

## Other rules to be observed

Swiss law provides other protection measures for pregnant employees, the most important of which are listed below.

### ➤ Principle of consent for employment

This rule stipulates that a pregnant woman may only work provided she has agreed to do so (Art. 35a, paras. 1 and 3, LTr/ArG). Therefore, by simply notifying her employer, she may choose not to go to work or to quit (Art. 35a, para. 2, LTr/ArG). In this case, however, the entitlement to a salary is not guaranteed.

### ➤ Evening and night shift work

Once the pregnancy has been announced, an employee who is employed between 8 pm and 6 am may ask for equivalent work during her day shift (Art. 35b, para. 1, LTr/ArG). Furthermore, during the eight week-period before childbirth, it is forbidden to employ a pregnant woman between 8 pm and 6 am (Art. 35a, para. 4, LTr/ArG).

### ➤ Working hours

Overtime is forbidden throughout the entire pregnancy. In any case, a pregnant employee must not work for more than nine hours per day, even if a longer period was specified in her contract (Art. 60, para. 1, OLT 1/ArGV 1).

### ➤ Standing activity

From the fourth month of pregnancy onwards, pregnant women who have to work mainly standing up are entitled to:

- take a 10 minute-break after every two hours of work (in addition to the breaks provided for by law);
- a daily rest period of 12 hours.

As from the sixth month, standing activities must be limited to four hours per day (Art. 61, OLT 1/ArGV 1).

### ➤ Rest at work

Pregnant employees must be able to lie down and rest in suitable conditions (Art. 34, OLT 3/ArGV 3). A comfortable couch, in a separate room, is an appropriate solution. For small businesses, with less than 20 women, providing a couch or a lounge is a minimum requirement.

## Pregnancy and absences

As mentioned above, the legislation provides for two types of absences specific to pregnant employees:

- pregnant employees may simply notify their employer at any time that they intend to stop working, without maintaining their entitlement to salary compensation however (Art. 35a, para. 2, LTr/ArG).
- since hazardous work (and, in part, night shifts) is dangerous for the child and incompatible with pregnancy, the employer must offer equivalent replacement activities without risks to the pregnant employee. If it cannot, the employee can stop working while receiving 80% of her salary (Art. 35 and 35b LTr/ArG).

However, no specific rule applies for an incapacity for work. Therefore, **in the event of illness, the entitlement to the payment of a salary** (or daily allowance benefits) **is the same for pregnant woman** as for her colleagues (Art. 324a, para. 3 of the Swiss Code of Obligations (CO) and/or general terms and conditions (CGA) of the daily allowance insurance). Therefore, daily allowance insurance benefits are paid when the absence is due to a medically attested health impairment of a sickly origin (related or unrelated to the pregnancy).

It should be noted that **pregnancy is not considered by law as an «illness»**. The same applies to everyday aches and pains usually associated with pregnancy (vomiting, headaches, shortness of breath, back pain, etc.) and to ordinary activities that pregnancy can make unpleasant (for example, car journeys between home and the workplace).

In general, these disorders (sometimes uncomfortable but rarely serious) do not justify a work stoppage giving right to daily allowance benefits.

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# Maternity and work

## Work restrictions and absences

For companies subject to the labour law (LTr/ArG), according to Art. 1 to 4.



When expecting a child, a woman's life changes, both physically and socially. This can destabilise a woman and her relatives, thus requiring some adjustments. However, from a legal and insurance point of view, pregnancy is not an illness. An absence before childbirth entitles the employee to daily allowance benefits under the loss of earnings insurance only if the work stoppage is due to medically certified reasons.

Swiss legislation specifies for the employer the environment that is required to guarantee the health of the mother-to-be and her child. It defines the professional activities which pregnant women could be required to perform. This leads to cases of absence and to compensation rules specific to pregnant employees.

In order to guide you through this legal maze, here is a simplified overview of the different rules and specific situations.

## Dangerous or strenuous work

The Ordinance on dangerous and strenuous work during pregnancy and maternity (**OProMa**), issued by the Federal Department of Economic Affairs, defines a list of activities (Art. 7 to 13) that pregnant women may not perform without prior notice:

- manually moving heavy loads (regularly moving heavy objects weighing over 5 kg or occasionally moving objects weighing over 10 kg)
- tiring movements or postures (bending down, squatting, heavy stretching)
- work with shocks, jolts or vibrations
- exposure to cold (below -5°C), to heat (over +28°C) or dampness
- exposure to harmful radiation or to noise (85dB(A) or more) \*
- exposure to hazardous chemicals or micro-organisms
- work-time systems which put severe stress on the employee (backward rotating shifts, more than three consecutive night shifts, etc.)

If such work is carried out in your company, you must request that a specialist recognised according to the «Guidelines on the consultation of specialists in occupational health and safety» (MSST/ASA) to carry out a risk assessment. The assessment must take place before the employment of women in the company (or part of the company concerned). It identifies hazards, assesses risks and proposes preventive measures to remove or reduce these risks. Your employees must be informed of the results of the assessment, as well as of the resulting preventive measures.

**Pregnant women may only perform work classified as dangerous or strenuous if a risk assessment has established that there is no threat to the health of the mother or child or if adequate protective measures have been taken (Art. 62 OLT/ArGV 1).**

\* Some examples of sound levels

- |                                 |                            |                               |
|---------------------------------|----------------------------|-------------------------------|
| ➤ 30 dB: low voice conversation | ➤ 70 dB: telephone ringing | ➤ 85 dB: dog barking          |
| ➤ 60 dB: normal conversation    | ➤ 75 dB: vacuum cleaner    | ➤ 95 dB: car horn             |
| ➤ 65 dB: television             | ➤ 80 dB: car               | ➤ 140 dB: aircraft taking off |

## Replacement activities

Sometimes it is impossible to apply preventive measures that remove or reduce the risks associated with hazardous or strenuous activities according to the OProMa. In such cases, the employer must offer an equivalent and safe workstation to the pregnant woman.

If the employer is not able to offer a safe equivalent job, the pregnant woman can give up work while receiving 80% of her salary (Art. 35 and 35b of the LTr/ArG).

- the payment of 80% of the salary remains subject to social security contributions.
- since the payment of 80% of the salary does not correspond to the entitlement to salary in the event of incapacity for work due to a health impairment, provided for in Art. 324a, para. 3 CO, it is not limited in time (e.g. Bernese scale) and is not covered by the loss of earnings insurance in case of illness.

		Month of pregnancy									Birth	Weeks after birth and breastfeeding			
		1	2	3	4	5	6	7	8	9		8	16	52	Until the end of breastfeeding
<b>LTr</b>	<b>Art. 35a</b>	Work only with the consent of the pregnant woman. Pregnant women may stay away from or leave work by simply notifying their employer.										After birth: women may work only with their consent			
<b>LTr</b>	<b>Art. 35a</b>											Breastfeeding women: work only with their consent			
<b>LTr</b>	<b>Art. 35a</b>											Breastfeeding women: entitled to the time they need to breastfeed (upon prior notification to the manager)			
<b>OLT 1</b>	<b>Art. 60, al. 1</b>	No overtime and up to 9 hours per day until the end of breastfeeding										Breastfeeding women: see text on the left			
<b>OLT 1</b>	<b>Art. 60, al. 2</b>											Breastfeeding breaks = paid work (duration according to activity rate*)			
<b>OLT 1</b>	<b>Art. 61</b>	Working in a standing position: daily rest period 12 hours; additional breaks 10 min/2h.										* Min. 30 mins per day if work < 4h/day Min. 60 mins per day if work > 4h/day and < 7h/day Min 90 mins per day if work > 7h/day			
<b>OLT 1</b>	<b>Art. 61</b>	Working in a standing position: max. 4h per day.													
<b>OLT 1</b>	<b>Art. 62 and Art. 63 Risk analysis: dangerous or strenuous work</b>	OLT 1 requires a risk assessment to be carried out for dangerous or strenuous work (specified in M).										Breastfeeding women: see text on the left			
<b>OLT 1</b>	<b>Art. 62 / OProMa Art. 13 Protection against passive smoking</b>	Pregnant women in smoking areas: legislation on protection against passive smoking refers to to LTr > OProMa: Art. 13 (e. g. dangerous substance «carbon monoxide CO»); risk assessment required; generally no work!										Breastfeeding women: see text on the left			
<b>OLT 1</b>	<b>Art. 64, al. 1</b>	Exempted from work that is perceived as difficult.										Breastfeeding women: see text on the left			
<b>OLT 1</b>	<b>Art. 64, al. 1</b>											In case of reduced capacity for work, adjust the workplace; medical certificate (first months after birth)			
<b>OLT 3</b>	<b>Art. 34 Pregnant women / breastfeeding mothers</b>	Pregnant and breastfeeding women must be able to lie down and rest in appropriate conditions.										Breastfeeding women: see text on the left			
<b>M Art. 7</b>	<b>Carrying heavy loads</b>	Regularly not more than 5kg, occasionally not more than 10kg.										No carrying loads of more than 5kg.			
<b>M Art. 8</b>	<b>Work: exposure to cold, heat or dampness</b>	Work < -5°C or > 28°C or in damp conditions not allowed; Work < 10°C and > -5°C: suitable clothes; work < 15°C: hot drinks.													
<b>M Art. 9</b>	<b>Movements and postures that cause early fatigue</b>	Movements and postures that cause early fatigue not allowed; impact of shocks, tremors or vibrations not allowed.										See text on the left			
<b>M Art. 10</b>	<b>Micro-organisms</b>	It must be ensured that such exposure does not cause any harm to either the mother or the child. Exception: proven immunisation (vaccination)										Breastfeeding women: see text on the left			
<b>M Art. 11</b>	<b>Noise</b>	Sound pressure level ≥ 85dB(A) (LEX 8 h) not allowed.													
<b>M Art. 12</b>	<b>Ionizing radiation</b>	Pregnant women should not be exposed to equivalent levels of radiation in excess of those specified in the Ordinance on Radiation Protection.										Breastfeeding women: no work with radioactive substances.			
<b>M Art. 13</b>	<b>Hazardous chemicals</b>	Exposure to hazardous chemicals must not be harmful to the mother or child. If particularly dangerous exposure: risk assessment!										Breastfeeding women: see text on the left			
<b>M Art. 14</b>	<b>Very demanding work time organisation systems</b>	No night work or shift work in the case of hazardous tasks according to Articles 7 to 13. Shift work systems that are particularly harmful to health are prohibited.										Breastfeeding women: see text on the left			
<b>M Art. 15</b>	<b>Piecework and time-controlled tasks</b>	Piecework and time-controlled tasks are prohibited if the pace of work cannot be regulated by the worker herself.													
<b>M Art. 16</b>	<b>Special assignment prohibitions</b>	Pregnant women should not be assigned to tasks involving overpressure or in rooms with oxygen-reduced atmosphere.													

Work prohibition

A danger is presumed to exist when the conditions set out in Articles 7 to 13 are met.

Source: State Secretariat for Economic Affairs (SECO)