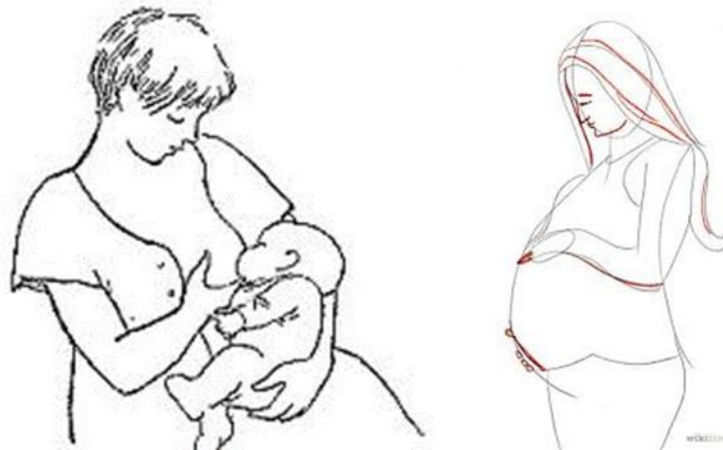


"EL RODIN"

SITRAP UNION BULLETIN

DEAR SISTERS, THE SITRAP UNION HAS MADE AN EFFORT TO PROVIDE YOU WITH THIS INFORMATION LEAFLET TO GUIDE PREGNANT OR BREASTFEEDING WOMEN IN ORDER TO EXERCISE THEIR LABOUR RIGHTS AND DUTIES FOR THE WELLBEING OF OUR FAMILIES.



Law protecting pregnant or breastfeeding workers: sections 94 to 100 of the Labour Code and section 54 of the Costa Rican Department of Social Security (CCSS) Health Insurance Regulations.

LABOUR CODE SECTION 94: An employer shall not dismiss workers who are pregnant or breastfeeding, except for just cause due to a serious failure to discharge their duties arising from their contract, in accordance with the grounds laid down in section 81 of the Labour Code.

In any event, the employer must handle the dismissal through the National Directorate and General Labour Inspectorate and must prove the worker's failure to discharge her duties. In an exceptional case, the Directorate may order the worker to be suspended whilst the handling of the dismissal is resolved.

What is maternity leave?

It is a period of 4 months which a pregnant worker is entitled to take so that she can rest for one month before giving birth and three months after her baby's birth. The three months after the birth are granted to give the mother and baby the time to adapt and they are considered to be the minimum period for breastfeeding. During this leave period, the worker has the right to receive the same salary as she would if she was working and, therefore, the Costa Rican Department of Social Security pays 50% of her salary and the employer has to pay the other 50%.

How does maternity leave work for a worker with a multiple pregnancy (twins, triplets, etc.)?

Maternity leave is a 4 month period of paid leave (1 month before and 3 months after the birth), during which time the worker receives 100% of her salary, with the amount paid being split equally between her employer and the CCSS. The doctor caring for the pregnant worker must issue a certificate granting the leave based upon her approximate due date.

Should it be a multiple pregnancy (twins, triplets, quadruplets, etc.), the maternity leave shall, following the pre- and post-birth periods, be extended by an additional month for every additional live birth. This additional leave shall be extended on a monthly basis according to the number of live births verified each time it is granted, in accordance with section 17 of the Costa Rican Social Security's Regulations on granting incapacity and leave, amended by section 23 at the Executive Board session No. 8540 on 26 May 2011.

What is the procedure that the employer must follow to request authorisation to dismiss a pregnant or breastfeeding worker?

If a pregnant or breastfeeding worker's actions are grounds for dismissal, the employer must submit a request for authorisation to dismiss her to the Labour Inspectorate, detailing the worker's misconduct and providing supporting evidence. The employee shall nominate the work inspectors to carry out the investigation and these inspectors shall summon all the involved parties to appear before them in order to establish the truth about the facts under investigation.

Once this stage is complete, the inspectors shall submit a report recommending that the requested dismissal be authorised or rejected. This report shall be made available to the employer and the worker involved, both of whom may send in their comments about its contents. Then, the National Labour Inspection Director shall issue the final decision, authorising or rejecting the dismissal request. Any party who is not satisfied with the decision may then resort to the courts to file his/her claim.

What special protection does every pregnant or breastfeeding worker enjoy?

The main protection provided is that pregnant or breastfeeding workers cannot be dismissed without just cause or treated in a discriminatory manner. This protection does not cover a worker who commits one of the misconduct offences outlined by section 81 of the Labour Code as a worker who does so may be dismissed, provided that the employer has received previous authorisation from the Ministry of Labour and Social Security's Labour Inspectorate.

Should social security contributions be deducted from the worker's salary during the 4 month maternity leave?

Yes, the social security contributions must be paid because it is still a salary but the Costa Rican Department Social Security pays the worker's contributions and the employer only pays contributions on the 50% of the salary he covers during the worker's leave.

Must the doctor issuing a note for the breastfeeding period be from the Costa Rican Department of Social Security?

The Law does not expressly refer to this issue and so it can be a doctor from the Costa Rican Department of Social Security or a private health centre as both have the legal authority to attest documents. Only the Courts of Justice can rule on whether a document issued by a doctor is valid or not.

Are the calculations for the mandatory year-end bonus, holidays, notice period and severance pay affected by the time that the worker is on maternity leave?

No, what the worker receives during her maternity leave is her salary and this must be considered when calculating her employment rights such as holidays, the mandatory year-end bonus, notice period, severance pay, etc.

This means that those rights must be calculated and paid based on 100% of her salary during her four month leave. The employer has to pay the full 100% of these rights even though he only pays 50% of her salary during her maternity leave.

Does a pregnant worker have special statutory protection even if she is in a probationary period?

A pregnant worker has far-reaching statutory protection with the aim of preventing her rights, and those of her baby, being affected and for this reason an employer cannot dismiss her without appropriate authorisation.

Regardless of whether she is in a probationary period, a worker enjoys the full protection of the law and it is illegal for her to be dismissed.

What should a worker do if she is dismissed while pregnant or breastfeeding?

If you are a member of SITRAP, you should immediately get in touch with the union. This can be done directly or through the union's grassroots representatives / union organiser or by calling the person in charge of the Secretariat for Working Women at the SITRAP office. SITRAP will then be able to offer guidance and begin the appropriate formalities to defend the worker affected, either through its executive committee or through its legal department.

If you are not a member, we are still available to work alongside you to defend your rights.

You may also go to the nearest Labour Inspectorate to your place of work as this is the office that will carry out the investigation into your complaint. If you prefer, you may take the case to the Labour Court to request your immediate reinstatement.

Should the worker not wish to be reinstated, she is entitled to the appropriate notice payment, severance pay, mandatory year-end bonus and holiday pay. In addition, the employer must pay the appropriate amounts for the pre- and post-birth allowance and her loss of earnings from the time of her dismissal to the end of the eighth month of her pregnancy.

If it is a breastfeeding worker who is being dismissed, she is entitled to compensation equal to ten days' salary if she waives her right to reinstatement. This is in addition to the notice, severance, mandatory year-end bonus and holidays to which she is entitled.

What requirements must the worker meet in order to enjoy this special statutory protection?

In case-law when applying the rules to specific cases, it has been repeatedly stated that a medical certificate may be provided at a later date as it does not constitute an essential requirement for the purposes of this protection, given that mere notification - even when given verbally - is sufficient for these protection mechanisms. This notification, it has been stated, can even be given at the same time as the dismissal.

BREASTFEEDING

Various rules regulate both the treatment of a woman and her baby during the breastfeeding period and the rights that they enjoy, namely section 51 of the Political Constitution, article 19 of the American Convention on Human Rights, ILO Convention No. 111 concerning discrimination in respect of employment and occupation, sections 95 and 97 of the Labour Code, section 2 of the Law to Promote Breastfeeding and section 2 of the Children and Adolescents Code.

It is clear that post-birth breastfeeding is a widely recognised right as being in the baby's best interests. It remains to be considered how long the breastfeeding period, and its possible extension, should be.

The Constitutional Chamber, in Vote No. 474-96 at 17:09 on 24 January 1996, established, in a binding ruling, that every worker is entitled to enjoy a period of breastfeeding for the length of time certified by a doctor, thereby guaranteeing a period of natural feeding that is in the child's best interests. Moreover, this ruling complies, in the spirit of protecting motherhood, with one of the principles of the Convention on the Rights of the Child, as expressed in its article 24.

Consideration should also be given to the scope of the Constitutional Chamber's vote No. 2011-635 at 8:39 on 29 January 2011, the pertinent part of which states that:

“...consideration should be given, in the first place, to the fact that section 2 of the Law to Promote Breastfeeding, by defining an infant, for "the purposes of this law", as "a child up to the age of twelve months", does not imply - either implicitly or explicitly

- that an upper limit is imposed on the breastfeeding period in the sphere of industrial relations when in truth the Labour Code itself, when dealing expressly with the matter (in its sections 95 and 97), does not place any limit on the breastfeeding period. On the contrary, what its rules prescribe is a minimum breastfeeding period, which may be extended if medical opinion supports it." (Emphasis added.)

Remember that when it concerns basic rights - such as an infant's right to be breastfed and the mother's right to nurse her baby without the risk of losing her job whilst doing so - this vote does not allow for any restrictive interpretation. Rather, it should be interpreted in "in the most favourable way to ensure the values, principles and basic rights incorporated in Constitutional Law are implemented... that every basic right should always be interpreted and applied in the way that most favours the individual and that a broad interpretation should be taken in all instances which maximise individual freedom and a restrictive interpretation in all those which limit such freedom...".

BREASTFEEDING PERIOD

The above means that breastfeeding can be extended beyond the year prescribed by section 2 of the Law to Promote Breastfeeding and, consequently, the protection provided by sections 94 and 94a of the Labour Code shall, in turn, be extended for the entire time that the worker continues to provide a doctor's note, even if her baby is more than one year old. Breastfeeding, therefore, does not continue only until the infant reaches his/her first birthday, in accordance with section 2 of the Law to Promote Breastfeeding, but until the doctor certifies that the mother has stopped nursing her baby.

How should the worker proceed when she goes back to work?

In order to continue breastfeeding after her period of maternity leave is over, regulations state that when the worker goes back to work, she will need to submit a medical certificate certifying that her baby still needs breastfeeding and she is still able to nurse him/her. These certificates can be renewed as many times as the doctor deems necessary and they must be respected by the company.

A breastfeeding certificate is a requirement that the worker must provide in order to access this right but she does not need to wait until her baby is six months old to request it.

As for when this certificate must be provided, the Second Chamber, in its case law through vote No. 191 at 9:55 on 23 June 1995, was understanding in stating that it is sufficient for the worker to verbally inform her employer and that the evidence can be provided at a later date, within the reasonable timeframe of 15 calendar days.

It is always advisable to issue a statement informing workers who wish to enjoy this right that they should hand in a certificate within a reasonable period of time but no later than 15 days.

Once the three months following the birth have passed, in accordance with the provisions of section 97 of the Labour Code, breastfeeding leave grants the worker 1 hour per day to nurse her baby or, alternatively, to pump and store the breast milk. This hour can be split into two half hours or into fifteen minute periods every three working hours, with the breakdown to be mutually agreed between the worker and the employer. It is common for a company to agree one of the following options with the worker:

- a) Arrive one hour later.**
- b) Leave one hour earlier.**
- c) Arrive half an hour later and leave half an hour earlier.**

The company must put this policy/practice in writing.

To summarise, we should emphasise the fact that a worker who is on maternity leave or breastfeeding enjoys special statutory protection. During this timeframe, an employer CANNOT dismiss her except in the case of serious misconduct as provided for in section 81 of the Labour Code. In such an event, the employer must undertake a process to authorise the dismissal through the Ministry of Labour and Social Security's Labour Inspectorate.

A RIGHT THAT IS NOT DEFENDED IS A RIGHT THAT IS LOST

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IF WE CREATE WEALTH, WE HAVE THE
RIGHT TO A BETTER LIFE

WITH NO UNION
THERE IS NO DEMOCRACY.

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