

Reform of German Maternity Protection Act

The German Maternity Protection Act (*Mutterschutzgesetz* – “**MuSchG**”) dates back to 1952. Since then it has never really been changed or updated. Keeping this in mind it was no surprise that the Federal Government (*Bundesregierung*) introduced a reform of the MuSchG in June 2016, which is the basis for this newsletter. Though the legislative process is not yet completed, the reform is expected to be effective as of 1st January 2017.

Whereas German employment law is in general “Employee Protection Law” and thus, guidance for the employer and its employees, the MuSchG is governing a specific subject matter (*lex specialis*). The latter is intended to especially protect the health and well-being of the woman and her (unborn) child during pregnancy, after birth and during lactation period.

The reform intends to represent the change in way of living of mothers who are eager to start working as soon as practicable after giving birth and to establish a consistent level of protection for all mothers-to-be – regardless of being employed or still at university or school.

The key points of the reform are as follows:

- ▶ **Broader scope of application:** The reform is intended to broaden the scope of application. Therefore not only employees and persons similar to employees are protected by the MuSchG but also women who are still at school or university. The only requirement is that participation of certain courses at the school/ university is mandatory and not upon woman’s discretion. The same principle applies to internships. If the internship is required by the school’s/ university’s syllabus, the pregnant women are protected by the MuSchG. Quite unique is the fact, that the protection can be waived by the students.
- ▶ **Liberalisation concerning work on Sundays and public holidays:** As of now pregnant women and nursing mothers were not allowed to work on Sundays and/or public holidays. The reform wants to give the women the chance to decide whether they want to work on those specific days or not. An authorization by authorities will no longer be required.
- ▶ **Flexibilization of night work:** Work during night time (8 pm until 6 am) will still be prohibited. Nonetheless work during 8 pm and 10 pm will be exceptionally allowed if the pregnant woman or the nursing mother explicitly agrees to work during those times and can provide the employee with a clearance certificate (*Unbedenklichkeitsbescheinigung*) issued by a doctor.
- ▶ **Right to employment before and after maternity leave – Focusing on the woman’s will to work:** Pregnant women and nursing mothers will have a stronger right to work before and after maternity leave. Thus the employer has to take actions (e.g. reorganisation of workplace, offering her another workplace) before declaring a ban on employment (*Beschäftigungsverbot*) so women can continue working in most cases. Only if the employer cannot establish a safe environment for the woman, the employer is obliged to declare a ban on employment.
- ▶ **Assessment of risks:** The already installed (general) risk assessment will be expanded by the assessment of the specific risk of the work environment for each workplace. Both assessments have to be documented.
- ▶ **Maternity leave with handicapped children:** When giving birth to a handicapped child the maternity leave extends to 12 instead of 8 weeks.
- ▶ **Protection against unfair dismissal after miscarriage:** If the miscarriage takes place after pregnancy week 12 the women are protected against unfair dismissal for four months regardless of the foetus’ weight.



Dr. Kilian Friemel

Specialist Lawyer for Employment Law
Email: K.Friemel@taylorwessing.com



Dr. Christian Maron

Specialist Lawyer for Employment Law
Email: C.Maron@taylorwessing.com

