



Federal Ministry
for Education, Family Affairs, Senior Citizens,
Women and Youth



Guide to Maternity Protection

***Information for pregnant
and breastfeeding women***

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***Information for pregnant
and breastfeeding women***

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1 Introduction

1.1 What is maternity protection?

Pregnancy, childbirth and the first months of a baby's life are an emotionally intense and very sensitive period in the life of a family.

Around the time of birth, mother and child require special protection: maternity protection. Modern maternity protection combines various objectives:

Aims of maternity protection

- protecting the health of a pregnant and breastfeeding woman as well as that of her child while at the same time enabling her to continue to pursue gainful employment as far as is responsibly possible;
- ensuring that pregnant women are protected from unjustified dismissal;
- securing their income during the period in which they are not permitted to perform their work; and
- overall, compensating for any disadvantages resulting from the implementation of maternity protection measures during pregnancy, after childbirth and during the breastfeeding period.

1.2 Which women are protected?

The Maternity Protection Act (*Mutterschutzgesetz – MuSchG*) applies to all pregnant and breastfeeding women who are **gainfully employed**. The key factor here is that the woman is employed in the Federal Republic of Germany and the employment contract was concluded under German law.

Within the meaning of the Maternity Protection Act, the term ‘woman’ is used to describe any person who is pregnant, has given birth to a child or is breastfeeding – **regardless of the sex indicated in their birth certificate**. This means that you are protected by law if you are pregnant, have given birth or are breastfeeding, even if you do not identify as a woman. Neither nationality nor marital status is relevant. Regardless of the nature of the employment contract, the Maternity Protection Act also applies to

- women in vocational training;
- trainees within the meaning of Section 26 of the Vocational Training Act (*Berufsbildungsgesetz – BBiG*);
- women with disabilities who are employed in a workshop for disabled persons;
- women who are volunteers within the meaning of the Youth Volunteer Services Act (*Jugendfreiwilligendienstegesetz – JFDG*) or the Federal Volunteer Service Act (*Bundesfreiwilligendienstgesetz – BFDG*); and
- women who are members of a religious cooperative, deaconesses or members of a comparable community who hold a permanent position or a position based on a secondment contract, also during a period of practical training.

For details of further protected groups of persons, see Sections 1.2.2 f.



Important note

If you have any doubts as to your employment status, please contact the **clearing office of the national German pension organisation Deutsche Rentenversicherung Bund** (postal address: DRV Bund, Clearingstelle, 10704 Berlin) to seek clarification. This option is also open to your employer. The application form along with other forms is also available for download at

https://www.deutsche-rentenversicherung.de/DRV/DE/Home/home_node.html

1.2.1 Employees in part-time jobs, mini-jobs, fixed-term employment, the probationary period and vocational training

Women who are employed **part-time** enjoy full protection under the Maternity Protection Act in the same way as full-time employees.

Fixed-term employment

The Maternity Protection Act also applies to women in marginal employment (so-called mini-jobs).

Women in **fixed-term employment**, for example for trial or substitution purposes, are covered by the Maternity Protection Act during pregnancy and after childbirth for the same period as that of the fixed-term employment. In the event of pregnancy during the period of protection after childbirth and during parental leave, the fixed-term employment still ends on expiry of the agreed period or achievement of the original purpose.



Important note

Maternity leave does not entitle you to the extension of a fixed-term employment contract. However, if your employer were to extend all your colleagues' fixed-term employment contracts of the same type and only invoke the expiry of the time limit in your case, this could potentially constitute a case of direct discrimination on the grounds of your pregnancy and therefore be inadmissible. For information on possible benefit entitlements in connection with fixed-term employment, see Sections 4.1.3.2 and 4.1.4 f.

The Maternity Protection Act also applies without restriction during the **probationary period** in the case of an **employment contract** that was originally concluded for an indefinite duration.

As a rule, **vocational training contracts** are temporary employment contracts. They end on expiry of the contractually agreed training period or – if the final examination is passed early – when the examination board announces the examination result. This also applies in the case of pregnancy. However, you can apply for an extension of your training period before the final examination if the extension is necessary in order for you to achieve the training objective, for example as a result of absences due to pregnancy. The body responsible for deciding on whether to approve the request is that which supervises implementation of the training programme – usually the local chamber of industry and commerce. If you do not pass the final examination, you can also request an extension until the next possible final examination, but the maximum extension period is one year. It is also possible to arrive at a mutual agreement with your employer regarding the extension of the training contract.



Important note

With regard to the extension of a training contract when taking parental leave, reference is made to the information brochure issued by the Federal Ministry for Education, Family Affairs, Senior Citizens, Women and Youth entitled *Parental Allowance and Parental Leave* (see ‘Does parental leave increase the length of a fixed-term employment contract?’ therein) The brochure can be ordered free of charge from publikationen@bundesregierung.de. See also:

<https://www.bmbfsfj.bund.de/bmbfsfj/service/publikationen/eltern geld-und-elternzeit--185102>

1.2.2 School pupils and university students

As of 1 January 2018, the Maternity Protection Act also applies to school pupils and university students insofar as the training organisation stipulates the time, place and structure of the training programme or an internship is being completed that forms a mandatory part of the individual’s school or university education. Special maternity protection regulations apply to school pupils and university students. In particular, they can waive their right to the period of protection after childbirth (see Section 2.5.2). The special maternity protection regulations concerning protection from dismissal and benefits are generally not applicable to school pupils and university students (see Sections 3 and 4).

1.2.3 Women in other forms of employment

The Maternity Protection Act also applies to the following, subject to restrictions:

- development workers (with the exception of the benefit regulations under Sections 18 to 22 of the Maternity Protection Act);
- women who work from home and those of equivalent status within the meaning of Section 1, Subsections 1 and 2 of the Home Work Act (*Heimarbeitsgesetz – HAG*), insofar as they work continuously, but subject to the requirement that Sections 10 and 14 of the Maternity Protection Act do not apply to them and Section 9, Subsections 1 to 5 of the Maternity Protection Act apply to them analogously (for details, see Section 2.5.3); and
- women who, due to their economic dependence, are to be regarded as persons with a status similar to that of an employee (with the exception of the benefit regulations under Section 18 and Section 19, Subsection 2, as well as Section 20 of the Maternity Protection Act).

1.2.4 Women who are not covered by the Maternity Protection Act

The Maternity Protection Act **does not apply to self-employed persons** (exception: women who, due to their economic dependence, are to be regarded as having a status similar to that of an employee), members of governing bodies and managing directors of legal entities or businesses (insofar as they do not predominantly work as employees), and **housewives**. This is because these women are not subject to an employment contract, so they are not bound by instructions and are not integrated in an organisation in which instructions can be issued to them. As such, they do not have an employer who has a contractual duty of care towards a pregnant or breastfeeding woman and who is required to observe the statutory regulations on maternity protection.

Special regulations apply to **female civil servants, judges and soldiers**, which are laid down in civil service legislation and in the Maternity Protection Ordinance for Female Soldiers (*Mutter-schutzverordnung – MuSchV*) By contrast, public sector employees are covered by the Maternity Protection Act.

Otherwise, **each individual case** has to be assessed **based on the agreement** under which the woman is employed as to whether the Maternity Protection Act applies. If there are groups of persons who cannot be subsumed under one of the circumstances set out in Section 1, Subsection 2, Sentence 2 of the Maternity Protection Act, standards under maternity protection law apply analogously, in particular **in the case of government action**.

Adoptive mothers are not covered by the Maternity Protection Act, as they do not fall within the scope of protection under maternity protection law, which relates specifically to pregnancy, childbirth and breastfeeding.

1.3 When does maternity protection start and how long does it last?

The Maternity Protection Act protects the health of women and their children at the place of work, training and study **during pregnancy, after childbirth and during breastfeeding**.

Duration of maternity protection

Maternity protection begins as soon as you are pregnant. It applies until after childbirth and during the breastfeeding period. However, your employer can only effectively protect your health and that of your child based on the necessary protective measures if you inform them of the fact that you are pregnant or breastfeeding.

Special protection from dismissal applies from the beginning of the pregnancy, regardless of whether the employer is informed (see Section 3.1).

1.4 Who is responsible for implementing maternity protection?

Responsibility for ensuring your maternity protection lies with **your employer** (or, in the case of school pupils and university students, the body with which the training or internship contract has been concluded). Your employer is required to observe and implement the statutory maternity protection provisions relating to health protection, protection from dismissal and benefit entitlements.



Note for your employer

If your employer fails to meet their obligations under the Maternity Protection Act, they may generally be fined up to EUR 5,000, in some cases even up to EUR 30,000.

After you have informed your employer of the fact that you are pregnant or breastfeeding, your employer must take the necessary protective measures for you and your (unborn) child based on a previously prepared risk assessment of your working conditions. In doing so, your employer can draw on the assistance of medical officers and occupational safety specialists.

Maternity protection requirements are based on the **typical needs** of women and their children **during pregnancy and breastfeeding**. Your employer will need your help to ensure maternity protection is implemented effectively. Take the opportunity to **talk to your employer** in person about maternity protection. Your employer will offer you the opportunity to conduct this interview (see also Sections 2.2.2 and 2.4). You are legally entitled to have your working conditions adapted in line with maternity protection requirements. Your doctor can certify any special individual impairments you may have (see also Sections 2.2.5 and 2.4.2).

You should inform your employer of your pregnancy **as early as possible**. Apart from this, there is no other particular action you have to take. Your employer is **legally obliged** to comply with the maternity protection regulations and implement the necessary protective measures after you have informed them that you are pregnant or breastfeeding.

Maternity protection does not have to be applied for and your consent is not required in order to secure it.

By the same token, this also means that you cannot waive maternity protection when you have informed your employer that you are pregnant. However, certain exceptions exist for the period of protection before childbirth and for the period of protection after a miscarriage or stillbirth (see comments under Sections 2.3.1 and 2.3.3) as well as for school pupils and university students (see Section 2.5.2).

Your employer must take appropriate steps to eliminate anything that might endanger your health or that of your child under the maternity protection regulations. As long as your health or that of your child is not at risk, however, there is no objection to you continuing to work. This ensures that maternity protection is implemented consistently throughout the company and avoids the protection of your and your child's health becoming a matter of individual negotiation between you and your employer. Provided that health hazards are eliminated, pregnant and breastfeeding women only have statutory rights of co-determination with regard to working hours (see Sections 2.2.3 and 2.4.1).

1.5 Who can advise you if you have any questions?

If you have any questions or are unsure about something, you can contact the following, depending on the subject.

- For matters relating to health protection and protection from dismissal: the supervisory authorities responsible for maternity protection (see also the information on counselling services in Sections 2.6 and 3.5)
- For matters relating to your entitlement to benefits under maternity protection law: your statutory health insurance company (see also Section 4.2.1)

If you have any other questions, please call our support service.

Tel.: 030 20 179 130

Fax: 030 18 555 4400

Monday–Thursday, 9 am to 6 pm

Email: info@bmbfsfjservice.bund.de

We would also be happy to hear any suggestions you might have regarding maternity protection!

2 *Health and safety at the workplace*

2.1 Before your pregnancy

Responsibilities of the employer

Maternity protection begins even before you become pregnant. Even before a pregnancy is reported, your employer is required to assess the hazards to which a pregnant or breastfeeding woman or her child is or might be exposed as part of the general assessment of working conditions under occupational health and safety law. On this basis, the employer must determine whether protective measures are necessary under maternity protection law. You can obtain information from your employer at any time about activities your work involves that might be relevant to maternity protection. This will enable you to find out in advance about hazards that might be relevant during the first three months of a pregnancy.



Note for your employer

Your employer is required to identify and assess hazards relevant to maternity protection as part of a general occupational health and safety risk assessment – regardless of whether or not they currently employ a pregnant or breastfeeding woman.

In businesses and administrations where more than three women are regularly employed, the employer must display or post a copy of the Maternity Protection Act in a suitable place for viewing. This does not apply if the employer has made it accessible at all times to employees electronically.



Note for your employer

Under the Maternity Protection Act, the employer is required to document the results of the risk assessment with regard to maternity protection and any protective measures that may be necessary, and also to inform the entire workforce. This can be done by providing detailed information to interested parties as appropriate at a suitable location. The employer is not required to share the risk assessment with employees.

2.2 During your pregnancy

2.2.1 Informing your employer of your pregnancy

You decide when to inform your employer of your pregnancy. Please bear in mind, however, that there may be risks to your unborn child during the first three months of your pregnancy, so the earlier you inform your employer of your pregnancy, the better your employer will be able to ensure fully effective maternity protection.

Informing your employer



Important note

From the start of pregnancy you enjoy special protection from dismissal (see 3 f.).

If your employer expressly requires evidence of your pregnancy because they do not feel verbal notification is sufficient, you should provide your employer with a medical certificate or a certificate issued by a midwife. This certificate needs to include the due date. However, your employer must not require you to submit your maternity records, as they include sensitive information about you and your child's health status, which is not required in order to prove that you are pregnant. Your employer must cover the cost of obtaining this certificate. Your employer may not disclose the information about your pregnancy to third parties without being authorised to do so.

Applying for a job

If you apply for a job during your pregnancy, you are not required to disclose your pregnancy when asked during the interview or in the course of the application process.



Note for your employer

Under the Maternity Protection Act, the employer is required to notify the supervisory authority responsible of your pregnancy (regional occupational health and safety office or trade inspectorate). Employers who fail to comply with this requirement may be subject to a fine of up to EUR 5,000. When notifying the authorities, your employer should also provide information about the nature of your work. This saves the supervisory authority having to ask unnecessary questions. The supervisory authority also advises your employer on maternity protection issues.

2.2.2 Personal interview with your employer

After you have informed your employer that you are pregnant, the employer must inform you of the results of the risk assessment and of any protective measures that have to be taken in your case. The employer is also required to offer you a personal interview to discuss any further adaptations of your working conditions to meet your needs during pregnancy or breastfeeding. Be sure to take advantage of this opportunity. Describe your situation. This will make it easier for your employer to adapt your working conditions to your needs. It also gives you an early opportunity to talk about when you plan to return to work after maternity leave and parental leave and discuss your future working hours and work-life balance with your employer. If you wish to return to work within the first year of your child's life, you can discuss at this point how time off for breastfeeding can be organised if necessary.

Information and planning meeting



Note for your employer

The platform *Erfolgsfaktor Familie* (Families as a Success Factor) is provided by the Federal Ministry for Education, Family Affairs, Senior Citizens, Women and Youth. It provides detailed information on the subject of family-friendly human resources policies for businesses. Practical guides are provided for HR managers on issues such as flexible working hours and mobile work. For details, see www.erfolgsfaktor-familie.de

2.2.3 Permitted working hours

Occupational health and safety in connection with working hours

The aim of maternity protection is to make it easier for you to reconcile your employment with your particular situation during pregnancy and the special needs you have during this time. One important aspect here are the regulations regarding **occupational health and safety in connection with working hours**.

Medical check-ups

First of all, maternity protection ensures that you are able to take advantage of medical check-ups while you are working. These serve to protect your health and that of your child.

Your employer is required to give you time off for this purpose. This only applies if the check-ups are necessary, however. You must arrange your appointments outside working hours as far as possible. In the case of **flexitime arrangements**, the time spent on a medical check-up is counted as working time if you cannot reasonably be expected to work before or after the time required for the check-up given the flexitime arrangements in question. Which medical check-ups are required will depend on the **benefits catalogue** available to you **under your statutory health insurance**. This also applies even if you are not covered by statutory health insurance.



Important note

Any time off granted **must not result in a loss of pay for you**. You may not be required to make up time off, whether in advance or later, nor may such time be counted towards breaks, as stipulated in the Working Hours Act (*Arbeitszeitgesetz – ArbZG*) as well as other regulations.

The Maternity Protection Act also contains a number of provisions regarding **permissible working hours during pregnancy**. These are designed to protect you from physical overload and symptoms of exhaustion and mental stress. This is mainly achieved as follows:

**Special regulations
regarding permitted
working hours**

- by limiting the amount of additional work allowed;
- by setting a mandatory minimum rest period; and
- by stipulating times at which work is not permitted (between 8 pm and 10 pm, on Sundays and public holidays).

There are a number of maximum working time limits your employer must observe during your pregnancy: Your employer may not have you work for more than **eight and a half hours a day** or more than 90 hours per fortnight. If you are **under the age of 18**, your employer may **not** have you work **for more than eight hours a day** or more than 80 hours per fortnight. Sundays are included in the fortnight period. Statutory rest breaks and travelling time (from home to your regular place of work) do not count as working hours (exception: this does not apply to employees without a fixed place of work). In addition, your employer may not have you work hours to an extent where the monthly average exceeds the **contractually agreed weekly working hours**.

**Maximum working
hours**

This regulation is intended to preserve existing working time arrangements for pregnant women as far as possible so as to avoid any stress during pregnancy resulting from an unfamiliar work schedule. When determining the contractually agreed weekly working hours, the following must be observed:

- **In connection with (qualified) flexitime arrangements**, too, pregnant and breastfeeding women are generally not allowed to reduce minus hours or build up overtime beyond the calendar month. This is because exceeding contractually agreed weekly working hours is not permitted for reasons of health protection, even in the case of flexitime agreements.
- The same applies during the **accumulation phase in connection with long-term or lifetime working time accounts**, where longer weekly working hours are contractually agreed for a limited period of time.
- **Work on call** is considered to be part of your contractually agreed working hours and not additional work.
- Insofar as the actual hours you have worked to date (**proof of established practice**) have regularly exceeded the working time set down in your written contract, the hours customarily worked may in individual cases be deemed to be the contractually agreed working hours, if this is in line with common practice in the industry, and therefore does **not actually** constitute **an additional burden** on a pregnant woman.

Example:

Based on the contract, there are 20 working hours per week.

In order to complete a project, you agree with your employer that you will work 40 hours per week for two consecutive weeks. In principle, this is also permissible during pregnancy, providing you are given time off for the other two weeks of the month to compensate. This is because, in this case, your total working hours exceed neither the 90 hours maximum which are permissible in the two consecutive weeks nor 20 hours per week on average for the month as a whole. Furthermore, in the case of a pregnant employee who is 18 years or older, working hours must not exceed 8.5 hours on any day.

- When calculating the monthly average working hours, the employer may take as a basis either the one-month period upon notification of pregnancy or breastfeeding or they may consider calendar months. To ensure that all parties concerned have the same basis for assessment, the employer should determine for each pregnant woman individually which point in time should serve as the basis for calculating the monthly working time. Before changing from one calculation method to the other, it must be ensured that no irregularity occurs in either of the two calculation periods.
- If you work for several employers, the total working hours must be added together. You must inform your employer of working hours with other employers. Priority should be given to reducing your hours as has been agreed upon between your employers, taking your wishes into account. In individual cases, the supervisory authority may order the employers to apply the necessary reductions in working hours under Section 29, Subsection 3, Sentence 1 of the Maternity Protection Act so as to meet their obligation under Section 4, Subsection 1, Sentence 5 of the Maternity Protection Act.

Minimum rest periods

In addition, your employer must grant you an uninterrupted **rest period of at least eleven hours** after the end of each day's work.

Example:



You worked until 8 pm. You may start working again no earlier than 7 am the following day.

Timing of working hours and co-determination rights

Finally, there are various provisions in the Maternity Protection Act that regulate the **timing of your working hours**, in some instances giving you **statutory rights of co-determination**. Your employer may not have you work without your consent between 8 pm and 10 pm or on Sundays and public holidays – regardless of the industry in which you are employed. You are the best judge of whether and to what extent you need these periods for recovery purposes.

For this reason, your employer may only have you work at these times if you yourself agree to do so and providing all further special protection provisions are complied with. In general, pregnant or breastfeeding women may not work between 8 pm and 6 am or on Sundays or public holidays. If you do agree to work between 8 pm and 10 pm or on Sundays or public holidays, it should be possible for you to do so without any undue bureaucratic hurdles.



Note for your employer

The protective regulations on working between 8 pm and 10 pm and on Sundays and public holidays changed with the entry into force of the new **Maternity Protection Act on 1 January 2018**. The supervisory authorities responsible will be happy to advise you.

Between 8 pm and 10 pm your employer may only have you work if

- you expressly agree to do so;
- there is no medically certified reason to stop you working until 10 pm;
- in particular, any irresponsible risk to you or your child from **working alone** is ruled out (for an explanation of the term ‘irresponsible risk’, see Section 2.2.4; working alone is when the employer has a woman work on premises within their area of responsibility without ensuring that she is able to freely leave the workplace or reach help at any time); and
- the employer has submitted a complete application to the competent supervisory authority.

Work between 8 pm and 10 pm and health and safety of pregnant women

You can **withdraw your consent** at any time with effect for the future. Since the employment of pregnant women after 8 pm is not generally permitted, your employer must file an application with the supervisory authority responsible if you are to work between 8 pm and 10 pm (see Section 2.6). If your employer has submitted a complete application to this effect, they may have you work during these times until further notice. The supervisory authority will assess your employer’s application and may not allow work during this period if the statutory requirements are not met.



Note for your employer

If the supervisory authority does not reject the application within **six weeks** of receiving it, **the approval is deemed to have been granted**. This must be certified for the employer on request.

Ban on night work

Work after 10 pm, on the other hand, is prohibited as a matter of principle and only permitted in special individual cases after prior approval by the supervisory authority responsible. The above-mentioned conditions (your explicit consent, medical certificate, exclusion of irresponsible risks) must also be met in the case of work after 10 pm.



Note for your employer

Unlike work after 10 pm, which in many cases poses an irresponsible risk to the woman and her child and can therefore only be approved by the supervisory authority in individual cases, it is assumed that work between 8 pm and 10 pm can usually be approved by the supervisory authority.

Only in individual cases will it be necessary to impose a temporary ban on work or reject an application for approval of work during this period. For this reason, a **simplified authorisation procedure for work between 8 pm and 10 pm** has been in force since 1 January 2018.

Your employer may only have you work on Sundays and public holidays if

**Work on Sundays
and public holidays**

- you expressly agree to do so;
- an exception to the general ban on work on Sundays and public holidays under Section 10 of the Working Hours Act (*Arbeitszeitgesetz – ArbZG*) is approved;
- you are granted an alternative day of rest each week following an uninterrupted night's rest of at least eleven hours; and
- in particular, there is no irresponsible risk to you or your child from working alone.

You can withdraw your consent at any time with effect for the future.



Note for your employer

If your employer intends to have you work on Sundays or public holidays, they must notify the supervisory authority responsible. They can do this when they report your pregnancy.

2.2.4 Working conditions that comply with maternity protection requirements

Workplace-related occupational health and safety

The regulations on **workplace-related occupational health and safety** are another important component of maternity protection. Your employer must ensure your work activity and workplace are organised in such a way that you and your child are adequately protected from any health hazards.

Interruption of work

Irrespective of your specific job, your employer must ensure that you are able to **interrupt your activity** at your workplace **briefly** at any time without this endangering you or third parties and without this interruption of the work process potentially exposing you to undue stress.

Rest facilities

In addition, your employer must ensure you are able to lie down, sit down and rest in appropriate conditions during breaks and work interruptions. These additional interruptions may not lead to a reduction in your earnings and do not have to be made up for by doing additional work.

Continuation of work

When arranging the conditions in which you work, your employer must implement all measures required based on the risk assessment in order to protect your **physical and mental health** and that of your child. The employer must also review the effectiveness of these measures and adapt them to changing circumstances if necessary. As far as is responsible according to the provisions of the Maternity Protection Act, your employer must also enable you to **continue to work** during pregnancy.

In general, your employer is legally obliged to **eliminate irresponsible risks** to you and your child. A risk is defined as irresponsible if the likelihood of a health impairment occurring is unacceptable in view of its anticipated severity. As in occupational health and safety, a risk for the purpose of maternity protection is understood to be the possibility of health impairment without any specific requirements as to its extent or likelihood of occurrence.

Elimination of irresponsible risks

In principle, your employer only has to take into account risks that are **sufficiently relevant to the work you do** and the applicable working conditions. This does not include hazards outside the work environment that are not related to your work activity (ubiquitous hazards). For example, the possibility of contracting an infection does not require any protective measures under maternity protection law, providing there is no greater likelihood of contracting the disease at the workplace than away from it (while shopping, for instance).

Relevance to work activity

In such cases, the hazard is a **general risk of life** and its avoidance does not fundamentally lie with the employer. Sufficient relevance to the work activity requires there to be a recognisably increased likelihood that a health impairment will apply to women working in certain conditions as compared to women who are not exposed to these same conditions.

Relevance to pregnancy

Finally, the risk must be sufficiently relevant to pregnancy. This means that the health of the pregnant woman or child could potentially be impaired in a way that is **specific to maternity protection**. A scientifically proven causal connection between the working conditions and the health impairment in question is not required. The specific link to maternity might derive from an increased likelihood of a health impairment to a woman who is pregnant (such as an increased risk of thrombosis as a result of long periods of standing, caused by the change in blood coagulation that occurs in pregnancy). However, it may also result from the fact that the type, extent and duration of any disease can have particularly severe effects during pregnancy (severe progression of a hepatitis-E-type liver inflammation as a result of the woman's altered immune status during pregnancy, for example). If there is no specific link to maternity (the risk of getting one's hand caught, for instance), there is no need for special protection under maternity protection law. Here, the regulations of the Occupational Health and Safety Act (*Arbeitsschutzgesetz – ArbSchG*) apply in the same way as they do to other women who are not pregnant.

Assessment of irresponsibility

The term '**irresponsibility**' describes the **risk threshold** at which the work activity no longer fulfils the requirements of maternity protection. When **assessing irresponsibility**, the following applies: the more severe the potential health impairment, the lower the likelihood of its occurrence must be. This means that the more severe a potential health impairment is, the more conscientiously your employer must review and enforce protective measures, if necessary even imposing a work ban. Due to the high priority attached to protection in this context, the threshold in terms of likelihood here is generally low.

The Maternity Protection Act offers a number of examples of activities and working conditions that may pose an irresponsible risk. For example, your employer must not allow you to carry out activities or expose you to working conditions that pose an irresponsible risk to your **physical or mental health** or that of your child, which involve the following:

Examples of health risks due to certain types of activity and hazardous substances

- hazardous substances (chemical substances, such as substances that are harmful to fertility);
- biological agents (viruses, bacteria, fungi);
- physical impacts (ionising and non-ionising radiation, shocks, vibrations and noise as well as heat, cold and wetness);
- a stressful working environment (in rooms with overpressure or with an oxygen-reduced atmosphere);
- physical stress and mechanical impacts; or
- activities that are subject to a prescribed pace of work.

When dealing with certain hazards, there are special regulations that serve to protect you and your child.

Examples of activities that are not permitted

During pregnancy, you are **especially not permitted to perform** activities which involve you having to

- lift, hold, move or transport loads weighing more than five kilograms by hand without mechanical aids on a regular basis or loads weighing more than ten kilograms by hand on an occasional basis, or do other work resulting in an equivalent physical strain that involves lifting, holding, moving or transporting loads by hand with mechanical aids;
- stand constantly while mainly remaining physically inactive after the fifth month of pregnancy where this type of work exceeds a period of four hours a day;
- stretch considerably, bend over, constantly squat, stoop or adopt other forced postures;
- be deployed on a means of transport if this poses an irresponsible risk to you or to your child;
- be exposed to a risk of accidents, especially slips, trips, falls or physical assaults that pose an irresponsible risk to you or your child;
- wear protective equipment that puts you under stress;
- be exposed to a risk of an increase in pressure in the abdominal cavity, especially when performing activities that involve particular strain on the feet;
- be deployed in rooms with overpressure within the meaning of Section 2 of the Compressed Air Ordinance (*Druckluftverordnung – DruckLV*), in rooms with an oxygen-reduced atmosphere or in underground mining; or

- do piecework, assembly line work or timed work at a prescribed pace, if the type or pace of work poses an irresponsible risk to you or your child.



Note for your employer

If your employer has you carry out work at a prescribed pace during pregnancy, they must **notify the supervisory authority** responsible.

If your employer identifies irresponsible risks to you or your child, they must first try to **reorganise the working conditions at your workplace** so as to eliminate the hazards. If this cannot be achieved by changing your working conditions or if such a change cannot be reasonably expected because of the disproportionate effort it clearly involves, the employer must deploy you at **another suitable workplace**, providing this can be arranged and it is reasonable to expect you to work there.

Enabling continued work



Important note

You do not have to fear any loss of pay in such cases. **Your employer must continue to pay you in full** if you are transferred to another workplace requiring you to adapt your work duties for the purpose of avoiding irresponsible risks. For details, see Section 2.2.7.

If you have any questions about workplace-related occupational health and safety, you can also consult the company's medical officer. If necessary in a specific case, the medical officer may suggest a change of workplace for the duration of the pregnancy.

Example:



Screen work

Ask your company's medical officer about the **factors that are important in terms of healthy workplace design** (e.g. avoiding one-sided physical postures over long periods, monotonous activities and working under tight time constraints). This type of strain can be reduced at VDU workstations by adapting work processes, for instance by alternating activities and arranging suitable breaks. Incidentally, scientific studies do not indicate any link between health disorders and the electric and magnetic fields created by modern screens.

2.2.5 Temporary work suspension under maternity protection regulations

A **temporary work suspension under maternity protection regulations** occurs when your employer is not allowed to employ you due to an occupational or medical work ban. In these cases, your employer is not allowed to have you perform your work. A work ban of this kind can be either partial or complete. You do not have any say in this decision.

When assessing whether a work ban must be issued, potential **risks due to difficult journeys to and from work** are not taken into account. Maternity protection law does not cover the journey from home to the workplace as the general risk associated with getting to and from work does not fall within the scope of workplace protections under the Maternity Protection Act. You are responsible for commuting to and from work. Your employer is not authorised to influence how you get to work and back.



Important note

You do not have to fear any loss of pay in such cases. **You are entitled to continued pay (maternity protection pay)** if your employer is no longer allowed to employ you due to a partial or complete work ban. For details, see Sections 2.2.7 and 4.1.



Note for your employer

In the event of a work ban under the Maternity Protection Act, your employer is **reimbursed 100 per cent** of your continued salary or the employer supplement (according to the so-called U2 procedure).

Under the Maternity Protection Act, an **occupational work ban** only applies if your employer is unable to prevent irresponsible risks to you or your child by rearranging or changing your workplace. The employer must exhaust all possibilities to enable you to go on working. The work ban only applies to the extent necessary to prevent hazards to you or your child.

Occupational work ban

If you are in doubt, you can ask the supervisory authority responsible what options your employer is required to offer you to enable you to continue to work.

Temporary work ban

If your employer has not taken the necessary protective measures – for instance, because they have not yet updated the risk assessment with regard to the maternity protection requirements for your activities and your workplace – you may not continue to work until the necessary protective measures have been implemented (**so-called temporary work ban**). In these cases, you can contact your supervisory authority to clarify the matter. If necessary, your gynaecologist will certify that you are not allowed to work.

Medical work ban

A **medical work ban** applies if your doctor considers your or your child's health to be at risk if you continue to work based on your individual state of health. Your doctor may prohibit your employer from having you perform work, either wholly or in part. If this is the case, your employer may no longer have you perform work to the extent specified.

The requirement for such a work ban to be effective is a **medical certificate** to this effect. This can be issued by any doctor, i.e. not only a gynaecologist but also an orthopaedic specialist or a neurologist, for example. It is addressed to your employer.

The medical certificate should contain information that is as precise and generally comprehensible as possible, in particular noting whether lighter work or reduced working hours remain permissible. It should be worded in such a way that your employer understands the nature and extent of the risk to you and your child if you continue to perform your work. The certificate should include the descriptions of the workplace and working conditions used as the basis for the employment ban. The certificate should not contain medical diagnoses.



Important note

Your doctor must decide whether your symptoms are due to your pregnancy or the result of an illness. If your doctor finds that you have symptoms due to your pregnancy, they must check and decide from a medical point of view whether you are **unfit for work** due to complications or **due to pregnancy** – without you actually being ill. The latter would mean that a work ban is required to protect the life or health of you or your child.

This distinction is important when it comes to determining the level of your continued pay and how much your employer is reimbursed:

- In the case of a pregnancy-related work ban, continued pay is unlimited in time. In this case, your employer is reimbursed 100 per cent of the salary paid (according to the so-called U2 procedure).
- In the event of work incapacity due to illness, you are entitled to continued pay for a period of up to six weeks.
- If your employer is obliged to participate in the so-called U1 apportionment procedure under the Expenditure Compensation Act (*Aufwendungsausgleichsgesetz – AAG*), they are reimbursed for part of their expenses for continued pay on request (at least 40 per cent, maximum 80 per cent). For those with statutory health insurance, the entitlement to sickness benefits is suspended during this period.

You can ask your doctor to explain this distinction to you.



Note for your employer

If your employer has reasonable doubts as to the accuracy of the medical certificate, they may request a **follow-up examination**. You have the right to choose the doctor, however. Your employer is therefore not allowed to require a specific doctor to carry out the follow-up examination. If your employer does require a follow-up examination, they must bear the cost.

2.2.6 Getting counselling from the supervisory authority

Feel free to contact the supervisory authority responsible for you at any time if you have any questions about how the regulations regarding the protection of your health and that of your child apply to you. For details of counselling options, see Section 2.6 of this brochure.

2.2.7 Continued pay in the event of a change of workplace or work ban under maternity protection regulations

You do not have to fear any financial disadvantages in connection with any of the above-mentioned measures under maternity protection law. Your employer must continue to pay you in full (so-called maternity protection pay) if they are no longer allowed to have you work outside the periods of protection before or after childbirth (see Section 2.3 on periods of protection) due to partial or complete work bans. Maternity protection pay is the average pay you received during the three calendar months prior to the start of pregnancy (see Section 4 for details of benefit entitlements).

2.3 Periods of protection before and after childbirth

The Maternity Protection Act protects women in particular during the period immediately before and after childbirth. As a rule, the period of protection begins **six weeks** before delivery and ends **eight weeks** after delivery. In the case of a medically premature birth, a multiple birth and, on request, in the case of the birth of a child with a disability, it ends **twelve weeks** after delivery. During this period, it is generally assumed that you can no longer perform your work.

Length of the periods of protection



Important note

One of the things you are entitled to under statutory health insurance is **midwife assistance**. You are also entitled to parental allowance and parental leave. Be sure to find out about these **family support benefits** early on. You will find useful information on this online at www.familienportal.de

2.3.1 Period of protection before childbirth

The **period of protection before childbirth** begins **six weeks** before the due date. The due date is shown on a certificate that you will receive from your gynaecologist, midwife or obstetric nurse (the so-called estimated date of delivery). If your child is not born on the due date, the period of protection before childbirth is shortened or extended accordingly.

You may continue to work

During this period of protection, your employer is generally not allowed to have you perform work. However, you are allowed to continue to work during the period of protection before childbirth at your own request. You can withdraw your request to continue to work at any time with effect for the future.

2.3.2 Period of protection after childbirth

You may not continue to work

The **period of protection after childbirth normally ends eight weeks** after the birth of your child. During the period of protection after childbirth, an **absolute ban on work** applies. During this time, your employer may not employ you even if you are willing to do so. Exceptions here apply only in the case of a miscarriage or stillbirth (see Section 2.3.3).



Note for your employer

If your employer does not observe a work ban, this infringement is prosecuted as a regulatory offence and can even be treated as a criminal offence.

The period of protection after childbirth can be **extended to twelve weeks**

- in the event of a medically premature birth;
- in the event of a multiple birth; or
- if your child has been diagnosed with a disability within eight weeks of birth and you have applied for an extension of the period of protection.

Whether or not a **birth** is medically **premature** is determined by the medical certificate. A premature birth is when the child is born weighing less than 2,500 grams or if the child requires significantly extended care due to not yet fully developed signs of maturity, in spite of a higher birth weight.

If the child has a **disability**, you can apply for an extended period of protection. This **does not require an official procedure to determine the disability**. In order to submit an application, it is sufficient to submit the medical certificate in due time, i.e. **within the first eight weeks after delivery**. An entitlement to the extension of the period of protection already applies if a disability within the meaning of Section 2, Subsection 1, Sentence 1 of the Ninth Book of the Social Code (SGB IX) is to be expected. You can **request** an extension of the period of protection **from your employer**. **If you are covered by statutory health insurance, it is sufficient to submit an application to your health insurance company.**

The period of protection after childbirth is **extended** in the event of premature childbirth by the amount it was shortened prior to the birth. If the estimated date of delivery is exceeded, the period of protection after childbirth is not **shortened**, but remains at eight or twelve weeks, as appropriate.

2.3.3 Special situations (stillbirth, miscarriage)

If a child is not born alive, this is always very distressing for those involved. Legally, a distinction is drawn in these cases between a stillbirth and a miscarriage.

Under the Ordinance Implementing the Civil Status Act (*Personenstandsverordnung*)

- a **stillbirth** is when the child has a weight at birth of at least 500 grams or is born from the 24th week of pregnancy and shows no signs of life;
- a **miscarriage** is when the child has a weight of less than 500 grams, has not reached the 24th week of pregnancy and shows no signs of life.

Weeks of pregnancy are calculated from the first day of your last menstrual period. The actual time of separation of the embryo or foetus from the womb is decisive for assessing whether it is a stillbirth or a miscarriage.

Your doctor will assess whether it is a miscarriage or a stillbirth and issue a medical certificate to this effect.

Stillbirth, death of the child

In the case of **stillbirth** or the **death of the child after birth**, the general period of protection after delivery applies. Your employer is generally not allowed to employ you during this period. Should you nevertheless wish to return to work earlier, you can do so from the third week after giving birth if there is no medically certified reason not to do so. You must explicitly express this wish to your employer, but you can withdraw it at any time.

In the case of a miscarriage from the 13th week of pregnancy, you have the option of using a period of protection. In the case of a miscarriage from the 13th week of pregnancy, the period of protection is two weeks; from the 17th week of pregnancy, it is six weeks; and from the 20th week of pregnancy, it is eight weeks. The specific design of the provision allows you to decide in a self-determined way whether you use a period of protection or not. The work ban only applies if you have decided to inform your employer about your pregnancy or the premature end of your pregnancy, to the extent that you do not expressly agree to perform the work.

Miscarriage



Important note

If you have not yet informed your employer about your pregnancy, you can decide for yourself whether you want to tell them about your miscarriage. Only if the employer is aware of the miscarriage can they meet their obligations under maternity protection law.

- If you decide to use the period of protection, you need to inform your employer about your miscarriage and provide them with evidence of the miscarriage on request.
- If you decide not to inform your employer about the miscarriage, you are obliged to perform your work unless you are entitled to continued pay in the event of sickness to the extent that you are unable to work due to sickness in your individual case.

If you have a miscarriage before the 13th week of pregnancy, you are not without protection. In the case of an incapacity to work, the regulations on pay in the event of sickness or those on sickness benefits under statutory health insurance apply.

In any case, you are entitled to medical care and treatment as well as extended protection from dismissal (see Section 3.3).

2.3.4 Compensation during the periods of protection

During the periods of protection and for the day of childbirth, you are entitled to maternity benefits which essentially replace your full pay before pregnancy: the maternity allowance plus **the supplement to the maternity allowance (employer supplement)**; see Section 4.1.3 ff.



Note for your employer

Your employer is reimbursed for **100 per cent of the employer supplement (according to the so-called U2 procedure)**.

2.4 After the birth of your child and during breastfeeding

After the end of the eight-week or twelve-week period of protection after childbirth, you can resume your work as before or go directly on parental leave (for details of parental leave, see our information brochure *Parental Allowance and Parental Leave*; see also Section 4.1.5).

Breastfeeding women also enjoy special protection under the Maternity Protection Act. Breast milk is particularly beneficial for your child's nutrition because of the composition and digestibility of its ingredients. It also contains active ingredients that fight bacteria, reduce inflammation and strengthen the baby's immune system.

For helpful advice on feeding your baby and on your diet as a breastfeeding mother, see the website *Gesund ins Leben* (www.gesund-ins-leben.de) and the website of the National Breastfeeding Committee (<https://www.mri.bund.de/de/themen/nationale-stillkommission>).

If you return to work after the birth of your child while you are still breastfeeding (after the periods of protection or after parental leave), you should inform your employer. Only then can your employer guarantee that you will enjoy effective breastfeeding protection. After you have given birth and during the breastfeeding period, your employer must again have you perform your work and arrange your workplace in such a way that your health and that of your child are adequately protected. Your employer is also obliged to inform the supervisory authority of the fact that you are breastfeeding if they have not yet reported your pregnancy.

Return to the workplace

World Breastfeeding Week 2023 focused on enabling breastfeeding at work, the rules that apply, and the advantages of successfully balancing breastfeeding and work commitments for employers and colleagues.

For more information, please visit

<https://www.gesund-ins-leben.de/netzwerk-gesund-ins-leben/kommunikation-zur-stillfoerderung/stillen-und-beruf/>



Note for your employer

When you return to work, you have the right to continue to work according to the terms of your contract (see Section 4.3.2).

After receiving this information, your employer must offer you a personal interview about further adapting your working conditions. Take advantage of this opportunity! Describe your situation. This will make it easier for your employer to adapt your working conditions to your needs. Your doctor can issue a certificate to confirm specific impairments.

Return and planning meeting

2.4.1 Permitted working hours

Health and safety relating to working hours

The Maternity Protection Act protects not just the health of a pregnant woman and her child but also the health of a woman who is breastfeeding. In order to make it easier for you to reconcile your work with your special needs in the period after childbirth while you are breastfeeding, the same health protection regulations essentially apply in relation to hours as they do to pregnant women (see Section 2.2.3).

After the birth, your employer must also **release you for medical check-ups** that are required in connection with statutory health insurance benefits during maternity. Any time off granted must not result in a **loss of pay** (see Section 2.2.3; the regulations described here apply in the same way).

Time off to breastfeed

In addition, the Maternity Protection Act guarantees **breastfeed-ing time during the first twelve months** after childbirth: on request, your employer must give you the necessary time off to breastfeed your child **at least half an hour twice a day or one hour once a day**. If you work for a continuous period of more than eight hours on end, you should be allowed to breastfeed twice for at least 45 minutes or, if there are no breastfeeding facilities near the workplace, once for at least 90 minutes. Working time is deemed to be continuous if it is not interrupted by a rest break of more than two hours. **Breastfeeding at the beginning or end of working hours** is considered working time if this time is required as part of the working hours set by your employer. These breastfeeding periods are **expressly intended as minimum requirements**. There may be a need for longer breastfeeding periods in individual cases, and additional breastfeeding breaks may also be necessary, especially for very young infants. The deciding factors here are the **age of the child** and your **breastfeeding habits to date**. The time required for breastfeeding includes the woman's **travel time** between the workplace and the place of breastfeeding. The breaks must be kept as short as possible.

All breastfeeding women to whom Section 1, Subsection 2 of the Maternity Protection Act applies may request time off for breastfeeding. This means that **school pupils and university students** within the meaning of Section 1, Subsection 2, Sentence 2, Number 8 of the Maternity Protection Act who wish to be released for a breastfeeding break while taking an exam lasting several hours, for example, also benefit from the regulation.

At the employer's request, you must submit a **breastfeeding certificate** to your employer showing that you are breastfeeding. The cost of such a certificate requested by the employer has to be borne by the employer under Section 9, Subsection 6, Sentence 2 of the Maternity Protection Act.



Important note

The granting of time off for medical check-ups and breastfeeding breaks **must not result in a loss of pay** for you, nor are you required to make up for such time off, whether before or afterwards. Time off for medical check-ups or breastfeeding does not count towards the rest breaks stipulated in the Working Time Act (*Arbeitszeitgesetz – ArbZG*) or other regulations.

In the case of **flexitime arrangements**, breastfeeding breaks are to be counted as working time if, taking into account the respective flexitime framework, you cannot reasonably be expected to work earlier or later to make up for the time spent on breastfeeding.



Important note

The regulations on **occupational health and safety** in connection with working hours and the workplace also apply in full after the first twelve months after childbirth. Accordingly, the same applies to the **employer's entitlement to reimbursement** under the Act on Compensation of Employers for Continued Remuneration (*Gesetz über den Ausgleich der Arbeitgeberaufwendungen für Entgeltfortzahlung*).

Timing of working hours and co-determination rights

Your employer may only employ you between 8 pm and 10 pm, after 10 pm, and on Sundays and public holidays (see also Section 2.2.3) if

- you expressly declare your willingness to do so and there is no medically certified reason for you not to work until 10 pm/after 10 pm; or
- you expressly declare your willingness to do so, an exception to the general ban on work on Sundays and public holidays under Section 10 of the Working Hours Act (*Arbeitszeitgesetz – ArbZG*) is approved, and you are granted an alternative day of rest each week following an uninterrupted night's rest of at least eleven hours.

Working alone is not a criterion that excludes breastfeeding women from performing their work activities. While this is an irresponsible risk to pregnant women that must be prevented, breastfeeding women can generally be employed working alone (see Section 2.2.3).

2.4.2 Working conditions that comply with maternity protection requirements

The regulations on workplace-related occupational health and safety described with regard to pregnancy (see Section 2.2.4) also apply in principle during the entire breastfeeding period after the birth of your child, although the hazards for the breastfeeding woman may differ from those faced by the pregnant woman. While you are breastfeeding, your employer must also ensure your work activity and workplace are organised in such a way that you and your child are adequately protected from any health hazards.

Workplace-related occupational health and safety

For more information, see Section 2.2.4 and Section 2.2.5. The regulations described apply in the same way to breastfeeding women.



Important note

Your entitlement to time off during breastfeeding is limited to a period of twelve months after the birth of the child.

This time limitation does not apply to health protection. Your employer must ensure that you and your child are not exposed to any risk during the entire breastfeeding period. Your employer must take protective measures in a specified order of priority.

Modifying the working conditions and changing the workplace take priority; an occupational working ban, on the other hand, is a measure of last resort. The protection from dismissal under maternity protection law (see Section 3) does not apply during the breastfeeding period.

Examples of health risks due to certain types of activity and hazardous substances

As such, the activities and working conditions listed in Section 2.2.4 which may pose an irresponsible risk also apply in principle to breastfeeding women. Your employer may therefore not allow you to carry out any activities or expose you to any working conditions that pose an irresponsible risk to your **physical or mental health**, for example

- hazardous substances (chemical substances, such as substances that are harmful to fertility);
- biological agents (viruses, bacteria, fungi);
- physical impacts (especially ionising and non-ionising radiation);
- a stressful working environment (for example in rooms with overpressure); and
- work at a prescribed pace (including piecework and assembly line work and possibly other timed work at a prescribed pace).

However, the regulation on the inadmissible exercise of activities involving physical strain or mechanical impact (see points 1–7 in the list on page 36 f.) no longer applies to breastfeeding women due to the lack of the need to protect the unborn child.



Note for your employer

If your employer intends to have you perform work at a prescribed pace during the breastfeeding period, they must notify the supervisory authority responsible.

Regardless of whether you are breastfeeding or not, your doctor can certify a (partial) work ban if you are not fully able to work in the first few months after giving birth. This reduced capacity must be maternity-related. In this case, too, you must submit a medical certificate which sets out in a way that is as precise and as generally comprehensible as possible the degree of reduced capacity, the type of permitted work and the duration of the work ban. Such **medical work bans** are generally possible up to a period of six months after birth. If you are unfit for work, on the other hand, your gynaecologist will issue you a certificate of work incapacity ('**sick note**').

Medical work ban



Important note

You can contact the supervisory authority responsible at any time if you have any questions. For details on counselling options, see Section 2.6.

2.4.3 Continued pay in the event of a change of workplace or work ban under maternity protection regulations

You do not have to fear any financial disadvantages in connection with any of the above-mentioned measures under maternity protection law. You are also entitled to **maternity protection pay** after the period of protection following childbirth (see Section 2.2.7).

Maternity protection pay

2.5 Health and safety in connection with different situations

Special health protection regulations apply to women who are not employed.

2.5.1 Persons with a status similar to that of an employee

Self-employed women

If you are a self-employed woman with a status similar to that of an employee due to economic dependence, the work ban is replaced by a release from the contractually agreed obligation to perform work vis-à-vis your contractual partner. However, you can declare to your contractual partner that you are willing to perform the contractually agreed work if you wish.

This takes account of the fact that you are able to decide on the type and extent of social protection the same way as a self-employed woman. In view of this economic situation, you should also be free to decide whether or not you wish to continue your gainful employment. In these cases, your contractual partner may not require you to perform the contractually agreed work. If you do not perform the work, however, the contractual partner is not required to pay the agreed remuneration.



Important note

Self-employed women can take out a voluntary daily sickness benefit insurance for the period between six weeks before the estimated date of delivery and generally eight weeks after childbirth. The payment of benefits to compensate for income losses during this period requires self-employed women to have taken out a separate insurance policy covering the benefits for this period.

If you are self-employed, the type of your health insurance and your specific contract determine the level of benefits you receive during pregnancy, on the day of delivery and after the birth.

For further information, please see Section 4.1.3.3.

2.5.2 School pupils and university students

If you are a school pupil or a university student, the regulations on maternity protection only apply if your school or university stipulates the time, place and structure of the course or you are doing a mandatory internship that forms part of your school or university education. In addition, special provisions apply in the area of maternity protection regulations regarding working hours:

- For school pupils and university students, the period of protection after childbirth is not mandatory in the same way as it is for employees. Your school or university may allow you to continue your school or university education if you expressly request this. However, you can withdraw this request at any time with effect for the future. During the period of protection before the birth, your school or university may also allow you to continue your activities if you expressly ask to do so.

- School pupils and university students may be active between 8 pm and 10 pm and on Sundays and public holidays if they agree to do so and this is necessary for educational purposes. No official approval procedure is required.



Important note

The Maternity Protection Act aims to protect your and your child's health. At the same time, it seeks to counteract discrimination. If protective measures are required that adversely affect or delay your education, the school or university should make allowances for this.

Talk to your school or university about the options to **counteract disadvantages** in your education.



Note for your school/university

Your school or university must notify the supervisory authority responsible of your work or participation in courses between 8 pm and 10 pm.

2.5.3 Women who work from home

For women who work from home and those of equivalent status within the meaning of Section 1, Subsections 1 and 2 of the Home Work Act (*Heimarbeitsgesetz – HAG*), insofar as they work continuously, **the provisions regarding health protection apply only in part**. In contrast to women who work on their employer's premises, as a woman who works from home you are essentially responsible for the working conditions yourself and therefore also for your own health and safety if the working conditions are not under the control of your employer. Unlike an employer, your contracting entity or intermediate superior is not obliged to prepare a risk assessment and provide information about the hazards identified.

This is not an exemption from the fundamental duty to protect your health and that of your child, however. For example, your contracting entity or intermediate superior must comply with the special working time regulations under Section 8 of the Maternity Protection Act.

In addition, they must organise your working conditions in such a way that hazards to you and your child are avoided as far as possible and any irresponsible risks are eliminated if it is within their power to do so. The competent occupational health and safety authorities are available to answer any specific queries (see Section 2.6).

2.6 Who can advise you if you have any questions? Where can you get help?

The German federal states are responsible for supervising the implementation of the Maternity Protection Act. In some federal states, the trade inspectorates are responsible for maternity protection supervision; in other federal states this responsibility lies with the regional occupational health and safety offices. The respective state ministry responsible for maternity protection will be happy to inform you of which agencies are responsible. The addresses can also be found on the website of the Federal Ministry for Education, Family Affairs, Senior Citizens, Women and Youth (www.bmbfsfj.bund.de).

If there is any doubt, the supervisory authority in question will clarify whether the specific workplace and working conditions might constitute a hazard and what measures have to be taken.

If you have any questions about workplace-related occupational health and safety, you can also talk to your employer to be sure.



Important note

Failure to comply with the provisions of the Maternity Protection Act is – depending on the facts of the case and the severity of the breach – a regulatory offence that involves a fine of up to EUR 30,000 or a criminal offence involving a custodial sentence of up to one year.

3 *Protection from dismissal*

**Periods of protection
from dismissal**

From the **beginning of your pregnancy up until the end of your period of protection after childbirth and up until at least four months after childbirth**, your employer is not permitted to terminate your employment contract, with a few exceptions. The same protection from dismissal applies until four months have passed in the event of a miscarriage after the twelfth week of pregnancy (periods of protection from dismissal).

3.1 Which women are protected?

In principle, all employed women are entitled to protection from dismissal under maternity protection law. This means it also applies to part-time, marginal and fixed-term employees as well as during the probationary period (see Section 1.2.1).

Regardless of whether the individual is subject to an employment contract, the protection from dismissal also applies to

- female trainees and interns within the meaning of Section 26 of the Vocational Training Act (*Berufsbildungsgesetz – BBiG*);
- women with disabilities who are employed in a workshop for disabled persons;
- female development workers;
- women who are volunteers within the meaning of the Youth Volunteer Services Act (*Jugendfreiwilligendienstgesetz – JFDG*) or the Federal Volunteer Service Act (*Bundesfreiwilligendienstgesetz – BFDG*);

- women who are members of a religious cooperative, deaconesses or members of a comparable community who hold a permanent position or a position based on a secondment contract, also during a period of practical training;
- women who work from home and those of equivalent status within the meaning of Section 1, Subsections 1 and 2 of the Home Work Act (*Heimarbeitsgesetz – HAG*), insofar as they work continuously; and
- women who are to be regarded as having a status similar to that of an employee due to their economic dependence.

3.2 When does the protection from dismissal start and how long does it last?

Protection from dismissal starts regardless of whether or not you have informed your employer that you are pregnant. Your employer is only prohibited from dismissing you under certain conditions, however (see Section 3.3).

In principle, your employer is not allowed to dismiss you during the period of protection from dismissal even if your employment contract is due to end after this period. For details of exceptions, see Section 3.3.2.

If you become pregnant after you have found out about the dismissal (i.e. after receiving the notice of dismissal), special protection from dismissal under the Maternity Protection Act does not apply.

3.3 What are the requirements for protection from dismissal?

Was the employer informed and, if so, when?

Your employer is only prohibited from dismissing you **if they are aware of your pregnancy, miscarriage after the twelfth week of pregnancy or childbirth** at the time of the dismissal or if you inform them of the fact within two weeks of receiving the notice of dismissal.

Your pregnancy must have started by the time you receive the notice of dismissal. The protection from dismissal applies equally even if you yourself were not yet aware of the pregnancy or were not yet sure, but you must inform your employer as soon as possible after receiving the notice of dismissal.



Important note

You are required to inform your employer of your pregnancy, miscarriage (after the twelfth week of pregnancy) or birth within two weeks of being dismissed in order for you to enjoy protection from dismissal.

If you miss this deadline, protection from dismissal only applies to you if it was not your fault that you missed the deadline and you immediately inform your employer as soon as you know.

If you take parental leave immediately after the birth of your child, the special protection from dismissal is extended until the end of your registered parental leave (for details, see the information brochure *Parental Allowance and Parental Leave*; see also Section 1.2.1).

3.3.1 What is your employer not allowed to do during a period of protection from dismissal?

Any extraordinary or ordinary termination of employment is inadmissible. Termination with the option of altered conditions of employment, termination of a probationary employment contract and termination in the event of insolvency are also generally prohibited.

Not only is your employer prohibited from issuing a notice of termination, they are also banned from adopting **preparatory measures** with regard to your dismissal. This also includes finding, planning and recruiting a permanent replacement for you after your return, for example.

3.3.2 Exceptions to the ban on dismissal

In exceptional cases, dismissal is possible where special reasons apply. However, these may not be related to your condition during pregnancy or your situation up until the expiry of the period of protection from dismissal, which is usually four months after the birth or miscarriage (after the twelfth week of pregnancy).

A special case may apply, for example, in the event of a relocation of the business premises; total or partial closure of the business (without the possibility of transferring the pregnant woman to another workplace); or, for small businesses, if the business cannot continue to operate due to the lack of a qualified replacement. In specific cases, very serious violations of obligations on your part may exceptionally entitle your employer to terminate your employment.

Approval of the supervisory authority

Your employer must always **first file an application with the supervisory authority** for the dismissal to be declared admissible due to exceptional circumstances if they intend to dismiss you during the period of protection from dismissal. Not until the authority has approved may your employer issue a legally valid notice of dismissal; any notice of termination issued before this is invalid.

The notice of termination must be issued **in writing** and must state the **reason for termination**.

3.4 Unlawful dismissal during maternity protection

In the event of a dismissal by your employer in violation of the prohibition, you have the options and rights outlined below. You cannot waive this protection from dismissal vis-à-vis your employer from the outset; any contractual agreement to this effect is inadmissible and therefore irrelevant. You can hand in your notice yourself, however.

3.4.1 How can you take legal action against dismissal by your employer?

If you are dismissed in violation of the law (i.e. without official approval) despite protection from dismissal, you must take **legal action before the competent industrial tribunal** if you wish the dismissal to be declared legally inadmissible. As a rule, you must file the action **within three weeks of receipt of the written notice of termination**. If you do not file the action, your employer's dismissal is considered to be legally effective from the outset.

You can file the action before the industrial tribunal yourself or have it filed for you by a legal representative (such as a lawyer). The action does not have to be filed in writing. It may also be submitted orally on the record to the industrial tribunal (administrative office).



Important note

In principle, you must **file an action before the competent industrial tribunal within three weeks of receiving the written notice of termination** if you wish to take legal steps against your employer's termination. In the following instances your legal action may still be admissible if taken at a later stage:

- If your employer is aware of your pregnancy, miscarriage (after the twelfth week of pregnancy) or childbirth and **has submitted an application to the supervisory authority for approval** of the dismissal, the three-week period for filing an action does not start until you have been notified of the authority's decision.
- If you have **not been informed of the authority's decision** or if your employer has not applied for a declaration of admissibility from the authority, the three-week time limit does not apply. However, the right to take legal action can also be forfeited in these cases if you do not take action against the termination within a reasonable period of time. For this reason, legal action should be taken within the three-week period in these cases, too.
- If, for reasons beyond your control, you do not find out that you are **pregnant** until after the three-week period for filing an action has expired, you can submit an application to the industrial tribunal to have the late action admitted and then file the action. The application must be justified and has to be made within two weeks after you have found out you are pregnant. If six months have passed since the deadline was missed, you may no longer submit the application.



Important note

The employer's dismissal is not the only thing you can take legal action against. Depending on the federal state, you can also appeal against the approval from the supervisory authority or take legal action before the competent administrative court.

3.4.2 What happens to your pay entitlement in the event of an invalid dismissal?

If the industrial tribunal finds that the dismissal is legally ineffective and the employment contract is therefore still valid, you are entitled to continued payment of your salary. Income from other work and public benefits paid as a result of your unemployment are deducted from this.

If your employer has dismissed you in breach of the law and does not continue to employ you until the end of the notice period, they must continue to pay your salary if you have offered to work for them. You do not have to offer to work if and for as long as a work ban (see Section 2.2.5) applies.

During the periods of protection (see Section 2.3), your employer must pay the maternity allowance supplement in such cases, too.

3.5 Who can advise you on protection from dismissal under maternity protection law?

If you have any questions about protection from dismissal, you can contact the maternity protection supervisory authority responsible.

Information can also be found in the free brochure published by the Federal Ministry of Labour and Social Affairs entitled *Kündigungsschutz* (Protection from dismissal), which can be ordered free of charge from the Federal Government's publication mailing service (email: publikationen@bundesregierung.de).

3.6 Are you allowed to terminate your employment yourself during maternity protection?

Voluntary termination, severance agreement

You can hand in your notice during the maternity protection period by means of voluntary termination or by concluding a severance agreement. If you are considering this in order to take care of your child, possibly because you think that childcare is not compatible with your job, you should seek advice – in particular from the Federal Employment Agency – with regard to the risk of a block on unemployment benefits. It may be a better option for you to request **parental leave** from your employer.

Otherwise, the following principles apply:

- You yourself are not bound by any ban on termination. You can hand in your notice at any time during your maternity leave, too (**voluntary termination**).
- When handing in your notice yourself, you must comply with the statutory or agreed notice periods applicable under the terms and conditions of your employment contract or collective agreement.
- Since you can voluntarily hand in your notice during pregnancy and after childbirth, **severance agreements are also permissible in principle**.
- In the case of voluntary termination and severance agreements, your maternity protection ends together with the termination of the employment.
- In both cases, you no longer have any claims against your employer (including claims to pay and to the maternity allowance supplement).
- Only in special cases, in particular if the termination or the severance agreement was brought about by your employer through **fraudulent deception or under unlawful threat**, is it possible to challenge the termination legally.

4 Benefits before and after childbirth

You are entitled to various benefits during the period before and after childbirth, in particular during the statutory periods of maternity protection. These are as follows:

- entitlements to pay and compensation in the event of a restriction on your work as a result of maternity protection (see Section 4.1);
- entitlements to support benefits (see Section 4.2);
- entitlements to preserve your existing rights (see Section 4.3); and
- a general entitlement to parental leave (see Section 4.4).

Those **eligible to receive benefits** under the Maternity Protection Act are, in principle, employed women as defined in Section 7, Subsection 1 of the Fourth Book of the Social Code (SGB IV). Regardless of whether a woman is employed as defined here, the regulations on benefit entitlements also apply to

- female trainees and interns within the meaning of Section 26 of the Vocational Training Act (*Berufsbildungsgesetz – BBiG*);
- women with disabilities who are employed in a workshop for disabled persons;
- women who are volunteers within the meaning of the Youth Volunteer Services Act (*Jugendfreiwilligendienstgesetz – JFDG*) or the Federal Volunteer Service Act (*Bundesfreiwilligendienstgesetz – BFDG*);
- women who are members of a religious cooperative, deaconesses or members of a comparable community who hold a permanent position or a position based on a secondment contract, also during a period of practical training;

- women who work from home and those of equivalent status within the meaning of Section 1, Subsections 1 and 2 of the Home Work Act (*Heimarbeitsgesetz – HAG*), insofar as they work continuously; and
- women who are to be regarded as having a status similar to that of an employee due to their economic dependence (Section 19, Subsection 1 of the Maternity Protection Act).

The following are not entitled to benefits under the Maternity Protection Act:

- female development workers;
- housewives (who are not subject to an employment contract);
- female civil servants (in this case, special civil service regulations apply instead of the Maternity Protection Act);
- school pupils and university students (who are not subject to an employment contract); and
- self-employed persons who do not have statutory health insurance with entitlement to sickness benefits.



Important note

Self-employed women can take out a voluntary daily sickness benefit insurance for the period between six weeks before the estimated date of delivery and generally eight weeks after childbirth.

If you are self-employed, your health insurance type and specific contract determine the level of benefits you receive during the maternity protection periods that apply to employees.

It is important that self-employed women inform themselves as early as possible about their insurance options.

For more information, see Section 4.1.3.3 and <https://familienportal.de/familienportal/familienleistungen/mutterschaftsleistungen/welche-mutterschaftsleistungen-kann-ich-bekommen-wenn-ich-selbststaendig-bin--125022> as well as https://www.existenzgruendungsportal.de/Redaktion/DE/Aktuelles/Unternehmertum_heute/Mutterschutz-fuer-Selbststaendige/inhalt

4.1 Your pay and compensation entitlements

You are entitled to the following to avoid loss of income due to maternity protection:

- paid time off for medical check-ups and breastfeeding (see Section 4.1.1);
- maternity protection pay in the case of maternity protection measures (see Section 4.1.2); and
- compensation for the periods of protection before and after childbirth as well as for the day of childbirth, e.g. maternity allowance and maternity allowance supplement – the so-called employer supplement (see Section 4.1.3).



Note for your employer

All employers are fully reimbursed for expenses incurred due to their employees' pregnancy and maternity (in particular maternity protection pay and the employer supplement). For this purpose, they participate in a general apportionment procedure operated by the health insurance companies (the so-called U2 procedure).

Both the employer supplements to maternity protection pay and the remuneration paid as maternity protection pay in the case of work bans are **fully reimbursed**. Employer contributions to statutory health, pension and unemployment insurance are also reimbursed.

A special regulation applies to co-working family members employed on a full-time basis who have mandatory **agricultural health insurance**. The U2 procedure does not apply to these employees because their employment is linked to family relationships.

Trainee allowances that have to continue to be paid due to a work ban are also eligible for reimbursement. The statutory health insurance companies are responsible for this. Reimbursement is made on request.

4.1.1 Paid time off for medical check-ups and breastfeeding

Pay in the event of time off for medical check-ups and breastfeeding

Time off for medical check-ups and breastfeeding breaks **must not result in a loss of pay** for you, nor are you required to make up for such time off, whether before or afterwards. Time off for medical check-ups or breastfeeding does not count towards the rest breaks stipulated in the Working Time Act (*Arbeitszeitgesetz – ArbZG*) or other regulations (see Sections 2.2.3 and 2.4.1, **also in connection with special working hour agreements**).

4.1.2 Maternity protection pay in the case of maternity protection measures

You do not need to fear any financial disadvantages in the event of a change of workplace due to maternity protection or a (partial or complete) work ban **outside the periods of protection**. You are entitled to **maternity protection pay**, which means that you will receive at least the average pay you were earning before the start of your pregnancy.

Maternity protection pay

Maternity protection pay is calculated as the average (gross) earnings of the last three calendar months prior to the start of pregnancy. This also applies if the employment or the type of remuneration changes because of the ban. If the employment contract does not begin until after the onset of pregnancy, the average pay is calculated based on the pay for the first three months of employment. If, during the work ban, you start a second job that is not covered by the ban, and you earn income from the job in addition to any maternity protection pay you receive, this extra income is offset against maternity protection pay.

Maternity protection pay is considered regular remuneration and is therefore subject to tax and social security deductions.



Note for your employer

Your employer is reimbursed for 100 per cent of the maternity protection pay (according to the so-called U2 procedure).

4.1.3 Compensation during periods of protection under maternity protection law

As an employee, you can generally receive compensation benefits for **work suspensions** during the periods of maternity protection. Which benefits you are entitled to will depend in particular on your employment contract and your health insurance. In addition to maternity benefits such as the **maternity allowance** and the **maternity allowance supplement (employer supplement)**, privately insured women are also entitled to **daily sickness benefits**. See Sections 4.1.3.1 to 4.1.3.4 and the summary table in Section 4.1.4 to find out whether and to what extent you are entitled to benefits.

Who pays?

Women with **statutory health insurance** receive the maternity allowance through their health insurance. Women who are privately insured or who have statutory health insurance as non-contributory family members receive a maternity allowance limited to a total of EUR 210 from the **Federal Office for Social Security** (until 1 January 2020: Federal Insurance Office).

You must **apply** for the maternity allowance through your health insurance or the Federal Office for Social Security. To submit the application, you will require the certificate from your doctor, midwife or obstetric nurse stating the due date (estimated date of delivery).



Important note

To obtain the maternity allowance amounting to a total of up to EUR 210, you must apply to the **Federal Office for Social Security – Maternity Allowance Office, Friedrich-Ebert-Allee 38, 53113 Bonn, tel. 0228 6191888**.

Information and application forms are also available online:
www.mutterschaftsgeld.de

Employed women receive an employer supplement from their employer in addition to the maternity allowance. The employer supplement is the difference between EUR 13 and the average daily pay of the last three calendar months before the start of the period of protection before childbirth, less statutory deductions. You will therefore receive the employer supplement if your average daily pay exceeds EUR 13. If your employment starts during the periods of protection before or after childbirth, your employer will pay you the maternity allowance supplement from the time your employment begins. The supplement is paid on the same date as you would have received your regular pay. If you have more than one employer, the employer supplement is to be paid on a pro rata basis by each employer according to the net pay you receive from them.

Employer supplement

The maternity allowance and employer supplement are generally calculated based on the **average pay per calendar day**, less statutory deductions, of the last three calendar months before the start of the period of protection prior to childbirth.

Assessment basis

In terms of the **amount of compensation**, there are four different types.

Amount of compensation

- Full pay compensation based on a **maternity allowance amounting to a maximum of EUR 13 per day and (if applicable) the employer supplement**

Example calculation:



A woman received a constant gross monthly salary of EUR 1,500 in the last three months before the start of the period of protection.

The net monthly pay was EUR 975. The monthly net pay of the last three months ($\text{EUR } 975 \times 3 = \text{EUR } 2,925$) is broken down into the amount per calendar day (three calendar months of 30 days each – $\text{EUR } 2,925/90 \text{ calendar days} = \text{EUR } 32.50 \text{ per calendar day}$).

The average net daily pay was therefore EUR 32.50. During the periods of protection before and after childbirth, the woman receives this amount of EUR 32.50 per calendar day, namely

- EUR 13 in the form of the maternity allowance from the health insurance company; and
 - EUR 19.50 in the form of the employer supplement.
- Partial pay compensation based on a **maternity allowance amounting to a total of up to EUR 210 and (if applicable) the employer supplement**
 - Partial pay compensation based on a **maternity allowance in the amount of sick pay**



Important note

Sickness benefits amount to **70 per cent of regular pay** and income from work, insofar as they are subject to statutory contributions (standard pay). However, they may not exceed 90 per cent of the relevant net pay.

- Pay compensation in the amount of the agreed daily sickness benefits (for women with **private daily sickness benefit insurance**)



Important note

The maternity allowance, parental allowance and other compensation claims are **offset against the daily sickness benefits**. If applicable, contractually agreed waiting and deferment periods must be taken into account.

The maternity allowance and the employer supplement are not subject to tax and social security contributions. They are included in the **fiscal progression proviso**, however. Because of the tax and contribution exemption, the amount of these benefits is based on your net earnings (gross pay minus the amounts for tax and contributions).

4.1.3.1 Women subject to existing employment contracts

As an employee, you are financially protected – regardless of your insurance status – during the periods of maternity protection before and after childbirth and for the day of childbirth by the **maternity allowance** (paid out through your health insurance company or the Federal Office for Social Security) and the **employer supplement**:

- If you are **employed** and have **statutory health insurance**, you are entitled to a maternity allowance of up to EUR 13 per day through your health insurance and a maternity allowance supplement from your employer.
- If you are **marginally employed** and have your own **statutory health insurance** (for example, students, voluntarily insured persons) and do not receive pay during the periods of protection, you receive a maternity allowance of up to EUR 13 per day through your health insurance and, if applicable, a maternity allowance supplement from your employer. If you are marginally employed and **do not have your own statutory health insurance** (if you are included in family insurance as a wife, civil partner or child, for example), you receive a maternity allowance of a total of up to EUR 210 from the Federal Office for Social Security and, if applicable, a maternity allowance supplement from your employer.

**Women with
statutory health
insurance**

**Marginally
employed women
(mini-jobbers)**

Women with private health insurance

- If you are **employed** and have **private health insurance**, you receive a maternity allowance of a total of up to EUR 210 from the Federal Office for Social Security and a maternity allowance supplement from your employer. If you have taken out daily sickness benefit insurance, you may also be entitled to payment of the agreed daily sickness benefits during the periods of protection.

4.1.3.2 Women whose type of employment changes during pregnancy or during the periods of protection

If your type of employment changes during pregnancy or during the periods of protection, this will affect your entitlement to benefits. There are four different groups here:

Dismissal

- **If your employer effectively terminates your employment during pregnancy or during the periods of protection** (see Section 3.3.2), you retain your entitlement to the maternity allowance and the employer supplement in the amount to which you were entitled before the end of the terminated employment. However, once you are no longer employed, you are no longer entitled to payment of the employer supplement by your employer. In order to protect you in this unforeseeable situation, you will continue to receive the maternity allowance from the agency responsible (either your health insurance or the Federal Office for Social Security) from the time the employment ends until the end of the period of protection.

Fixed-term contracts, voluntary termination

- **If your employment ends during the periods of protection** because you are on a **fixed-term contract** that expires during a period of protection or because you have **terminated** your employment **yourself** (see Section 3.6), your entitlements will depend on your health insurance company from the end

of your employment. If you have statutory health insurance, you will receive the maternity allowance **in the amount of the sickness benefits** through your health insurance from the end of your employment until the end of the period of maternity protection. If you have family health insurance or private health insurance, your entitlement to the maternity allowance, once applicable, is not affected if your employment ends later. You will continue to receive a **maternity allowance of a total of up to EUR 210** from the Federal Office for Social Security. Since you are not (or no longer) employed, you are not entitled to the employer supplement in these cases, regardless of your insurance status.

- If your employment **ends** (e.g. due to a fixed-term contract) **immediately before the start of the period of protection before the birth** and if you had health insurance on your last day of employment, you receive a maternity allowance in the amount of the sickness benefits.



Important note

If you become unemployed during the periods of maternity protection, you should contact your health insurance, the Federal Employment Agency and, if necessary, the social welfare office as early as possible so as to clarify both your insurance coverage and your financial security.

Benefits in the event of insolvency

If your employer cannot fulfil their obligation to pay the employer supplement **due to insolvency**, the same regulation applies from the day of the insolvency until the end of the periods of protection as would apply in the case of a legal dismissal (see Section 3.3.2) from the end of employment until the end of the periods of protection (see above). Overdue claims to the employer supplement up until the time of the insolvency are treated as overdue pay at the time the insolvency takes effect. After the insolvency takes effect, you are **entitled to insolvency benefits** if you are still entitled to remuneration for the three months of employment preceding the insolvency.

If your status changes from that of a civil servant to that of an employee during the periods of protection, you are entitled to the maternity allowance from the time employee status is established.

4.1.3.3 Self-employed women

If you are self-employed, you decide on your own how long you work before the birth of your child, when you start working again, how much you work and what work you do.

You can cover income losses in the six weeks before the estimated date of delivery and usually eight weeks after childbirth.

Women with private health insurance

As a **self-employed woman with private health insurance** you can take out **daily sickness benefit insurance**. If you have taken out such an insurance policy, you are entitled to compensation for your income losses in the amount of the agreed daily sickness benefits during the legal periods of protection under Section 3, Subsections 1 and 2 of the Maternity Protection Act and on the day of childbirth (six weeks before the estimated date of delivery until generally eight weeks after childbirth) after the end of the contractually agreed waiting period.

This entitlement requires that you are not otherwise entitled to adequate compensation of income losses during this period (Section 192, Subsection 5 of the Insurance Contract Act [Versicherungsvertragsgesetz – VVG]).

If you have a miscarriage, however, the insurance company is only required to pay daily sickness benefits under a private daily sickness benefit insurance policy if the terms of your contract provide for this.

Daily sickness benefits are only paid after the end of the waiting periods agreed in your contract. Insurance companies can set a special waiting period before they pay daily sickness benefits during the period that corresponds to the legal periods of protection before and after childbirth. The waiting period can be a maximum of eight months between signing the contract and the earliest possible occurrence of the insured event. This means that you cannot claim daily sickness benefits directly after signing the insurance contract but only after the end of the **waiting period**. If you are already pregnant when signing the contract, it is useful to directly clarify with your insurance provider the time from which you can receive daily sickness benefits.

When signing the contract, you agree with your insurance provider the day from which you receive daily sickness benefits after you are no longer able to work or after the first day of the legal maternity protection periods. This period is the waiting period. For example, you can agree that payment begins from the 4th, 8th or 43rd day. The **waiting period** in these three examples is 3, 7 or 42 days. You can also choose a later point in time. It is important that you can cover your financial needs until the beginning of payment.

You can choose the amount of daily sickness benefits paid during the time corresponding to the legal maternity protection periods and on the day of childbirth if you are unable to work and suffer income losses and include this amount in your insurance contract. The amount is limited, however, to your previous net income (average income in the last twelve months).

Voluntarily insured persons

If you are self-employed and have **statutory health insurance on a voluntary basis**, you can receive a maternity allowance in the amount of the sickness benefits during the legal periods of maternity protection and on the day of childbirth. This means that your insurance also covers you in case of a miscarriage. You must file an application with your health insurance company to cover your **entitlement to sickness benefits**.

If you have statutory health insurance on a voluntary basis, you are not automatically entitled to sickness benefits. Ask your statutory health insurance provider as early as possible how you can claim sickness benefits.

You receive sickness benefits from the 43rd day of your inability to work if you have decided to claim optional sickness benefits. You can also claim the benefits earlier by signing a related elective policy. You receive maternity allowance without a waiting period from the beginning of the period that corresponds to the period of protection before childbirth applicable to employees, which generally begins six weeks before the estimated date of delivery and usually ends eight weeks after the birth. The period during which the allowance is paid corresponds to the period of protection for employees, including in the event of a stillbirth or a miscarriage.

Self-employed women receive sickness allowance in the amount of 70 per cent of the relevant income that they earn from work on a regular basis up until they have special protection status. Income above the contribution ceiling is not taken into account when calculating the contribution to be paid. The contribution ceiling is reassessed every year. The limit on the contributions results in a limit on the level of sickness allowance paid.

As a self-employed woman who has statutory health insurance on a voluntary basis you can take out daily sickness allowance insurance from a private health insurance company.



Important note

If you are self-employed and have **statutory health insurance on a voluntary basis**, you can choose whether you want your insurance to cover loss of earnings in the event of work incapacity by means of an optional sickness benefit tariff or by means of a ‘statutory’ sickness benefit entitlement (**optional declaration**). Further information is available from the relevant health insurance companies. There are exceptions that apply to those with **agricultural health insurance**.

4.1.3.4 Women who are not gainfully employed

If you are not gainfully employed, your entitlements are essentially based on the general provisions of the Second and Third Book of the Social Code (SGB II and SGB III). The same applies to women whose employment ends during pregnancy but before the start of the period of protection before childbirth.

- If at the beginning of the period of protection you are receiving unemployment benefits in the case of unemployment or in the case of further vocational training under SGB III, you will receive the maternity allowance under statutory health insurance. The amount of maternity allowance corresponds to the **amount of unemployment benefits in the case of unemployment or, in the case of further vocational training under SGB III**, the amount that the insured person received before the start of the period of protection prior to childbirth.
- If you receive citizen’s benefits (including supplementary benefits) under SGB II, you will be entitled to an **additional needs allowance amounting to 17 per cent of the applicable standard needs rate** from the 13th week of pregnancy to the day of delivery (for a single person this is approximately EUR 71, for example). If there is an entitlement to the maternity allowance from previous gainful employment, the employer supplement is taken into account as income when

**Unemployment
benefit recipients**

**Citizen’s benefit
recipients**

determining citizen's benefits. However, the maternity allowance paid by the health insurance is not taken into account. Regardless of this, benefits for the first set of clothes and other items required for pregnancy and birth are available separately from the local agencies responsible for providing basic income support for jobseekers (job centres) upon request.

School pupils and university students

- If you are a school pupil or university student without employee status, you are generally insured under **statutory health insurance** as a student **without sickness benefit entitlement** and are therefore **not entitled to the maternity allowance**.

4.1.4 General information on the maternity allowance and employer supplement

Overview

Women subject to existing employment contracts

Those with **statutory** health insurance including sickness benefit entitlement

Up to **EUR 13 per day of maternity allowance** paid through health insurance **plus the employer supplement** in the amount of the difference between EUR 13 and the average net pay

Mini-jobbers with **statutory** health insurance **without** sickness benefit entitlement (e.g. students)

Up to **EUR 13 per day of maternity allowance** paid through health insurance and, if applicable, the **employer supplement** in the amount of the difference between EUR 13 and the average net pay

Mini-jobbers without statutory health insurance (such as **family members**)

Maternity allowance as a one-off payment of a total of up to **EUR 210** from the Federal Office for Social Security **plus, if applicable, the employer supplement** in the amount of the difference between EUR 13 and the average net pay

Overview

Employees with **private** health insurance

Maternity allowance of a total of up to **EUR 210** from the Federal Office for Social Security **plus the employer supplement** amounting to the difference between EUR 13 and the average net pay, **plus any additional daily sickness benefits if agreed**

Women whose employment ends during pregnancy or during the periods of protection

Women whose employment **was legally terminated** by their employer during pregnancy or during the periods of protection

For those with statutory health insurance: up to **EUR 13 of maternity allowance per day plus the employer supplement** paid through health insurance; for women who do not have statutory health insurance: **maternity allowance** up to a total of **EUR 210** from the Federal Office for Social Security

Women whose **fixed-term employment** ended during the periods of protection

For those who have statutory health insurance: **maternity allowance in the amount of the sickness benefits** paid through health insurance; for women who do not have statutory health insurance: **maternity allowance** up to a total of **EUR 210** from the Federal Office for Social Security

Women whose employment ends **immediately before the start of the period of protection before childbirth** if they had health insurance on the last day of employment

Maternity allowance in the amount of the sickness benefits paid through health insurance

Women whose employment ends **during pregnancy but before the beginning of the period of protection** before childbirth

Maternity benefits are the same as for women who are not employed; see page 87.

Overview

Women whose employer goes into **insolvency** during pregnancy or during the periods of protection

Maternity benefits from the occurrence of the insolvency are the same as after a legal dismissal.

Self-employed women

Those with **statutory** health insurance including sickness benefit entitlement

Maternity allowance in the amount of the sickness benefits paid through health insurance

Those with **statutory** health insurance **not including** sickness benefit entitlement and not including daily sickness benefit insurance

No maternity allowance, no daily sickness benefits

Self-employed women with **private** health insurance who have taken out **daily sickness benefit insurance**

Entitlement to payment of the **agreed daily sickness benefits** applies during the periods of maternity protection after the end of the agreed waiting period.

Women who are not gainfully employed

Those with statutory health insurance including sickness benefit entitlement (**unemployment benefit** recipients)

Maternity allowance is paid through health insurance **in the amount of the previous unemployment benefits.**

Those with statutory health insurance without sickness benefit entitlement (**citizen's benefit** recipients)

Citizen's benefits are paid during the statutory periods of maternity protection, plus an **additional needs allowance**. The additional needs allowance is granted after the twelfth week of pregnancy and until the end of the month of childbirth.

Pupils and university students not gainfully employed

No benefits

4.1.5 Conditions relating to pay and compensation and how these are calculated

Please note the following with regard to the conditions and calculation of pay and compensation.

When **determining average pay**, the principle applies that your financial treatment during maternity protection may not be worse or better than if you had continued to pursue your employment without work bans under maternity protection law:

- Neither does it have any effect if there is a **change in the type of remuneration** as a result of such a ban. Losses due to the ban on piecework and assembly line work or additional work, Sunday work, and night work do not have a negative effect on the calculation.

Changes in pay groups
- **In the case of permanent increases or reductions in earnings**, for example in the case of wage and salary increases or reductions that take effect during the calculation period, the calculation of the average earnings for the entire calculation period is based on the new level of pay. This takes account of the fact that the woman would otherwise have continued to work without the work ban and would have received her pay in the new amount. If the change takes effect after the end of the calculation period, it is included in the calculation from the time it takes effect. **Temporary increases or reductions in earnings that occur during the calculation period are not taken into account for the calculation of average pay.**

Changes in pay
- If you pursue **secondary employment** in addition to your main employment, the remuneration for the secondary employment must also be taken into account when calculating your pay.

Secondary employment

Unexcused absences

- When determining the calculation period for average pay, periods during which the woman did not earn **any pay** due to **absence through no fault of her own** are not taken into account. If the period of employment was shorter than three months, the calculation is based on the actual period of employment.
- When calculating the average pay, **one-off payments** and **reductions in pay** that occurred during the calculation period as a result of short-time work, absences from work or **absence from work through no fault of the employee** are not taken into account.

Insufficient basis for assessment

- If it is **not possible to determine the average pay** based on the usual regulations, the average daily pay of a person employed in a comparable position is taken as a basis.

Special provisions in the event of renewed pregnancy during parental leave

If you are on parental leave for your older child at the time of pregnancy, you must bear the following in mind:

- If you do not work part-time during parental leave or if you do not end your parental leave early, you are not entitled to maternity protection pay during a work ban. Your entitlement to the employer supplement during the periods of protection also ceases if you do not work part-time during parental leave or you do not end your parental leave early. Your employment status is only fully revived once you have completed your parental leave; not until this happens are you entitled to payment of the employer supplement for your employment prior to your renewed parental leave. If you do not end your parental leave early and have not worked part-time during your parental leave, you are only entitled to the maternity allowance.



Important note

You can end an ongoing **period of parental leave early** – and **without your employer's consent** – in order to take advantage of the pre-natal and post-natal periods of maternity protection and the rights that this involves (including entitlement to the employer's maternity allowance supplement). Your employer cannot refuse early termination of parental leave in this case. This is governed by the Federal Parental Allowance and Parental Leave Act (*Bundes-elterngeld- und Elternzeitgesetz – BEEG*).

If you end your parental leave early in order to take advantage of the statutory periods of maternity protection, you should inform your employer in good time that you intend to end your parental leave. Retroactive termination of parental leave is not possible.

This does not incur costs to your employer because they will be reimbursed in full through health insurance for the employer supplement which they are required to pay.

- If you pursue permissible **part-time employment** during parental leave and **you do not end your current parental leave**, and if the period of maternity protection falls during this part-time employment, you are entitled to the employer supplement from the part-time employment. The Maternity Protection Act applies unrestrictedly to part-time employment.
- If you have **prematurely ended a period of parental leave** during which you **worked part-time**, special rules apply to the calculation of average pay: an assessment has to be carried out to determine whether it is more favourable for you to do the calculation based on your income during parental leave or based on your income before parental leave. The part-time pay that you earned during parental leave is

not taken into account if the average pay is higher without taking into account the periods during which this pay was earned. This prevents any disadvantage arising from the parental leave you took for your older child when it comes to assessing the maternity protection for your other child.

Maternity benefits are always fully **offset against your parental allowance**. This also applies to the remuneration paid during the periods of maternity protection if you are a civil servant. The maternity allowance of up to a total of EUR 210 paid by the Federal Office for Social Security is not taken into account. Maternity benefits from the day of the birth of another child are also offset against the parental allowance for an older child, but only to the extent that the parental allowance exceeds an amount of EUR 300.



Important note

The brochure issued by the Federal Ministry for Education, Family Affairs, Senior Citizens, Women and Youth entitled *Parental Allowance and Parental Leave* provides details of the regulations relating to the parental allowance and parental leave. It can be ordered free of charge from the Federal Government's publication mailing service (email: publikationen@bundesregierung.de). See also:

<https://www.bmbfsfj.bund.de/bmbfsfj/service/publikationen/elterngeld-und-elternzeit--185102>

4.2 Your entitlement to support benefits

In addition to the cash benefits mentioned above, you may be entitled to other support benefits.

4.2.1 Statutory health insurance benefits (such as midwife assistance)

The following benefits are provided in addition to the maternity allowance for those with statutory health insurance:

- medical care and midwife assistance;
- provision of medicines, dressings, remedies and aids;
- childbirth;
- home care;
- domestic help.

4.2.2 Assistance from the 'Federal Foundation Mother and Child – Protection of the Unborn' in emergency situations

The 'Federal Foundation Mother and Child – Protection of Unborn Life' provides unbureaucratic assistance if you are in an emergency situation and other social benefits are not available to you or are insufficient. The application must be submitted during pregnancy to a pregnancy counselling centre near your home. Your income is assessed before financial aid is granted. The foundation provides assistance for the first set of clothes and other items for the child, household help, housing, and fur-

nishings as well as infant care. This assistance is not counted as income against citizen's benefits, income support or other social benefits. For details, see the foundation flyer at

<https://www.bmbfsfj.bund.de/bmbfsfj/service/publikationen/bundesstiftung-mutter-und-kind-81256>

4.3 Your entitlement to preserving your existing rights

There are also various ways in which you are entitled to preserve your existing rights. This ensures you are protected from other disadvantages in addition to matters of financial compensation. These entitlements are as follows.

4.3.1 Claiming holiday leave

Holiday leave

Periods of absence caused by work bans under maternity protection law and periods of maternity protection are treated as periods of employment. Holiday leave entitlement also accrues during these periods. It is not permissible to reduce holiday leave as a result of work bans under maternity protection law. If you did not receive your leave or did not receive it in full before the work bans came into effect, you can claim your remaining annual leave in the current or subsequent year after the periods of protection have come to an end.

Remaining annual leave from the period before the work bans is transferable to the current or following year. This remaining leave can also be taken after parental leave (see the brochure *Parental Allowance and Parental Leave*).

4.3.2 Continued employment according to your existing contract

When periods of protection or other maternity protection work bans come to an end, you have the right to continue to be employed under the terms of your existing contract.

4.3.3 Entitlement to capital-forming benefits and savings allowances

Whether or not you are entitled to have **capital-forming benefits** paid by your employer during maternity protection will depend on the agreement in question (collective agreement, company agreement or individual employment contract).

The **savings allowance** under the Capital Accumulation Act (*Vermögensbildungsgesetz – VermBG*) is only available on payments made by the employer. For this reason, the maternity allowance paid through statutory health insurance cannot be used as a capital-forming benefit. However, you can have parts of the employer's maternity allowance supplement invested as a capital-forming benefit and receive the state savings allowance for this purpose.

If you did not receive any capital-forming benefits from your employer during the periods of maternity protection, you can also have the employer invest the amounts that are still lacking for full utilisation of the eligible maximum before the start or after the end of the periods of maternity protection. This is because the amounts eligible for allowances under the Capital Accumulation Act are annual amounts.

4.3.4 Securing entitlements under statutory health, pension and unemployment insurance

Statutory health insurance

If your employment was subject to social insurance contributions before the start of the period of protection, you remain insured under statutory health insurance by law during the period of entitlement to or receipt of the maternity allowance. You do not have to pay contributions for the maternity allowance. Even if you are voluntarily insured under statutory health insurance, receipt of the maternity allowance means that you are exempt from paying contributions for pay or income from work that was subject to contributions before the benefits were received, insofar as and for as long as you do not receive such income. The statutory minimum contributions are not payable in these cases for the duration of benefit receipt.

Statutory pension insurance

Under statutory pension insurance, those periods in which you do not pursue employment subject to pension insurance or a self-employed activity because of pregnancy or maternity during the periods of maternity protection are known as non-contributory periods. Neither you nor your employer pay contributions during this time. These periods subject to maternity protection have the effect of increasing your pension but are not counted towards every holding period under statutory pension insurance. After the month in which your child is born, you can have 36 calendar months credited to your later pension as child-raising periods if you raise your child in Germany. During this time, you enjoy the same status as if you were paying contributions as an average earner, but without actually having to pay any contributions.

Statutory unemployment insurance

Unemployment insurance is compulsory without restriction for periods in which the maternity allowance is received if such insurance was compulsory immediately prior to the start of receipt or if benefits were received on an ongoing basis under unemployment insurance. The Federal Employment Agency will inform you of the details.

4.3.5 Entitlement to a 13th monthly salary and special benefits

Whether and to what extent special annual benefits are paid is determined in each individual case by the content of the relevant agreement (collective agreement, company agreement or individual employment contract). The Maternity Protection Act does not contain any specific provisions here.

According to case law, neither under collective agreements (collective bargaining agreements or works agreements) nor according to employment contracts may absences due to a work ban under maternity protection law or periods of maternity protection be used to reduce any entitlement to work-related special annual bonuses (special payments of a purely remunerative nature).

4.4 Your entitlement to parental leave

Providing you inform your employer in good time, parental leave under the Federal Act on Parental Allowance and Parental Leave (*Bundeselterngeld und Elternzeitgesetz – BEEG*) follows on immediately from the period of maternity protection. If you wish, however, you also have the option to resume your work and start parental leave at a later date.

Employed women and men are entitled to claim parental leave from their employer. Parents can also take parental leave together, either in full or for part of the time.

You must inform your employer **in writing** of the **parental leave** you wish to take until the child reaches the age of three **at least seven weeks before it begins**. At the same time, you must make a binding commitment for two years regarding the period or

Registration deadline

periods in which you wish to take parental leave. During parental leave, it is possible to work part-time for up to 30 hours per week. Special protection from dismissal also applies.



Important note

If you wish to work part-time during parental leave, you must inform your employer in writing seven weeks before the start of the part-time work. This request for part-time work during parental leave is deemed to be accepted if it is not rejected in writing by your employer within four weeks in the case of parental leave taken before your child's third birthday.

Renewed pregnancy during parental leave

If another child is born during the current parental leave, the periods of maternity protection for the additional child do not lead to an automatic termination of the parental leave (see Section 4.1.5). Parental leave for the additional child follows on when the first parental leave comes to an end, unless the current parental leave is terminated prematurely.

For more information about parental leave, see our brochure *Parental Allowance and Parental Leave* (see Section 1.2.1).

4.5 Who advises you on benefit entitlements?

The following agencies can provide you and your employer with information and advice on all questions relating to the Maternity Protection Act.

- Benefits under statutory health insurance during pregnancy and maternity: the statutory health insurance companies
- Maternity allowances for women who do not have statutory health insurance: the Federal Office for Social Security in Bonn
- Questions relating to unemployment benefits: the Employment Agency; questions relating to citizen's benefits: the local agencies responsible for basic income support for jobseekers (job centres)
- If entitlements to benefits under the Twelfth Book of the Social Code (SGB XII) are to be claimed (for example basic income support in the case of a permanent reduction in earning capacity): the social welfare offices

According to the Counselling Assistance Act (*Beratungshilfegesetz – BerHG*), women with low income are also entitled to advisory assistance in matters relating to labour law and social law. The competent local courts will issue a counselling permit if the requirements are met.

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Important dates, deadlines and information

I



Before pregnancy	During pregnancy	Before the start of the period of protection	Period of protection before childbirth
● If necessary, obtain information about maternity protection from your employer → p. 23	● Inform employer of pregnancy and estimated date of delivery (if necessary, submit medical certificate or certificate issued by midwife/delivery nurse → pp. 21 f.) ● Agree on information and planning meeting with employer → p. 23 ● Enable continued employment until the start of the period of protection before the birth • Take into account permissible working hours (e.g. max. 8.5 hours per day) – After 8 pm and on Sundays and public holidays, work is only possible with your consent → pp. 29 f. • Take into account entitlement to rest opportunities, short breaks from work and, if necessary, time off for required medical check-ups → pp. 24, 32 • Implement protective measures where required (adapt working conditions, change of workplace) → pp. 16, 23, 37, 39 • Implement partial/full occupational or medical work ban where applicable → pp. 38 ff. ● Plan time up until maternity leave (handover, remaining tasks) ● Special protection from dismissal applies from the beginning of pregnancy → pp. 15 f., 21, 62 ff. ● No loss of pay for time off under maternity protection, protective measures and work bans → entitlement to continued pay (maternity protection pay) → p. 24 ● You must not be required to make up time off, either before or after, no deduction of rest breaks → p. 24	● Request maternity allowances for the periods of protection before and after the birth from your health insurance (or the Federal Office for Social Security) → p. 78 • Submit medical certificate or certificate issued by midwife/delivery nurse with the due date and employer confirmation to calculate maternity pay • Additional entitlement to maternity allowance where relevant (employer supplement) ● If parental leave starts directly after the period of protection, inform the employer no later than seven weeks before it starts ● If necessary, discuss job re-entry with employer in advance (e.g. communicate your desire to work part-time)	● Work is generally prohibited six weeks before the birth → p. 44 • Continued work possible at employee's request

Important dates, deadlines and information

I

Period of protection after childbirth

After birth

Return to work

- Usually for eight weeks after birth, in special cases for twelve weeks, there is an absolute ban on work
 - Continued work at employee's request not possible → **pp. 43 ff.**
- NEW: staggered period of protection in the case of miscarriages from the 13th week of pregnancy → **pp. 46 ff.**
- Send copy of birth certificate to health insurance
- Apply for child benefits from the family benefit office at the employment agency responsible
 - Submit tax identification numbers
 - Child benefits are paid regardless of income
- Apply for parental allowance from the parental allowance office
 - Retrospective payment only possible for the last three months after the application was made
 - Submit birth certificate and proof of income
- Inform employer in writing about return or inform employer of parental leave at least seven weeks before it starts
- Where applicable, inform employer in writing of your wish to work part-time during parental leave
 - Seven weeks before you wish to start
 - Up to 32 hours per week on average per month is possible
- Special protection from dismissal applies up until the end of the period of protection after birth and at least until four months after the birth → **pp. 62 ff.**
- Interview on the subject of your return to work; if necessary inform employer you will be breastfeeding → **p. 49**
- Entitlement to work in line with maternity protection requirements, e.g. during the breastfeeding period
 - Take into account permissible working hours (e.g. max. 8.5 hours per day)
 - After 8 pm and on Sundays and public holidays, work is only possible with your consent → **p. 52**
 - Take into account entitlement to rest facilities, short breaks from work and, if necessary, release time for breastfeeding breaks and medical check-ups as required → **p. 50**
 - If necessary, implement protective measures (adaptation of working conditions, change of workplace) → **pp. 53 ff.**
 - If applicable, implement a partial/full occupational or medical work ban → **p. 54**
- No loss of pay for time off under maternity protection, protective measures and work bans → entitlement to continued pay (maternity protection pay) → **p. 50**
- You must not be required to make up time off, either before or after, no deduction of rest breaks → **pp. 51 ff.**
- If necessary, apply for part-time work after parental leave



The checklist opposite, including all important dates, deadlines and information on the subject of maternity protection, is also available in the PDF edition.

If this list is missing or gets lost, please see our PDF of this brochure at www.bmbfsfj.bund.de/bmbfsfj/service/publikationen by searching 'Guide to Maternity Protection'.



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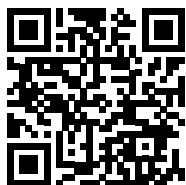
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