

Legal security and social protection for women during pregnancy and maternity

Medical care for a pregnant woman and the law

Procedure *lege artis*

- **Act No 372/2011 Coll. on Health Services** states that the patient has the right to the provision of health services at the appropriate professional level, which means - *the provision of health services according to the rules of science and recognised medical procedures, respecting the individuality of the patient, taking into account the specific conditions and objective possibilities*
- Various recommendations of the **Czech Society of Gynaecology and Obstetrics**, articles, textbooks, etc. are considered to be current knowledge.
- If something happens, the court then decides on the basis of an expert opinion.
- The *lege artis* procedure is often an alternative procedure, for example several procedures exist side by side.
- Exceptions to the *lege artis* procedure
 - The patient refuses the *lege artis* procedure - the doctor instructs the patient as thoroughly as possible, writes a negative reversal.
 - In the case of a patient who is not in a state to give consent at the time of intervention, we must take into account the wishes expressed earlier (e.g. Jehovah's Witnesses - blood transfusion).
 - However, if it is for a vital indication, we must have this earlier wish notarised.
 - Extreme emergency (*ultimum refugium*) - urgent help in a situation that does not allow for the *lege artis* procedure, the danger must be imminent, the consequence of the intervention must not be more serious than the one threatened.

Informed consent

- Any medical intervention cannot be carried out without informing the person and without **her consent**.^[1]
- There is no legal requirement as to how consent is to be given; for more complex interventions, consent is to be confirmed in writing (**positive reversal**)
- For trivial ones, verbal consent or even behavioural consent is sufficient (the patient removes her panties and lies down on the gynaecological table when asked to perform a gynaecological examination).
- The patient can withdraw her consent **at any time**.
- Without consent, we perform the procedure:
 - if the patient is incapable of giving consent (minority, mental disorder), then the consent of the legal guardian is required;
 - if consent cannot be obtained, we perform life-saving procedures urgently.

Negative reversal

- If the woman refuses the treatment in question.
- It is written down individually.
- It must include why we recommended the procedure, what the consequences may be if it is not carried out (we must list them verbally).
- It is good to add that the woman understood the instructions and had the opportunity to ask additional questions.
- If the woman refuses treatment and also refuses to sign the reversal, the reversal is made and signed by the doctor and the witness.

Employment during pregnancy and maternity

Legal protection for pregnant women and mothers in employment

- A pregnant woman may not be dismissed (unless she has committed a crime or grossly violated her work obligations). If the woman proves that she was already pregnant when she was dismissed, the dismissal is **invalid**.
- A pregnant woman, a woman who is breastfeeding and the mother of a child up to the age of 9 months must not do work that is **prohibited** for pregnant women^[2] or that, according to a medical opinion, endangers her pregnancy or maternity - in this case she is entitled to a safer work proposal from her employer. If this position means that the woman receives less pay than in her previous job, she receives a compensation allowance to make up the difference.
- A pregnant mother **is not allowed to work overtime**. Those caring for a child under 1 year old may not be ordered to work overtime.
- A pregnant employee working at night is only entitled to day shift (she may apply, the employer must comply).
- A pregnant woman caring for a child under 8 years of age, a single carer of a child under 15 years of age and a carer of a person dependent on the assistance of another natural person cannot be sent on duty away from

her place of residence and workplace unless she gives her own consent. They may work elsewhere only if they themselves request it.

- The employer must take into account the needs of employees caring for children when assigning employees to shifts.^[3].

Sick leave

- Pregnancy as such is not a reason for incapacity for work.
- It is a reason for incapacity for work in the following cases:
 - risky pregnancy - the performance of the job endangers the woman and the fetus (both *physically* and *psychologically*);
 - pathological pregnancy - inter alia, imminent miscarriage, twins, pathological fetal position;
 - aggravation of a non-obstetric chronic disease.
- Specific obstetric aspects:
 - incapacity for work of the pregnant woman ends 6 weeks before the date of delivery, when the woman starts maternity leave;
 - if the woman does not qualify for maternity allowance, the doctor will issue incapacity **for work 6 weeks before and 6 weeks after the birth**.

Cash benefits

Maternity allowance

- Who is entitled:
 - female employee - conditions:
 - Participation of the woman in sickness insurance or duration of the protection period;
 - at least **270** calendar days of participation in **sickness insurance** in the last two years before giving birth;
 - Childbirth;;
 - not working in the job from which the maternity allowance was granted.
 - Self-employed (except under the conditions laid down for female employees):
 - payment of sickness insurance premiums;
 - not being personally self-employed;
 - obtain at least **180** days of participation in self-employed sickness insurance in the year before giving birth.

The amount of the maternity allowance per calendar day is **70 %** of the daily assessment base.^[4] **The maternity allowance** is granted for a maximum of **28 weeks**, or 37 weeks in the case of women who have given birth to several children at the same time and are caring for at least two of them, or who are single, widowed, divorced or lonely for other serious reasons and who are not living with their partner.

Daily assessment base

- Employees - the countable income charged to the employee in the reference period, which is normally the 12 calendar months immediately preceding the calendar month in which the incapacity for work, the need to care for a family member or the **taking of maternity leave occurred, is divided** by the number of calendar days falling within the reference period. However, some days are not included in this number of days in order to avoid unjustified dilution of the daily assessment base (e.g. days of sickness benefit).
- For self-employed persons, the daily assessment base is determined in a similar way, with the proviso that the reference period is usually the calendar year preceding the year in which the incapacity for work arose or in which the **woman takes maternity leave**, and the countable income is the sum of the monthly assessment bases for the purpose of determining advances on pension insurance contributions.

Reduction threshold

There are three thresholds for reduction: 1. reduction threshold - CZK 1 000, 2. reduction threshold - CZK 1 499, 3. reduction threshold - CZK 2 998.

The calculated daily assessment base is subject to reduction for the Maternity allowance if its amount exceeds the threshold:

- the amount up to the first reduction threshold is calculated at 100%,
- 60% of the amount above the first reduction threshold up to the second reduction threshold,
- 30% of the amount above the second reduction threshold up to the third reduction threshold,
- the amount above the third reduction limit is not taken into account (i.e. still 30%).^[5].

Maternity compensation

If a woman is reassigned to another job where she receives less pay through no fault of her own, the **compensatory allowance** makes up the difference from her average salary. The maternity allowance is granted until the woman takes maternity leave and, after maternity leave, until the end of the ninth month after giving birth.

Parental allowance

Together with parental leave, it follows Maternity allowance and maternity leave. A total of CZK **300,000** is paid for an only child and CZK **450,000** for twins and multiples. It can be taken up to the age of 4 and can only be taken for the youngest child. The amount of the monthly parental allowance is chosen by the parent and may not exceed 70% of 30 times the monthly daily assessment base. The amount of the monthly parental allowance may be changed after 3 months.^[6].

Childbirth allowance

This is a lump sum payment of money. Entitlement to the birth grant arises if the income in the family does not exceed the product of the family's subsistence amount and a coefficient of 2.70 and it is the first or second live birth. CZK 13,000 is contributed for the first child and CZK 10,000 for the second child.^[6].

Maternity and parental leave

Maternity leave and Maternity allowance

- In connection with childbirth and childcare, the employee is entitled to maternity leave for 28 weeks (37 if she has had two or more children or if she is single).
- Maternity leave may start on a date to be determined by the expectant mother between **8 and 6 weeks** before the expected date of childbirth; if no date is determined, it is to start at the beginning of the **6th week** before the expected date of childbirth, on the day of childbirth (premature birth).
- In the case of stillbirth, maternity leave is **14 weeks** with Maternity allowance.
- If the child dies during maternity leave, maternity leave and Maternity allowance continue for **2 weeks** after the death.^[4].

Parental leave

- The employer is obliged to grant parental leave to the mother or father, if they request it, until the child is **3 years old** (there is also parental leave until the child is 4 years old - but the employer is not obliged to grant it).

Links

Related articles

External links

BENEŠ, Jiří. *Studijní materiály* [online]. ©2011. [cit. 2017-12-31]. <<http://jirben2.chytrak.cz/>>.

Retrieved from

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2. ČR. Vyhláška o zakázaných pracích a pracovištích. 2015. Available from <https://www.mpsv.cz/ppropo.php?ID=v180_2015>.
3. ČR. Zákoník práce. 2006. Available from <http://www.pracepropravniky.cz/_userfiles/texty_prilohy/10195.pdf>.
4. ČR. Zákon o nemocenském pojištění. 2006.
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6. ČR. Zákon o státní sociální podpoře. 1995. Available from <<https://www.podnikatel.cz/zakony/zakon-c-117-1995-sb-zakon-o-statni-socialni-podpore/uplne/>>.