIONS

Colombia is a founding member of the ILO, as well as a member of the United Nations (UN), the same institution that designated the country as an advisory body. Although it is not a signatory to the constitution, it does have the status of a founding member along with the other countries. Given the above, Colombia, as a member country of the UN, has the obligation to ratify the conventions adopted by the ILO, provided that, after a constitutional review, they do not conflict with the constitution, or in the case of human rights conventions examined by that court, they must be incorporated into national legislation by the constitutional block that has been in force since 1991 in our constitution.

Otherwise, in December of each year, it must notify the Director-General of the reasons for non-ratification, as committed to by a country with a long history of ratifications such as Colombia, which, with 63 ratified conventions, has issued many protective regulations for maternity. For this reason, since Decree Law 2351 of 1965, which developed Law 6 of 1945, the first legal statute on labour matters, Colombian women have enjoyed special protection in relation to maternity and breastfeeding.

Given the above, Bill 2357 of 2024 is currently before Congress, which adopts Convention 183 of 2000 (Normlex, 2024, *Ratifications of Colombia)*, which has not complied with due parliamentary process, due to the saturation of Congress with social reforms proposed by the current government. To date, we do not know the reasons given by the Colombian government to the ILO within the commitment to ratify within 12 months.

4- JURISPRUDENTIAL CONTRIBUTIONS

It is the jurisprudence of the Constitutional Court that has contributed most to the protection of maternity, as evidenced in ruling T-1223 of 1993 by Alejandro Martínez

Caballero, who established reinforced maternity jurisdiction based on the theory of the presumption of unjustified dismissal on the grounds of pregnancy or breastfeeding. [2] On the other hand, Law 100 of 1993, in its articles 155 and 166, establishes special protection for mothers during pregnancy and breastfeeding, and emphasises the protection of mothers by the mandatory and subsidised health plan. In 1998, Decree 806 established the payment of sick leave for pregnant women by employers, whether public or private. Law 823 of 2023 addresses the differences between the compulsory and subsidised schemes.

Likewise, Law 1468 of 2011 was enacted, increasing maternity leave from 12 to 14 weeks, amending Articles 57 and 58 of the Substantive Labour Code (CST) and introducing adoptive mothers and surrogate mothers. This ruling, a milestone in constitutional jurisprudence, has been followed by numerous others, such as T-606 of 1995, T-694 of 1996 and T-568 of 1996, all reiterating the 1993 ruling by Martínez Caballero on reinforced maternity rights.

Furthermore, it is C-710 of 1996 that declares the dismissal of a woman due to pregnancy to be ineffective, ordering the employer to reinstate her with the payment of all labour entitlements, as if the employment contract or relationship had not been interrupted.

But perhaps the most forceful is C-470, which, although it takes up the thesis of reinforced maternity rights, questions the payment of compensation for unjustified dismissal, since by paying all the debts, the employment relationship was never terminated. While it is true that our Constitutional Court has been described as progressive, we, with all due respect, consider it to be overly protective**,** which is far removed from the economic reality of the world.

5.-LABOUR AND PENSION REFORM PROJECTS IN COLOMBIA

Colombia, following the change of government to a left-wing administration, has undergone a wave of reforms, and has been insistent on these two issues.

Despite the collapse of the first, the second, with more than 100 constitutional challenges, has continued to pursue a reformist approach. As we have mentioned, the labour reform insisted on increasing the period of maternity leave from six to twelve weeks. Despite the collapse of the former, the latter, with more than 100 constitutional challenges, has continued to pursue a reformist agenda. As we have mentioned, the labour reform insisted on increasing parental leave to twelve weeks, which we do not find justified, and we have already expressed our reasons. But we must also remember that, thanks to the wage gap between men and women, when women give up one week of their 18 weeks of leave to men, men do not request it because they receive less compensation than their salary, thus demonstrating how unattractive they find participating in the tasks involved in motherhood. If those twelve weeks are going to have the same amount of compensation, the less interested they will be.

Secondly, what is needed is work and productivity to lift people out of poverty. The working day has already been reduced by two hours and we are on our way to a third, and the overall results issued by the National Administrative Department of Statistics (DANE) showed that the productivity rate in Colombia in 2023 was approximately -1%

(2024, *1. General results of value-added productivity 2023pr),* which is not a good sign for the country's economy, let alone its economic growth. In the pension reform, things are no better; it was proposed to reduce the number of weeks of contributions for women with up to three children, as well as to reduce the age. Recently**,** in one of his political speeches, the president proposed lowering the retirement age, ignoring the phenomenon of global ageing, longevity and low birth rates. This is completely at odds with the reality of the whole world; in Europe, the retirement age and the length of time people stay in work have been increased as a solution to the financing and sustainability of pension schemes. Demagoguery carries everything along with it.

6.-CONCLUSIONS

While there is an insistence on providing women with greater job security, which ultimately becomes a factor of discrimination in employment because they are not given opportunities and, on the contrary, there is very veiled discrimination, bearing in mind that these are not guarantees requested by them, in consideration of their dual role, they will suffer the consequences of discrimination in opportunities and salaries. It is a duty to address reality and its consequences. Reality is always stubborn and clear.

They have requested, in consideration of their dual role, they will suffer the consequences of discrimination in opportunities and wages. It is a duty to address reality and its consequences. Reality is always stubborn and clear, although not always beautiful, and it is important that these guarantees are adjusted to that reality in order to avoid counterproductive effects that may perpetuate or aggravate structural problems in the workplace.

It is not through labour regulations or the reduction of conditions in relation to legal requirements that are invoked on the grounds of motherhood that there is true recognition of their dual role. There has been an insistence on labour protection with the argument that in modern society, dysfunctional families can equally cover adoptive parents or same-sex couples.

It is social protection with its nine branches that is called upon to provide comprehensive protection from the moment of conception until after death and to contribute, where appropriate, to alleviating the burden of motherhood and childcare, without placing them at risk of discrimination in employment and wages, because we are labelled as working little due to the time spent on the task assigned for reasons of human nature.

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