

Übersetzung durch die Sprachendienste des Bundesministeriums für Familie, Senioren, Frauen und Jugend sowie des Bundesministeriums für Gesundheit in Zusammenarbeit mit Proverb OHG, Stuttgart

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Act on the Protection of Mothers at Work, in Training and at University

(Maternity Protection Act - MuSchG)

Act on the Protection of Mothers at Work, in Training and at University [Mutterschutzgesetz – MuSchG] of 23 May 1978 as amended by the notice of 30 May 2017 (Federal Law Gazette [BGBl.] I p. 1,228), last amended by Article 57 (8) of the Act of 12 December 2019 (Federal Law Gazette I, p. 2652).

Section 1 **General Provisions**

§ 1

Scope, aim of maternity protection

(1) This Act protects the health of women and their children at the place of work, training and study during pregnancy, after and during childbirth and during breastfeeding. The Act enables a woman to continue her employment or other activity during this period without endangering her health or that of her child and counteracts disadvantages during pregnancy, after childbirth and during breastfeeding. Provisions under other occupational health and safety legislation remain unaffected.

(2) This Act applies to women in employment within the meaning of Section 7 Subsection 1 of the Fourth Book of the Social Code. Regardless of whether the individual is subject to an employment contract, this Act also applies to

1. trainees within the meaning of Section 26 of the Vocational Training Act [Berufsbildungsgesetz – BBiG];
2. women with disabilities who are employed in a workshop for disabled persons;
3. development workers within the meaning of the Development Workers Act [Entwicklungshelfer-Gesetz – EhfG], but subject to the requirement that Sections 18 to 22 do not apply to them;

4. women who are volunteers within the meaning of the Youth Volunteer Services Act [*Jugendfreiwilligendienstegesetz* – JFDG] or the Federal Volunteer Service Act [*Bundesfreiwilligendienstgesetz* – BFDG];
 5. 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;
 6. women who work from home and those of equivalent status within the meaning of Sections 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 do not apply to them and that Section 9 Subsections 1 to 5 are to be applied to them accordingly;
 7. women who are to be regarded as having a status similar to that of an employee due to their economic dependence, but subject to the requirement that Section 18, Section 19 Subsection 2 and Section 20 are to be applied to them; and
 8. school pupils and university students, insofar as the training organisation stipulates the place, time and structure of the course or if the pupils and students are taking a mandatory internship that forms part of their school or university education, but subject to the requirement that Sections 17 to 24 do not apply to them.
- (3) The Act does not apply to female civil servants and judges. The Act likewise does not apply to female soldiers, even if the requirements of Subparagraph 2 are met, unless they work outside the area of responsibility of the Federal Ministry of Defence based on official orders or permission.
- (4) This Act applies to any person who is pregnant, has given birth to a child or is breastfeeding. Subparagraphs 2 and 3 apply accordingly.

§ 2

Definitions

(1) For the purposes of this Act, an employer is a natural or legal person or partnership with legal capacity that employs persons under Section 1 Subsection 2 Sentence 1. The following are equivalent to an employer:

1. the natural or legal person or partnership with legal capacity that trains women in the case of Section 1 Subsection 2 Sentence 2 Number 1 or for which female interns work in the case of Section 1 Subsection 2 Sentence 2 Number 1;
2. the organisation which operates the workshop for disabled people in the case of Section 1 Subsection 2 Sentence 2 Number 2;
3. the development service provider in the case of Section 1 Subsection 2 Sentence 2 Number 3;
4. the institution in which the voluntary service is performed under the Youth Voluntary Service Act or the Federal Voluntary Service Act in the case of Section 1 Subsection 2 Sentence 2 Number 4;
5. the religious cooperative or similar community in the case of Section 1 Subsection 2 Sentence 2 Number 5;
6. the contracting authority and intermediate supervisor of women in the case of Section 1 Subsection 2 Sentence 2 Number 6;
7. the natural or legal person or the partnership with legal capacity for which women work within the meaning of Section 1 Subsection 2 Sentence 2 Number 7; and

8. the natural or legal person or the partnership with legal capacity with which the training or internship contract has been concluded in the case of Section 1 Subsection 2 Sentence 2 Number 8 (training organisation).

(2) Employment within the meaning of the provisions set out below covers any form of activity that a woman engages in as part of an employment relationship under Section 1 Subsection 2 Sentence 1, or that a woman engages in under Section 1 Subsection 2 Sentence 2 as part of her legal relationship with her employer under Section 2 Subsection 1 Sentence 2.

(3) A work ban within the meaning of this Act is only a work ban under Sections 3 to 6, Section 10 Subsection 3, Section 13 Subsection 1 Sentence 3 and Section 16. In the case of a woman who works from home and a woman of equal status, the work ban is replaced by a ban on the instruction to perform home work under Sections 3 and 8, Section 13 Subsection 2 and Section 16. For a woman who, because of her economic dependence, is to be regarded as having a status similar to that of an employee, the work ban under Sentence 1 is replaced by exemption from the contractually agreed performance obligation; the woman may, however, declare her willingness to provide the contractually agreed performance vis-à-vis the person or company equivalent to the employer within the meaning of Subparagraph 1 Sentence 2 Number 7.

(4) Working alone within the meaning of this Act occurs when the employer has a woman work on the premises within their area of responsibility without ensuring that she is able to freely leave the workplace or reach help at any time.

(5) Remuneration within the meaning of this Act shall be remuneration paid under Section 14 of the Fourth Book of the Code of Social Law in conjunction with an ordinance issued based on Section 17 of the Fourth Book of the Social Code. For women within the meaning of Section 1 Subsection 2 Sentence 2, their respective remuneration pay shall be deemed to be their pay.

Section 2 Health Protection

Subsection 1 Occupational health and safety in connection with working hours

§ 3

Periods of protection before and after childbirth

(1) The employer may not have a pregnant woman perform work in the last six weeks before childbirth (period of protection before childbirth) if the woman does not expressly declare her willingness to do so. The woman may withdraw her declaration under Sentence 1 at any time with effect for the future. For the calculation of the period of protection before childbirth, the expected date of delivery is the deciding factor, as derived from the medical certificate or the certificate issued by a midwife or obstetric nurse. If the woman does not give birth on the expected date of delivery, the period of protection before childbirth is shortened or extended accordingly.

(2) The employer may not have a woman perform work until eight weeks after the birth (period of protection after childbirth). The period of protection after childbirth is extended to twelve weeks

1. in the event of a premature birth;
2. in the event of a multiple birth; and
3. if the child is medically diagnosed with a disability within the meaning of Section 2 Subsection 1 Sentence 1 of the Ninth Book of the Social Code within eight weeks after delivery.

In the event of a premature birth, the period of protection after delivery according to Sentence 1 or Sentence 2 shall be extended by the reduction of the period of protection

before delivery according to Subparagraph 1 Sentence 4. According to Sentence 2 Number 3, the period of protection after childbirth is only extended if the woman submits an application to this effect.

(3) The training organisation may allow a woman within the meaning of Section 1 Subsection 2 Sentence 2 Number 8 to be active as part of her school or university education during the period of protection after childbirth if the woman expressly requests this of her training organisation. The woman may revoke her request at any time with effect for the future.

(4) The employer may have a woman perform work after the death of her child after the expiry of the first two weeks after childbirth if the woman expressly requests this; and there is no medically certified reason to the contrary.

The woman may withdraw her request under Sentence 1 Number 1 at any time with effect for the future.

§ 4

Ban on additional work; rest period

(1) An employer may not employ a pregnant or breastfeeding woman who is 18 years of age or older to perform work for a period of more than eight and a half hours a day or more than 90 hours in a fortnight. An employer may not have a pregnant or breastfeeding woman under the age of 18 perform work for a period of more than eight hours a day or more than 80 hours in a fortnight. Sundays are included in the fortnight. The employer may not have a pregnant or breastfeeding woman perform work in excess of the contractually agreed weekly working hours on average over a monthly period. If there are several employers, the working hours must be added together.

(2) The employer must grant the pregnant or breastfeeding woman an uninterrupted rest period of at least eleven hours after the end of each day's work.

§ 5

Ban on night work

(1) The employer may not have a pregnant or breastfeeding woman work between 8 pm and 6 am. The employer may have her work until 10 pm providing the requirements of Section 28 are met.

(2) The training organisation may not have a pregnant or breastfeeding woman within the meaning of Section 1 Subsection 2 Sentence 2 Number 8 be active between 8 pm and 6 am as part of her school or university education. The training organisation may have her attend courses until 10 pm, if

1. the woman expressly declares her willingness to do so;
2. attendance is required at that time for training purposes; and
3. in particular, there is no irresponsible risk to the pregnant woman or her child from working alone.

The pregnant or breastfeeding woman may withdraw her declaration under Sentence 1 Number 1 at any time with effect for the future.

§ 6

Ban on work on Sundays and public holidays

(1) The employer may not have a pregnant or breastfeeding woman work between 8 pm and 6 am. The employer may only have her work on Sundays and public holidays if

1. the woman expressly declares her willingness to do so;
2. an exception to the general ban on work on Sundays and public holidays under Section 10 of the Working Hours Act is approved;
3. the woman is granted an alternative day of rest each week following an uninterrupted night's rest of at least eleven hours; and

4. in particular, there is no irresponsible risk to the pregnant woman or her child from working alone.

The pregnant or breastfeeding woman may withdraw her declaration under Sentence 1 Number 1 at any time with effect for the future.

(2) The training organisation may not have a pregnant or breastfeeding woman within the meaning of Section 1 Subsection 2 Sentence 2 Number 8 work on Sundays or public holidays as part of her school or university education. The training organisation may allow her to attend courses on Sundays and public holidays if

1. the woman expressly declares her willingness to do so;
2. attendance is required at that time for training purposes;
3. the woman is granted an alternative day of rest each week following an uninterrupted night's rest of at least eleven hours; and
4. in particular, there is no irresponsible risk to the pregnant woman or her child from working alone.

The pregnant or breastfeeding woman may withdraw her declaration under Sentence 1 Number 1 at any time with effect for the future.

§ 7

Release time for medical check-ups and breastfeeding

(1) The employer shall release a woman from work for the time required to have medical check-ups in connection with pregnancy and maternity under statutory health insurance. The same applies to women who do not have statutory health insurance.

(2) The employer shall give a breastfeeding woman release time at her request during the first twelve months after childbirth for the time required for breastfeeding, amounting to at least twice a day for half an hour or once a day for one hour. In the case of a continuous working period of more than eight hours, the woman is to be allowed, on request, 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.

§ 8

Restriction of home work

(1) The contracting entity or intermediate supervisor may only assign home work to a pregnant woman who works from home or to a woman of equal status to such an extent and with such completion deadlines that the work can be performed during an eight-hour working day on weekdays.

(2) The contracting entity or intermediate supervisor may only assign home work to a breastfeeding woman who works from home or to a woman of equal status to such an extent and with such completion deadlines that the work can be performed during a seven-hour working day on weekdays.

Subsection 2

Workplace-related occupational health and safety

§ 9

Arrangement of working conditions; irresponsible risks

(1) When arranging the conditions in which a pregnant or breastfeeding woman works, the employer must implement all measures required based on the risk assessment under Section 10 in order to protect her physical and mental health and that of her child. The employer shall review the effectiveness of the measures and, if necessary, shall adapt them to changing circumstances. A woman shall be enabled to continue her work during pregnancy, after childbirth and during the period of breastfeeding to the extent that it is

responsibly possible under the provisions of this Act. Disadvantages due to pregnancy, childbirth or breastfeeding are to be avoided or compensated for.

(2) The employer shall organise the working conditions in such a way that risks to a pregnant or breastfeeding woman or her child are avoided as far as possible and any irresponsible risk is excluded. A risk is defined as irresponsible if the likelihood of a health impairment occurring is unacceptable in view of its anticipated severity. An irresponsible risk shall be deemed to be excluded if the employer complies with all requirements that are likely to result in the health of a pregnant or breastfeeding woman or her child not being adversely affected.

(3) The employer shall ensure that the pregnant or breastfeeding woman can briefly interrupt her work at the workplace to the extent necessary for her. The employer must also ensure that the pregnant or breastfeeding woman can lie down, sit down and rest in appropriate conditions during breaks and work interruptions.

(4) All measures taken by the employer under this subsection and the assessment of working conditions under Section 10 shall be in line with the state of the art, occupational medicine and hygiene as well as other established scientific insights. The employer shall take into account in their measures the rules and findings determined by the Maternity Protection Committee and published in the Joint Ministerial Gazette under Section 30 Subsection 4; if these rules are complied with and these findings are observed, it shall be assumed that the requirements set out in this Act are met.

(5) The employer may commission reliable and competent persons in writing to perform tasks incumbent upon the employer under this subsection on the persons' own responsibility.

(6) The employer may not impose costs for measures under this Act on persons in their employment. The employer shall bear the costs of any certificates and written confirmations which the pregnant or breastfeeding woman is required to produce at the employer's request.

§ 10

Assessment of working conditions; protective measures

(1) As part of the assessment of working conditions under Section 5 of the Occupational Health and Safety Act [*Arbeitsschutzgesetz – ArbSchG*], the employer shall, for each activity,

1. assess the hazards in terms of their nature, duration and magnitude to which a pregnant or breastfeeding woman or her child is or may be exposed; and
2. determine, taking into account the outcome of the risk assessment referred to in Number 1, whether no protective measures are likely to be required for a pregnant or breastfeeding woman or her child or whether
 - a) a reorganisation of the working conditions under Section 13 Subsection 1 Sentence 1 will be necessary; or
 - b) a continuation of the woman's work at this workplace will not be possible.

In the case of similar working conditions, the assessment of one workplace or activity is sufficient.

(2) As soon as a woman has informed the employer that she is pregnant or breastfeeding, the employer shall immediately determine the protective measures required in accordance with the risk assessment referred to in Subparagraph 1. In addition, the employer shall offer the woman an interview on the subject of further adaptations of her working conditions.

(3) The employer may only allow a pregnant or breastfeeding woman to perform those activities for which they have taken the necessary protective measures under Subparagraph 2 Sentence 1.

§ 11

Inadmissible activities and working conditions for pregnant women

(1) The employer must not allow a pregnant woman to carry out activities or expose her to working conditions where she comes into contact or might come into contact with hazardous

substances to such an extent that this poses an irresponsible risk to her or her child. An irresponsible risk within the meaning of Sentence 1 exists in particular if the pregnant woman carries out activities or is exposed to working conditions in which she comes into contact or might come into contact with the following hazardous substances:

1. hazardous substances which, according to the criteria listed in Appendix I to Regulation (EC) Number 1272/2008 of the European Parliament and of the Council of 16 December 2008 on the classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) Number 1907/2006 (OJ L 353, 31.12.2008, p. 1), are to be assessed as
 - a. toxic to reproduction according to category 1A, 1B or 2 or according to the additional category for effects on or via lactation;
 - b. germ cell mutagenic according to category 1A or 1B;
 - c. a carcinogen according to category 1A or 1B;
 - d. specifically target organ toxic after a single exposure according to category 1; or
 - e. acutely toxic according to category 1, 2 or 3;
2. lead and lead derivatives, insofar as there is a risk that these substances will be absorbed by the human body; or
3. hazardous substances that have been identified as substances that can potentially be teratogenic, even if the workplace regulations are complied with.

An irresponsible risk within the meaning of Sentence 1 or 2 shall be deemed to be excluded in particular

1. if
 - a. the workplace-related requirements for the respective hazardous substance are complied with and the hazardous substance is one that is designated as a substance that has been assessed as safe from a teratogenic point of view, providing the workplace-related specifications are complied with; or
 - b. the hazardous substance is not able to cross the placental barrier, or damage is excluded from occurring to the foetus for any other reasons; and
2. if the hazardous substance is not assessed as toxic to reproduction according to the criteria of Annex I to Regulation (EC) No. 1272/2008 under the additional category for effects on or via lactation.

The scientific findings identified by the Maternity Protection Committee shall be observed.

(2) The employer may not allow a pregnant woman to perform any activities or expose her to any working conditions in which she comes into contact or might come into contact with biological substances under risk group 2, 3 or 4 within the meaning of Section 3 Subsection 1 of the Biological Substances Ordinance [*Biostoffverordnung* – *BiostoffV*] to a degree that poses an irresponsible risk to her or her child. An irresponsible risk within the meaning of Sentence 1 exists in particular if the pregnant woman carries out activities or is exposed to working conditions in which she comes into contact or might come into contact with the following biological substances:

1. biological substances that are to be classified in risk group 4 within the meaning of Section 3 Subsection 1 of the Biological Substances Ordinance; or
2. rubella virus or *Toxoplasma*.

Sentences 1 and 2 shall also apply if the contact with biological substances within the meaning of Sentence 1 or 2 necessitates or potentially necessitates therapeutic measures which themselves pose an irresponsible risk. An irresponsible risk within the meaning of Sentence 1 or 2 shall be deemed to be excluded in particular if the pregnant woman has sufficient immune protection.

(3) The employer must not allow a pregnant woman to carry out activities or expose her to working conditions where she is or may be exposed to physical impacts to such an extent that this poses an irresponsible risk to her or her child. Physical impacts within the meaning of Sentence 1 shall be considered in particular to be:

1. ionising and non-ionising radiation;
2. shocks, vibrations and noise;
3. heat, cold and wet.

(4) The employer must not allow a pregnant woman to carry out activities or expose her to working conditions where she is or may be exposed to a burdensome working environment to such an extent that this poses an irresponsible risk to her or her child. In particular, the employer may not allow a pregnant woman to carry out any activities

1. in rooms with overpressure within the meaning of Section 2 of the Compressed Air Ordinance [*Druckluftverordnung* – DruckLV];
2. in rooms with an oxygen-reduced atmosphere; or
3. in underground mining.

(5) The employer must not allow a pregnant woman to carry out activities or expose her to working conditions in which she is or may be exposed to physical stress or mechanical impact to such an extent that this poses an irresponsible risk to her or her child. In particular, the employer may not allow a pregnant woman to perform any activities in which

1. she has 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;
2. she has to lift, hold, move or transport loads resulting in an equivalent physical strain involved in the work under Number 1;
3. she is required to 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;
4. she has to stretch considerably, bend over, constantly squat, stoop or adopt other forced postures;
5. she is deployed on means of transport if this poses an irresponsible risk to her or her child;
6. there is a risk of accidents, especially slips, trips, falls or physical assaults occurring that pose an irresponsible risk to her or her child;
7. she has to wear protective equipment and this puts her under stress; or
8. there is a risk of an increase in pressure in the abdominal cavity, especially when performing activities that involve particular strain on the feet.

(6) The employer may not allow a pregnant woman to carry out the following activities:

1. piecework or other work where a higher rate of pay can be achieved through an increased pace of work;

2. assembly line work; or
3. timed work with a prescribed pace of work if the nature of the work or the pace of work poses an irresponsible risk to the pregnant woman or her child.

§ 12

Inadmissible activities and working conditions for breastfeeding women

(1) The employer must not allow a pregnant woman to carry out activities or expose her to working conditions where she comes into contact or might come into contact with hazardous substances to such an extent that this poses an irresponsible risk to her or her child. An irresponsible risk within the meaning of Sentence 1 exists in particular if the breastfeeding woman carries out activities or is exposed to working conditions in which she comes into contact or might come into contact with the following hazardous substances:

1. hazardous substances which, according to the criteria listed in Appendix I to Regulation (EC) Number 1272/2008, are toxic to reproduction according to the additional category for effects on or via lactation; or
2. lead and lead derivatives, insofar as there is a risk of these substances being absorbed by the human body.

(2) The employer may not allow a breastfeeding woman to perform any activities or expose her to any working conditions in which she comes into contact or might come into contact with biological substances under risk group 2, 3 or 4 within the meaning of Section 3 Subsection 1 of the Biological Substances Ordinance [*Biostoffverordnung* – BiostoffV] to a degree that poses an irresponsible risk to her or her child. An irresponsible risk within the meaning of Sentence 1 exists in particular if the breastfeeding woman carries out activities or is exposed to working conditions in which she comes into contact or might come into contact with biological substances to be classified in risk group 4 within the meaning of Section 3 Subsection 1 of the Biological Substances Ordinance. Sentences 1 and 2 shall also apply if the contact with biological substances within the meaning of Sentence 1 or 2 necessitates or potentially necessitates therapeutic measures which themselves pose an irresponsible risk. An irresponsible risk within the meaning of Sentence 1 or 2 shall be deemed to be excluded if the breastfeeding woman has sufficient immune protection.

(3) The employer must not allow a breastfeeding woman to carry out activities or expose her to working conditions where she is or may be exposed to physical impacts to such an extent that this poses an irresponsible risk to her or her child. Physical impacts within the meaning of Sentence 1 shall include in particular ionising and non-ionising radiation.

(4) The employer must not allow a breastfeeding woman to carry out activities or expose her to working conditions where she is or may be exposed to a burdensome working environment to such an extent that this poses an irresponsible risk to her or her child. In particular, the employer may not allow a breastfeeding woman to carry out any activities

1. in rooms with overpressure within the meaning of Section 2 of the Compressed Air Ordinance [*Druckluftverordnung* – DruckLV]; or
2. in underground mining.

(5) The employer may not allow a breastfeeding woman to carry out the following activities:

1. piecework or other work where a higher rate of pay can be achieved through an increased pace of work;
2. assembly line work; or
3. timed work with a prescribed pace of work if the nature of the work or the pace of work poses an irresponsible risk to the breastfeeding woman or her child.

§ 13

Ranking of protective measures: change of working conditions, change of workplace and occupational work ban

(1) If irresponsible risks within the meaning of Section 9, Section 11 or Section 12 are identified, the employer shall take protective measures for each activity of a pregnant or breastfeeding woman in the following order of priority:

1. The employer shall modify the working conditions for pregnant or breastfeeding women by taking protective measures under Section 9 Subsection 2.

2. If the employer is unable to eliminate irresponsible risks to the pregnant or breastfeeding woman by rearranging the working conditions under Number 1, or if a rearrangement is unreasonable due to the proven disproportionate expense, the employer shall assign the woman to another suitable workplace if they can provide such a workplace and it is reasonable to expect the pregnant or breastfeeding woman to work at this workplace.

3. If the employer is unable to eliminate irresponsible risks to the pregnant or breastfeeding woman either by protective measures according to Number 1 or by a change of workplace according to Number 2, the employer may not continue to have the pregnant or breastfeeding woman perform work.

(2) The contracting entity or intermediate supervisor may not assign home work to pregnant or breastfeeding women if irresponsible risks cannot be eliminated by means of protective measures under Subparagraph 1 Number 1.

§ 14

Documentation and notification on the part of the employer

(1) The employer shall document the assessment of the working conditions under Section 10 in order to show the following:

1. the result of the risk assessment under Section 10 Subsection 1 Sentence 1 Number 1 and the need for protective measures under Section 10 Subsection 1 Sentence 1 Number 2;

2. the determination of the necessary protective measures under Section 10 Subsection 2 Sentence 1 as well as the result of the review of these measures under Section 9 Subsection 1 Sentence 2; and

3. the offer of an interview with the woman regarding further adaptations of her working conditions under Section 10 Subsection 2 Sentence 2 or the timing of such an interview.

If the assessment under Section 10 Subsection 1 shows that the pregnant or breastfeeding woman or her child is not and cannot be exposed to any risk within the meaning of Section 9 Subsection 2, it shall be sufficient to note this finding in any documentation of the assessment of working conditions under Section 5 of the Occupational Health and Safety Act [*Arbeitsschutzgesetz – ArbSchG*] already drawn up for the woman's workplace or activity.

(2) The employer shall inform all persons in their employ of the result of the risk assessment under Section 10 Subsection 1 Sentence 1 Number 1 and of the need for protective measures under Section 10 Subsection 1 Sentence 1 Number 2.

(3) The employer shall inform a pregnant or breastfeeding woman of the risk assessment under Section 10 Subsection 1 Sentence 1 Number 1 and of the associated protective measures required for her under Section 10 Subsection 2 Sentence 1 in conjunction with Section 13.

§ 15

Notifications and proofs to be provided on the part of pregnant and breastfeeding women

- (1) A pregnant woman is to inform her employer of her pregnancy and the expected date of delivery as soon as she knows she is pregnant. A breastfeeding woman is to tell her employer as early as possible that she is breastfeeding.
- (2) At the employer's request, a pregnant woman is to produce a medical certificate or the certificate issued by a midwife or obstetric nurse as proof of her pregnancy. The certificate of pregnancy shall include the expected date of delivery.

Subsection 3 Medical health protection

§ 16

Medical work ban

- (1) An employer may not have a pregnant woman perform work if a medical certificate indicates that her health or the health of her child would be endangered if she continued to work.
- (2) The employer may not have a woman perform work who, according to a medical certificate, is not fully able to perform work that exceeds her work capacity in the first months after childbirth.

Section 3 Protection from dismissal

§ 17

Ban on dismissal

- (1) An employer may not dismiss a woman
1. during her pregnancy;
 2. until the expiry of four months after a miscarriage after the twelfth week of pregnancy; and
 3. until the end of their period of protection after childbirth, but at least up until the expiry of four months after childbirth;

if the employer is aware of the pregnancy, the miscarriage after the twelfth week of pregnancy or the childbirth at the time of the dismissal or if the information is communicated to them within two weeks after receipt of the notice of dismissal. Exceeding this time limit is not detrimental if the woman is not responsible for the delay and the notification is then made without delay. Sentences 1 and 2 shall apply analogously to preparatory measures taken by the employer with a view to dismissing the woman.

(2) The supreme federal state authority responsible for occupational health and safety or the body designated by it may exceptionally declare dismissal permissible in special cases not connected with the condition of the woman during pregnancy, after a miscarriage after the twelfth week of pregnancy or after childbirth. The notice of dismissal must be issued in writing and must state the reason for dismissal.

(3) The contracting entity or intermediate supervisor may not exclude a woman who works from home from the assignment of home work against her will during the periods referred to in Section 1 Subsection 1; Sections 3, 8, 11 and 12, Section 13 Subsection 2 and Section 16 shall remain unaffected. Subparagraph 1 shall also apply to a woman who has an equivalent status to that of a woman working from home and whose equivalent status also extends to Section 29 of the Home Work Act [*Heimarbeitsgesetz* – HAG]. Subparagraph 2 shall apply analogously to a woman who works from home and to a woman of equivalent status.

Section 4 Benefits

§ 18

Maternity protection pay

A woman who is not allowed to work at all or in part because of a work ban outside the periods of protection before or after childbirth receives maternity protection pay from her employer. Maternity protection pay is calculated as the average earnings of the last three calendar months prior to the start of pregnancy. This shall also apply if, because of such a work ban, the employment or the type of remuneration changes. 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.

§ 19

Maternity allowance

(1) A woman who has statutory health insurance shall receive the maternity allowance under the provisions of the Fifth Book of the Social Code or under the provisions of the Second Act on Farmers' Health Insurance (KVLG) for the periods of protection before and after childbirth and for the day of childbirth.

(2) A woman who does not have statutory health insurance shall receive the maternity allowance at the expense of the Federal Government for the periods of protection before and after childbirth as well as for the day of childbirth in analogous application of the provisions of the Fifth Book of the Social Code on the maternity allowance, but not exceeding a total of EUR 210. The maternity allowance is paid to the woman on application by the Federal Office for Social Security. If the employment ends as a result of termination under Section 17 Subsection 2, the woman shall receive maternity pay by applying Sentences 1 and 2 analogously for the period after the end of the employment.

§ 20

Supplement to the maternity allowance

(1) A woman receives a maternity allowance supplement from her employer for the periods of protection before and after childbirth as well as for the day of childbirth. The maternity allowance supplement is the difference between EUR 13 and the average daily pay, less statutory deductions, of the last three calendar months before the start of the period of protection before the birth. A woman whose employment begins during the periods of protection before or after childbirth is paid the maternity allowance supplement from the beginning of employment.

(2) If a woman has more than one employer, calculation of the employer supplement according to Subparagraph 1 is based on the average of the total pay received from all employers. The resulting amount shall be paid by the employers on a pro rata basis according to the amount of the average pay per calendar day paid by each of them.

(3) If the employment ends as a result of dismissal under Section 17 Subsection 2, the woman shall receive the maternity allowance supplement under Subparagraph 1 from the body responsible for paying the maternity allowance for the period after the end of the employment. Sentence 1 shall apply analogously if the employer is unable to pay the allowance under Subparagraph 1 due to an insolvency within the meaning of Section 165 Subsection 1 Sentence 2 of the Third Book of the Social Code.

§ 21

Determination of the average pay

(1) When determining the period for calculating the average pay for the benefits under Sections 18 to 20, periods during which the woman did not receive any earnings due to absence through no fault of her own shall not be included. If the employment lasted less than three months, the calculation shall be based on the actual period of employment.

(2) For the purpose of determining the average pay for the benefits under Sections 18 to 20, the following shall not be included:

1. remuneration paid on a one-off basis within the meaning of Section 23a of the Fourth Book of the Social Code;
 2. reductions in remuneration that occur during the calculation period as a result of short-time work, loss of working hours or absence from work through no fault of the employee; and
 3. in the event of termination of parental leave under the Federal Parental Allowance and Parental Leave Act [*Bundeselterngeld-und Elternzeitgesetz* – BEEG], the remuneration from part-time employment earned during parental leave prior to the termination of parental leave, insofar as the average pay is higher without taking into account the periods during which this remuneration was earned.
- (3) If it is not possible to determine the average pay based on Subparagraphs 1 and 2, the average daily pay of a person employed in a comparable position shall be taken as a basis.
- (4) In the event of a permanent change in the amount of pay, the new amount of pay shall be used as a basis for determining the average pay for the benefits under Sections 18 to 20, namely
1. for the entire calculation period if the change takes effect during the calculation period; or
 2. from the effective date of the change in the amount of pay, if the change in the amount of pay takes effect after the calculation period.

§ 22

Benefits during parental leave

During parental leave, claims to benefits under Sections 18 and 20 arising from employment suspended due to parental leave are excluded. If the woman works part-time during parental leave, only the remuneration from this part-time work is to be taken as a basis for determining the average pay.

§ 23

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

- (1) The pregnant or breastfeeding woman must not suffer any loss of pay as a result of the granting of release time under Section 7. The woman may not be required to make up release time, whether in advance or later. Nor may such time be counted towards breaks as stipulated in the Working Hours Act [*Arbeitszeitgesetz* – ArbZG] or other regulations.
- (2) The contracting entity or intermediate supervisor shall pay a woman working from home and a woman with an equivalent status a remuneration for the breastfeeding period which is to be calculated at the rate of the average hourly pay for each working day. If a woman works for more than one contracting entity or intermediate supervisor, the latter shall pay the remuneration for the breastfeeding period in equal shares. The provisions under Sections 23 to 25 of the Home Work Act [*Heimarbeitsgesetz* – HAG] on the protection of remuneration shall apply.

§ 24

Continued entitlement to holiday leave in case of work bans

For the purpose of calculating the entitlement to paid holiday leave, periods of absence due to a work ban shall be regarded as periods of employment. If a woman did not receive her leave or did not receive it in full before the work bans came into effect, she can claim her remaining annual leave in the current or subsequent year on expiry of the work ban.

§ 25

Continued work after the end of the work ban

On expiry of a work ban within the meaning of Section 2 Subsection 3, a woman has the right to be employed under the contractually agreed conditions.

Section 5 Implementation of the Act

§ 26 Posting of the Act

(1) 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.

(2) In the case of a woman working from home or her equivalent, the contracting entity or intermediate supervisor shall display or post a copy of this Act in a suitable place for inspection on the premises where home work is issued or accepted. Subparagraph 1 Sentence 2 shall apply accordingly.

§ 27 Notification and retention obligations on the part of the employer, prohibition of disclosure by the persons entrusted with supervision

(1) The employer shall notify the supervisory authority without delay

1. when they have been informed by a woman
 - a) that she is pregnant; or
 - b) that she is breastfeeding, unless the employer has already notified the supervisory authority of that woman's pregnancy; or
2. if the employer intends to have a pregnant or breastfeeding woman work
 - a) until 10 pm according to the provisions of Section 5 Subsection 2 Sentence 2 Number 3; or
 - b) on Sundays and public holidays according to the provisions of Section 6 Subsection 1 Sentence 2 Number 3 or Subsection 2 Sentence 2 Number 3; or
 - c) at a prescribed pace within the meaning of Section 11 Subsection 6 Sentence 3 or Section 12 Subsection 5 Sentence 3.

The employer shall not disclose this information to third parties without being authorised to do so.

(2) The employer shall, on request, provide the supervisory authority with the information necessary for that authority to fulfil its duties. The employer must provide the information truthfully, completely and in good time.

(3) On request, the employer shall submit or send documentary evidence of the following to the supervisory authority for inspection:

1. the names of pregnant or breastfeeding women in their employment;
2. the nature and period of their employment;
3. the pay that they have received;
4. the results of the assessment of the working conditions under Section 10; and
5. any other information required under Subparagraph 2.

(4) The person required to provide information may refuse to answer such questions or to produce such documents where this would expose them or one of their relatives referred to in Section 383 Subsection 1 Sentence 1 to 3 of the Code of Civil Procedure [*Zivilprozessordnung* – ZPO] to the risk of prosecution for a criminal offence or regulatory offence. The person required to provide the information shall be notified of this.

(5) The employer shall keep the documents referred to in Subparagraph 3 at least until the expiry of two years after the last registration.

(6) The persons of the supervisory authority entrusted with monitoring may only disclose business and trade secrets of which they have become aware in the course of their monitoring activities to the competent authorities in cases regulated by law or for the prosecution of violations of the law or for the fulfilment of tasks regulated by law for the protection of the environment. Insofar as business and trade secrets constitute information about the environment within the meaning of the Environmental Information Act [*Umweltinformationsgesetz* – UIG], the authority to disclose them shall be governed by the Environmental Information Act.

§ 28

Official approval procedure for work between 8 pm and 10 pm

(1) By way of derogation from Section 5 Subsection 1 Sentence 1, the supervisory authority may, at the employer's request, approve the pregnant or breastfeeding woman working between 8 pm and 10 pm if

1. the woman expressly declares her willingness to do so;
2. there is no medically certified reason to stop her working until 10 pm; and
3. in particular, there is no irresponsible risk to the pregnant woman or her child from working alone.

The application shall be accompanied by documentation of the assessment of the working conditions under Section 14 Subsection 1. The pregnant or breastfeeding woman may withdraw her declaration under Sentence 1 Number 1 at any time with effect for the future.

(2) If the supervisory authority does not reject the application or does not impose a ban on work between 8 pm and 10 pm, the employer may have the woman work subject to the conditions of Subparagraph 1. The supervisory authority shall notify the employer without delay after receipt of the application if the documents required for the application under subparagraph 1 are incomplete. The supervisory authority may temporarily impose a ban on work to the extent necessary to ensure the protection of the health of the woman or her child.

(3) If the supervisory authority does not reject the application within six weeks after receipt of the complete application, the approval shall be deemed to have been granted. On request, the employer shall receive certification of the granting of the deemed approval (Section 42a of the Administrative Procedure Act – *Verwaltungsverfahrensgesetz* – VwVfG).

(4) In all other respects, the provisions of the Administrative Procedure Act shall apply.

§ 29

Responsibility and powers of the supervisory authorities, annual report

(1) Supervision of the implementation of the provisions of this Act and of the regulations issued on the basis of this Act shall be the responsibility of the authorities competent under federal state law (supervisory authorities).

(2) The supervisory authorities shall have the same powers as the persons charged with supervision under Section 22 Subsections 2 and 3 of the Occupational Health and Safety Act (*Arbeitsschutzgesetz* – ArbSchG). The fundamental right of inviolability of the home (Section 13 of the Basic Law – *Grundgesetz* – GG) is restricted in this respect.

(3) The supervisory authority may in individual cases order the necessary measures to be taken by the employer to fulfil the obligations arising from Section 2 of this Act and from the statutory orders issued based on Section 31 Subsections 1 to 5. In particular, the supervisory authority may:

1. in particularly justified individual cases, grant exemptions from the ban on additional work under Section 4 Subsection 1 Sentence 1 Number 2 and 4, and from the ban on night work between 10 pm and 6 am under Section 5 Subsection 1 Sentence 1 and Subsection 2 Sentence 1, if

- a) the woman expressly declares her willingness to do so;
 - b) there is no medically certified reason to stop her working;
 - c) in the cases referred to in Section 5 Subsection 1 Sentence 1 or Subsection 2 Sentence 1, in particular, an irresponsible risk to the pregnant woman or her child from working alone is excluded;
2. prohibit an employer from having a pregnant or breastfeeding woman work
- a) between 8 pm and 10 pm in accordance with Section 5 Subsection 2 Sentence 2; or
 - b) on Sundays and public holidays in accordance with Section 6 Subsection 1 Sentence 2, or Section 6 Subsection 2 Sentence 2;
3. request details of leave for breastfeeding under Section 7 Subsection 2 and the provision of premises suitable for breastfeeding;
4. request details of the permissible quantity of work under Section 8;
5. request protective measures under Section 9 Subsections 1 to 3 and Section 13;
6. request details of the nature and scope of the assessment of working conditions under Section 10;
7. ban certain activities or working conditions under Section 11 or Section 12;
8. grant exemptions from the provisions under Section 11 Subsection 6 Sentences 1 and 2 and Section 12 Subsection 5 Sentences 1 and 2 if the nature of the work and the pace of work do not pose an irresponsible risk to the pregnant or breastfeeding woman or to her child; and
9. request details of the nature and scope of the documentation and information under Section 14.

The pregnant or breastfeeding woman may withdraw her request under Sentence 2 Number 1 at any time with effect for the future.

(4) The supervisory authority shall advise the employer on the fulfilment of their obligations under this Act and the persons employed by them on their rights and obligations under this Act; this shall not apply to the rights and obligations under Sections 18 to 22.

(5) For establishments and administrations in the area of responsibility of the Federal Ministry of Defence, supervision under Subparagraph 1 shall be carried out by the Federal Ministry of Defence or the agency designated by it at its own responsibility.

(6) The competent supreme federal state authorities shall publish an annual report on the supervisory activities of their subordinate authorities. The annual report shall also include information on the fulfilment of information obligations arising from international conventions or acts of law of the European Union as they relate to maternity protection.

§ 30

Maternity Protection Committee

(1) A Maternity Protection Committee shall be established at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth with suitable persons representing public and private employers, training organisations, trade unions, student bodies and federal state authorities as well as other suitable persons, in particular from the academic community. The committee shall not have more than 15 members. A substitute member shall be appointed for each member. Membership of the Maternity Protection Committee is unpaid.

(2) The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall appoint the members of the Maternity Protection Committee and the substitute members in

agreement with the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Health and the Federal Ministry of Education and Research. The Committee shall adopt its own rules of procedure and elect a chairperson from among its members. The rules of procedure and the election of the chairperson require the approval of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Approval shall be granted in agreement with the Federal Ministry of Labour and Social Affairs and the Federal Ministry of Health.

(3) The responsibilities of the Maternity Protection Committee include

1. determining and justifying the nature, extent and duration of the possible irresponsible risks to a pregnant or breastfeeding woman and her child in accordance with scientific findings;
2. establishing safety-related, occupational health and hygiene rules for the protection of pregnant or breastfeeding women and their children; and
3. advising the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on all issues relating to maternity protection.

The committee shall work closely with the committees under Section 18 Subsection 2 Sentence 5 of the Occupational Health and Safety Act [*Arbeitsschutzgesetz – ArbSchG*].

(4) After review by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, by the Federal Ministry of Labour and Social Affairs, by the Federal Ministry of Health and by the Federal Ministry of Education and Research, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth may, in agreement with the other federal ministries referred to in this subparagraph, publish the rules and findings drawn up by the Maternity Protection Committee under subparagraph 3 in the Joint Ministerial Gazette.

(5) The federal ministries and the supreme federal state authorities may send representatives to the meetings of the Maternity Protection Committee. They shall be given the floor at the meeting on request.

(6) The business of the Maternity Protection Committee shall be conducted by the Federal Office of Family Affairs and Civil Society Functions.

§ 31

Issuance of legal ordinances

The Federal Government is authorised to issue ordinances to regulate the following with the consent of the Federal Council:

1. more detailed provisions on the concept of irresponsible risk under Section 9 Subsection 2 Sentence 2 Number 3;
2. more detailed provisions on the implementation of the necessary protective measures under Section 9 Subsections 1 and 2 and Section 13;
3. more detailed provisions on the nature and scope of the assessment of working conditions under Section 10;
4. determinations regarding unlawful activities and working conditions within the meaning of Section 11 or Section 12 or regarding other activities and working conditions which are unlawful under this Act;
5. more detailed provisions on documentation and information under Section 14;
6. more detailed provisions for determining the average pay within the meaning of Sections 18 to 22; and
7. more detailed provisions on the required content of the notification, its form, the manner of transmission and the recipients of the information to be reported by the employer under Section 27.

Section 6
Rules on fines, penal provisions

§ 32
Fines

(1) A regulatory offence is committed by anyone who intentionally or negligently

1. has a woman work in contravention of Section 3 subparagraph 1 Sentence 1, also in conjunction with Sentence 4, in contravention of Section 3 Subparagraph 2 Sentence 1, also in conjunction with Sentence 2 or 3, in contravention of Section 3 Subparagraph 3 Sentence 1, Section 4 Subparagraph 1 Sentence 1, 2 or 4 or Section 5 Subparagraph 1 Sentence 1, Section 6 Subparagraph 1 Sentence 1, Section 13 Subparagraph 1 Number 3 or Section 16;
2. fails to grant a rest period, or does not do so properly or in a timely manner, in contravention of Section 4 subparagraph 2;
3. has a woman work in contravention of Section 5 Subparagraph 2 Sentence 1 or Section 6 Subparagraph 2 Sentence 1;
4. does not release a woman from work in contravention of Section 7 subparagraph 1 Sentence 1, also in conjunction with Sentence 2, or in contravention of Section 7 Subparagraph 2 Sentence 1;
5. assigns home work in contravention of Section 8 or Section 13 Subparagraph 2; fails to assess a hazard or fails to do so properly or in good time or fails to carry out an investigation properly or in good time in contravention of Section 10 Subparagraph 1 Sentence 1, also in conjunction with an ordinance under Section 31 Number 3,
6. fails to determine a protective measure, fails to determine it correctly or fails to determine it in good time, in contravention of Section 10 Subparagraph 2 Sentence 1, also in conjunction with an ordinance under Section 31 Number 3;
7. in contravention of Section 10 Subparagraph 3, has a woman engage in any work other than that specified therein;
8. fails to prepare documentation, fails to prepare it correctly, fails to prepare it completely or fails to prepare it in time, in contravention of Section 14 Subparagraph 1 Sentence 1 in conjunction with an ordinance under Section 31 Number 5,
9. fails to provide information or provide it correctly, completely or in good time in contravention of Section 14 Subparagraph 2 or 3, in each case in conjunction with an ordinance under Section 31 Number 5,
10. fails to notify the supervisory authority, fails to notify it correctly or fails to notify it in good time in contravention of Section 27 Subparagraph 1 Sentence 1;
11. discloses information in contravention of Section 27 Subparagraph 1 Sentence 2;
12. fails to provide information or to provide it correctly, completely or in good time in contravention of Section 27 Subparagraph 2;
13. fails to submit a document, fails to submit it correctly or fails to submit it at all or in good time in contravention of Section 27 Subparagraph 3;
14. fails to retain a document or to retain it for at least two years in contravention of Section 27 Subparagraph 5;

15. contravenes an enforceable order under Section 29 Subparagraph 3 Sentence 1; or

16. contravenes an ordinance under Section 31 Number 4 or an enforceable order based on such an ordinance, insofar as the ordinance refers to this provision on fines for a specific offence.

(2) The regulatory offence may attract a fine of up to EUR 30,000 in the cases referred to in Subparagraph 1, Numbers 1 to 5, 8, 16 and 17, and a fine of up to EUR 5,000 in other cases.

§ 33

Penal provisions

Any person who commits an intentional act referred to in Section 32 Subparagraph 1 Number 1 to 5, 8, 16 and 17 and thereby endangers the health of a woman or her child shall be liable to a custodial sentence not exceeding one year or to a fine.

Section 7

Final provisions

§ 34

Evaluation report

The Federal Government shall submit an evaluation report on the effects of the Act to the German Bundestag by 1 January 2021. The main focus of the report shall be the manageability of the statutory regulations in the practice of businesses and authorities, the effectiveness and impact of the Act in terms of its scope of application, the impact of the provisions prohibiting additional work and night work and the prohibition of work on Sundays and public holidays, and the work of the Maternity Protection Committee. The report must not contain any personal data.