

Is it possible to end the employment relationship during maternity ?

1. Protection against dismissal

Employers who have been duly informed of the pregnancy may **not dismiss with notice** an employee whose pregnancy has been confirmed by a medical practitioner. This ban on dismissal is valid throughout **the duration of the pregnancy and for another 12 weeks after the birth**.

If an employee is dismissed before her pregnancy has been confirmed by a medical practitioner, she has 8 days from the notification of dismissal to provide her employer with a medical certificate as proof of her pregnancy.

The employer must then annul the decision to dismiss with the employee's consent. If the employer refuses to annul the dismissal, the employee has 15 days following the termination of the contract to file a claim to the labour tribunal in order to demand that the dismissal be declared null and void.

2. In case of serious misconduct

A pregnant employee's contract may be terminated in case of serious misconduct. Employers can request the employee's **immediate suspension** pending the decision of the labour tribunal, but they cannot send the actual letter of dismissal on their own initiative.

They have to file a **request with the labour tribunal** in order to be authorised to terminate the employment contract. The tribunal will assess the gravity of the misconduct and decide whether or not to validate the immediate suspension and thus terminate the employee's employment contract. In case the request is rejected, the immediate suspension is declared null and void by the judge.

3. During the trial period

Employers may **not terminate the employee's contract** during the trial period if they have been duly informed of the pregnancy.

If an employee on a permanent employment contract becomes pregnant during her trial period, the trial period is **suspended** from the day the employee submits a medical certificate to her employer confirming the pregnancy.

The remaining time of the trial period will start running at the end of the period of protection against dismissal (i.e. 12 weeks after the delivery).

In the case of a fixed-term employment contract, there is no suspension of the trial period or renewal of the fixed-term contract, which expires normally at the end of the term initially foreseen.

4. Resignation of the employee

If the employee does not wish to return to work at the end of her maternity leave in order to be with her child, she **can resign without notice without becoming subject to a severance** payment. Resignation without notice is only possible in the event where the employee decides to give up her job in order to fully and exclusively devote herself to the education of the child.

Moreover, the employee who resigns at the end of the maternity leave may assert her right to **priority for re-employment** for a period of **one year**.

The information published in this article is valid only on the date of publication of said article. As social legislation is frequently amended, please contact us concerning any question or intended use based on this article or a previously published article.

Pursuant to Article 2, §2 of the Act of 10 August 1991, as the Legal Department of SECUREX Luxembourg SA is not authorised to practice law, it shall limit its action at all times to disseminating information and documentation.

Such documentation and information thus provided under the legal subscription always constitute typical examples or summaries, are of indicative value, and lay no claim to being exhaustive. The addressee is solely responsible for the use and interpretation of the information or documentation referred to in this article, advice or acts he deduces as well as the results he obtains from them.