

## **Part I: General provisions**

### **§ 1 Scope**

This Act shall cover

- Female home-workers and persons similar to them (§ 1, paragraphs 1 and 2 of the Home-Work Act of 14 March 1951 - Official Gazette I, p. 191), inasmuch as they take part in piecework.

### **§ 2 Organisation of the work post**

(1) Persons who employ an expectant or nursing mother shall take the necessary precautions and measures to protect the life and health of the expectant or nursing mother in the installation and maintenance of the work post including that of machinery, tools and equipment and in the organisation of employment.

(2) Persons who employ an expectant or nursing mother in work where she has to constantly remain standing or walk shall provide a seat for her for short rests.

(3) Persons who employ an expectant or nursing mother in work where she has to sit constantly shall give her the opportunity to interrupt her work for brief periods.

(4) The Federal Government shall be authorised

1. to require the employer to install restrooms where these women can lie down and to take other measures to implement the principle laid down in paragraph 1 with a view to avoiding health hazards for the expectant or nursing mothers;

2. to lay down further details concerning the requirement for the employer to assess a hazard for expectant or nursing mothers, to carry out the necessary protective measures and to inform the working women involved in accordance with Articles 4 to 6 of Council Directive 92/85/EEC of 19 October 1992 on the implementation of measures to improve the safety and health protection of pregnant workers, women who have recently given birth and nursing mothers at work, which are to be transposed in this respect (ABI. EC no. L 348, p.1)

through a legal regulation subject to the approval of the Bundesrat [Upper House].

(5) Irrespective of the provisions issued by virtue of paragraph 4, the supervisory authority can, in special cases, order which precautions and measures are to be taken in order to implement paragraph 1.

## **Part II: Prohibition of employment**

### **§ 3 Prohibition of the employment of expectant mothers**

(1) Expectant mothers must not be employed inasmuch as it is confirmed by a medical certificate that the life or health of the mother or child would be jeopardised if employment were to continue.

(2) Expectant mothers must not be employed in the last six weeks prior to delivery unless they expressly state that they are prepared to perform work; that statement may be withdrawn at any time.

#### **§ 4 Further prohibition of employment**

(1) Expectant mothers must not be employed in jobs involving heavy physical work or in jobs in which they are exposed to the harmful effects of substances or radiation presenting a health hazard, of dust, gases or fumes, of heat, cold or moisture, of vibrations or of noise.

(2) In particular, expectant mothers must not be employed

1. in jobs in which loads of more than 5 kg are regularly lifted by hand, moved or transported or loads of more than 10 kg are occasionally lifted by hand, moved or transported. Where heavier loads are to be lifted by hand, moved or transported with mechanical aids the physical effort required of the expectant mother must not be greater than in the jobs mentioned in the first sentence;

2. once the fifth month of pregnancy has elapsed, in jobs in which they have to remain standing constantly, inasmuch as this occupation exceeds four hours per day;

3. in jobs in which they frequently have to stretch considerably or bend down or in which they constantly have to crouch down or remain stooped,

4. in the operation of appliances and machines of any kind involving use of the feet, particularly those operated with a foot drive;

5. in the stripping of timber;

6. in jobs in which, because of their pregnancy, they are particularly exposed to the danger of contracting an occupational disease or in which, due to the risk of the occurrence of an occupational disease, there is an increased hazard for expectant mothers or a danger for the unborn child;

7. on means of transport, once the third month of pregnancy has elapsed;

8. in jobs in which they are exposed to a greater risk of accident, in particular to the danger of slipping, falling or falling from a height.

(3) The employment of expectant mothers is prohibited on

1. piecework and other jobs in which higher wages can be obtained by increasing the work rhythm;

2. work on an assembly line with a prescribed work rhythm. The supervisory authority may allow exceptions if the type of work and the work rhythm do not give rise to the fear that the mother or child's health will be impaired. The supervisory authority may allow the employment of all expectant mothers in an undertaking or a section of an undertaking if the conditions laid down in the second sentence are fulfilled for all of the women employed in the undertaking or in the section of an undertaking.

(4) With a view to avoiding health hazards for expectant or nursing mothers and their children the Federal Government shall be authorised

1. to determine jobs which fall under the employment bans laid down in paragraphs 1 and 2

2. to issue further employment bans for expectant and nursing mothers prior to and after delivery

through legal regulations subject to the approval of the Bundesrat [Upper House].

(5) The supervisory authority can determine in individual cases whether a job comes under the employment bans laid down in paragraphs 1 to 3 or a regulation issued by the Federal Government pursuant to paragraph 4. It may prohibit employment in certain other jobs in individual cases.

### **§ 5 Obligation to provide information, medical certificate**

(1) Expectant mothers must inform their employer of their pregnancy and the probable date of delivery as soon as they know about their condition. At the request of the employer they must present a doctor's or midwife's certificate. The employer must notify the supervisory authority immediately of the information communicated by the expectant mother. It may not divulge the expectant mother's communication to third parties without authorisation.

(2) For the calculation of the periods prior to the delivery referred to in § 3, paragraph 2, the doctor's or midwife's certificate shall be authoritative; the certificate must state the probable date of the delivery. Where the doctor or midwife is mistaken with regard to the date of the delivery, that period shall be shortened or extended accordingly.

(3) The costs incurred in procuring the certificates referred to in paragraphs 1 and 2 shall be borne by the employer.

### **§ 6 Prohibition of employment following delivery**

(1) Women in childbed must not be employed until eight weeks have elapsed following the delivery. This period shall be extended to twelve weeks following premature births and multiple births plus, in the case of premature births, the period which could not be claimed pursuant to § 3, paragraph 2. In the event of the death of her child the mother may be employed again before these periods have elapsed if she expressly requests this and a medical certificate confirms

that there is no reason not to do so. She may withdraw her statement at any time.

(2) Women who present medical certificates stating that they are not completely fit during the first few months following delivery must not be used for work which exceeds their physical capacity.

(3) Nursing mothers must not be employed in the jobs mentioned in § 4, paragraph 1, subsections 1,3,4,5,6 and 8 and in the first sentence of paragraph 3. The provisions laid down in the second and third sentences of § 4, paragraph 3, and in paragraph 5 shall apply accordingly.

## **§ 7 Nursing period**

(1) Nursing mothers must, at their request, be given the time off which they need for nursing their children, but at least half an hour twice a day or an hour once a day. Where the continuous working time exceeds eight hours, a nursing break of at least forty-five minutes must be granted twice upon the mother's request or, where there is no nursing facility in the vicinity of the workplace, a nursing break of ninety minutes must be granted once. The working time shall be considered to be continuous when it is not interrupted by a rest period of at least two hours.

(2) The granting of a nursing break must not result in any loss of pay. The nursing break must not be made up either beforehand or afterwards by the nursing mother, nor must it be counted as part of the rest periods laid down in the Working Time Act or in other provisions.

(3) The supervisory authority may lay down further details concerning the number, scheduling and duration of nursing breaks in individual cases; it may prescribe that nursing rooms be installed.

(4) The home-work contractor or sub-contractor must pay persons engaged in home-work and persons associated to such workers a remuneration of 75% of average hourly earnings for the nursing break, but at least 0.75 DM, for each working day. Where a woman is working for several contractors or intermediaries the latter must pay that remuneration for the nursing break in equal parts. The provisions laid down in §§ 23 to 25 of the Home-Work Act of 14 March 1951 (Official Gazette I, p. 191) and pertaining to the protection of earnings shall apply to the woman's earnings.

## **§ 8 Overtime, night work and work on Sundays**

(1) Expectant and nursing mothers must not be required to work overtime or be employed at night between 8.00 p.m. and 6.00 a.m. or on Sundays and public holidays.

(2) Overtime within the meaning of paragraph 1 is any work

1. which is performed by women under 18 years of age in excess of 8 hours per day or 80 hours per fortnight

2. which is performed by other women in excess of 8.5 hours per day or 90 hours per fortnight. Sundays shall be counted in the fortnight.

(3) By way of derogation to paragraph 2, expectant mothers may be employed in the first four months of pregnancy and nursing mothers may be employed

1. until 10.00 p.m. in restaurants and public houses and in the remainder of the hotel and catering trade

2. from 5.00 a.m. onwards in the milking of dairy cattle in agriculture

3. until 11.00 p.m. as artists in musical, theatrical and similar performances.

(4) By way of derogation to paragraph 1, expectant or nursing mothers may be employed on Sundays and public holidays in the transport industry, in restaurants and public houses and in the remainder of the hotel and catering trade, in the family household, in nursing homes and bathing establishments, in musical, theatrical and other entertainment performances or festivities if they are granted a continuous rest period of at least 24 hours following a night rest period once a week.

(5) Home-work may only be given out to persons employed in home-work who are expectant or nursing mothers in such quantities and with such production deadlines as an expectant mother can be expected to perform in an 8-hour working day and as a nursing mother can be expected to perform in a working day of 7.25 hours on weekdays. The supervisory authority may lay down further details pertaining to the volume of work in individual cases. Where a Committee on Home-Work has been set up, the authority shall hear that committee before doing so.

(6) The supervisory authority may allow exceptions to the above provisions in substantiated individual cases.

### **Part III: Dismissal**

#### **§ 9 Prohibition of dismissal**

(1) The dismissal of a woman shall be unlawful during pregnancy and until four months have elapsed following the delivery if the employer was aware of the pregnancy or delivery at the time when notice of dismissal was given or if he is notified of the pregnancy or delivery within two weeks of the reception of the notice of dismissal; failure to comply with this deadline shall be inconsequential if it has been due to a cause which is not to be attributed to the woman and the information is then communicated immediately. The provision laid down in the first sentence shall only apply to women who are assimilated to persons engaged in home-work if the assimilation also applies to Part IX - Dismissal - of the Home-Work Act of 14 March 1951 (Official Gazette I, p. 191).

(2) If a woman gives notice of termination of her employment relationship, the third sentence of § 5, paragraph 1, shall apply accordingly.

(3) In special cases which are not related to the condition of a woman during pregnancy or her situation in the first four months following delivery, the supreme authority of the respective State or an agency determined by that authority may, as an exception, declare the dismissal lawful. The notice of dismissal must be delivered in writing and must state the admissible reason for the dismissal.

(4) Persons employed in home-work and persons assimilated to them may not be excluded from the distribution of home-work against their will during pregnancy and during the first four months following delivery; this shall be without prejudice to the provisions of §§ 3, 4, 6 and 8, paragraph 5.

## **§ 10 Preservation of rights**

(1) A woman may give notice of termination of her employment relationship during pregnancy and during the period of protection following delivery (§ 6, paragraph 1) without observing a term of notice until the end of the protection period.

(2) If the employment relationship is cancelled according to paragraph 1 and the woman is then re-employed in her former undertaking within one year of the delivery, the employment relationship shall be considered not to have been interrupted inasmuch as rights based on the employment relationship are contingent on the duration of employment in the undertaking or membership in a trade or occupation or on the duration of the period of employment. This shall not apply if the woman was employed by another employer in the period between the cancellation of the employment relationship and the date on which she was re-employed.

## **Part IV: Benefits**

### **§ 11 Earnings in the event that employment is prohibited**

(1) Inasmuch as women who come within the scope of § 1 cannot draw a maternity benefit pursuant to the provisions of the Pre-war Insurance Regulations, their employer shall continue to pay them at least the average earnings of the last three weeks or of the last three months prior to the beginning of the month in which the pregnancy commences, if they interrupt their work partially or completely as the result of an employment ban pursuant to § 3, paragraph 1, §§ 4 and 6, paragraph 2 or 3, or because of the prohibition of overtime, night work or work on Sundays pursuant to § 8, paragraphs 1, 3 or 5. This shall also apply if the employment or type of remuneration changes as the result of these bans. If the employment relationship does not commence until after the beginning of the pregnancy, the average earnings shall be calculated on the basis of the earnings of the first thirteen weeks or three months of employment. Where the duration of the employment relationship has been shorter than the periods mentioned in the first or third sentence, the shorter period shall be taken as a basis for the calculation. Periods in which no remuneration was earned shall not be taken into account.

(2) In the event of increases in earnings - including temporary increases - which occur during or after the calculation period, the higher earnings shall be taken as a basis. Reductions in earnings which occur during the calculation period as the result of short-time employment, intermittent unemployment or absence from work through no fault of the worker shall not be taken into account in the calculation of the average earnings.

(3) The Federal Government shall be authorised to issue provisions on the calculation of the average earnings within the meaning of paragraphs 1 and 2 by means of legal regulations subject to the approval of the Bundesrat [Upper House].

**§ 12** (no longer applies) (Official Gazette I 1996, p. 2111)

### **§ 13 Maternity benefit**

(1) Women who are members of a health insurance fund shall receive a maternity benefit pursuant to the provisions of the Pre-war Insurance Regulations or of the Act on Health Insurance for Farmers pertaining to maternity benefit throughout the protection period laid down in § 3, paragraph 2, and § 6, paragraph 1, and for the day of delivery.

(2) Women who are not members of a health insurance fund shall receive a maternity benefit throughout the protection periods laid down in § 3, paragraph 2, and § 6, paragraph 1, and for the day of delivery paid out of the federal budget in accordance with the provisions of the Pre-war Insurance Regulations pertaining to maternity benefit, if they are in an employment relationship or are employed in home-work under § 3, paragraph 2, or if their employment relationship has been lawfully cancelled by the employer in the course of their pregnancy; the amount of this benefit, however, shall not exceed four hundred DM. The maternity benefit shall be paid to these women by the Federal Insurance Office.

### **§ 14 Allowance supplementary to maternity benefit**

(1) Women who are entitled to maternity benefit pursuant to § 200, paragraphs 1, paragraph 2, sentences 1 to 4, and paragraph 3, of the Pre-war Insurance Regulations, § 29, paragraphs 1, 2 and 4, of the Act on Health Insurance for Farmers, or § 13, paragraph 2, shall be paid an allowance by their employer throughout the protection periods laid down in § 3, paragraph 2, and § 6, paragraph 1, and for the day of delivery; that allowance shall amount to the difference between 25 DM and the average earnings of one calendar day less the statutory deductions. The average earnings for one calendar day shall be calculated on the basis of the last three calendar months or, if calculated on a weekly basis, the last thirteen remunerated weeks, prior to the commencement of the protection period pursuant to § 3, paragraph 2. Increases in earnings - including temporary increases - which become effective during the protection periods laid down in § 3, paragraph 2, and § 6, paragraph 1, shall be included in the calculation after that point in time. Non-recurrent earnings (§ 23a of Book IV of the Social Security Code) and days on which no earnings or reduced earnings were obtained as the result of short-time employment, intermittent

unemployment or absence from work through no fault of the worker shall not be taken into account. Where it is not possible to calculate earnings in this way, the average earnings of a person in a similar type of occupation for one calendar day shall be taken as a basis.

(2) Women whose employment relationship has been lawfully cancelled during pregnancy or during the protection period laid down in § 6, paragraph 1, shall be paid the allowance under paragraph 1 out of the federal budget by the agency responsible for paying maternity benefits.

(3) If the employer is unable to fulfil his obligation to pay the allowance under paragraph 1 for the period following the initiation of bankruptcy proceedings or after the final dismissal of the bankruptcy petition due to lack of assets until the lawful cancellation of the employment relationship due to insolvency, the women shall be paid the allowance out of the federal budget by the agency responsible for paying maternity benefits.

(4) The allowance under paragraphs 1 to 3 shall not apply to the period in which women claim or would have claimed parental leave under the Federal Childcare Allowance Act if their employment relationship had not been lawfully cancelled by the employer during their pregnancy or during the protection period laid down in § 6, paragraph 1. This shall not apply inasmuch as they perform admissible part-time work.

## **§ 15 Other benefits in the event of pregnancy and maternity**

Women who are covered by the statutory health insurance scheme shall also enjoy the following services in the event of pregnancy and maternity pursuant to the provisions of the Pre-war Insurance Regulations or the Act on Health Insurance for Farmers:

1. medical care and assistance and the assistance of a midwife,
2. the supply of drugs, dressings and medical accessories,
3. in-patient delivery
4. home care
5. home help
6. delivery allowance.

## **§ 16 Time off for check-ups**

The employer must allow women the necessary time off to undergo the examinations involved in the context of the statutory health insurance services provided for pregnancy and maternity. This shall apply accordingly to women who are not covered by the statutory health insurance scheme. This time off must not result in loss of pay.

## **Part V: Implementation of the Act**

**§ 17** (no longer applies)

**§ 18 Display of the Act**



(1) A copy of the present Act shall be displayed or posted in a suitable place for consultation in firms and administrative units in which more than three women are employed on a regular basis.

(2) Persons who distribute or purchase home-work must display or post a copy of the present Act in a suitable place for consultation in the rooms where the work is distributed and purchased.

## **§ 19 Information**

(1) At the request of the supervisory authority the employer must

1. provide that authority with the information necessary for the fulfilment of its tasks, truthfully and in full;
2. present or send in the documents for inspection indicating the name, type and times of employment of expectant and nursing mothers and the payments of wages and salaries as well as all other documents relating to the information to be provided under subsection 1.

(2) The documents shall be conserved until at least two years have elapsed after the last entry.

## **§ 20 Supervisory authorities**

(1) The competent authorities (supervisory authorities) under the laws of the respective States [Länder] shall be responsible for monitoring the implementation of the provisions of the present Act and the provisions issued pursuant to it.

(2) The supervisory authorities shall have the same powers and obligations as those conferred under § 139b of the Trading Regulations on the special officials referred to in those regulations. The fundamental right of the inviolability of the domicile (Article 13 of the Basic Law) shall be restricted in this respect.

## **Part VI: Criminal offences and infringement of the regulations**

### **§ 21 Criminal offences and infringements of the regulations**

(1) An infringement of the regulations is committed by an employer who intentionally or as the result of negligence acts contrary to

1. the provisions of §§ 3, 4, paragraph 1 to paragraph 3, first sentence, or § 6, paragraphs 1 to paragraph 3, first sentence, pertaining to employment bans prior to and after delivery,
2. the provisions of § 7, paragraph 1, first sentence, or paragraph 2, second sentence, on the nursing period,
3. the provisions of § 8, paragraph 1, or 3 to 5, first sentence, on overtime, night work and work on Sundays,
4. the provisions issued pursuant to § 4, paragraph 4, inasmuch as they refer to the present provision concerning fines for a specific case,
5. an enforceable order of the supervisory authority pursuant to § 2, paragraph

5, § 4, paragraph 5, § 6, paragraph 3, second sentence, § 7, paragraph 3, or § 8, Paragraph 5, first half of second sentence,  
6. the provisions of § 5, paragraph 1, third sentence, on notification,  
7. the provision of § 16, first sentence, also in conjunction with the second sentence, on time off for check-ups  
8. the provisions of § 18 on displaying the Act or of § 19 on the inspection, conservation and presentation of documents and on information.

(2) An infringement under paragraphs 1 to 5 can be punished with a fine of not more than thirty thousand DM, and an infringement under paragraphs 6 to 8 can be punished with a fine of not more than five thousand DM.

(3) Persons who intentionally commit any of the acts listed in paragraphs 1 to 5 and thereby endanger the woman's capacity for work or health shall be punished with imprisonment of not more than one year or with a fine.

(4) Persons who cause the danger in the cases mentioned in paragraph 3 as the result of negligence shall be punished with imprisonment of not more than six months or with a fine of not more than one hundred and eighty times the daily rate.

**§ 22** (no longer applies)

**§ 23** (no longer applies)

## **Part VII: Final provisions**

### **§ 24 Persons employed in home-work**

The following sections shall apply to persons employed in home-work and those assimilated to such persons:

1. §§ 3, 4 and 6 subject to the proviso that the employment bans are replaced by the prohibition of the distribution of home-work;
2. § 2, paragraph 4, § 5, paragraphs 1 and 3, § 9, paragraph 1, § 11, paragraph 1, § 13, paragraph 2, §§ 14, 16 and 19, paragraph 1, and § 21, paragraph 1, subject to the proviso that the employer is replaced by the contractor or sub-contractor.

*Mutterschutzgesetz 1997*

*In the version promulgated on 17 January 1997 (Official Gazette I, 1997, p. 22, corrected p. 293)*