

Resolution of the  
133<sup>rd</sup> Senate of the HRK  
on 15 June 2016  
in Berlin

**Regarding the draft  
legislation of the federal  
government on the  
revision of the Maternity  
Protection Act**

## **HRK** German Rectors' Conference

The Voice of the Universities

Leipziger Platz 11    Tel.: +49 (0) 30 206292-0    post@hrk.de  
D-10117 Berlin    Fax: +49 (0) 30 206292-15    www.hrk.de

Ahrstraße 39    Tel.: +49 (0) 228 887-0    post@hrk.de  
D-53175 Bonn    Fax: +49 (0) 228 887-110    www.hrk.de

The Senate of the HRK was astonished at the draft legislation of the federal government on the revision of the Maternity Protection Act (MuSchG). Contrary to the recommendation of the HRK, the extension of the scope of the MuSchG to include students is still planned.

German universities are committed to the protection of family and pregnancy in many ways – they undergo appropriate audit procedures and take suitable regulatory and practical precautions.

## **I. Content**

The following technical and legal considerations, in the view of the universities, constitute arguments against extending the scope of the MuSchG to include students:

The draft version of the MuSchG is still an occupational safety act, and the terminology used corresponds to this fact (employer, place of work and education, employment, etc.). A direct inclusion of students and universities in an occupational safety act fails to take account of the nature of higher education. This nature is recorded in all higher education acts: "Teaching and studying impart academic critical thinking and, in the appropriate courses of study, creative skills with multidisciplinary aspects. They prepare students for a professional career and impart the appropriate specialist knowledge and methods. They qualify students for academic and, in appropriate courses of study, creative work and encourage responsible conduct in the free, democratic and social state based on the rule of law" (Section 13 of the Hessen State Higher Education Act, used here representatively).

Consequently, the relationship between a student and universities cannot be understood as the established "traditional" relationship between an employer and employee. While attempts have been made to take into account the special conditions in universities with specific exemptions, the overall assessment remains unchanged. Simply re-establishing the freedom to study already specified in the German Higher Education Framework Act does not correspond to this freedom. Rather, there is the risk of discrimination against pregnant and breastfeeding students with the regulations proposed in the draft.

Appropriate regulations to protect pregnant students in terms of examination dates and taking leave, for example, are in place at all universities and are generally incorporated in the

corresponding statutes by universities. Inasmuch as legal regulations are to be drawn up, even provisions in the state higher education acts would be more effective and reasonable than the planned revision of the MuSchG (e.g. in Section 64 of the North Rhine-Westphalia State Higher Education Act with reference to the examination regulations).

The argument for standardisation of all federal states specified in the justification of the draft is also not effective. Since the legal regulation can only be applied to predetermined mandatory courses and examinations, the starting position in North Rhine-Westphalia and Schleswig Holstein, for example, where attendance obligations have been restricted in higher education law, is entirely different. As a matter of fact, this depends on the higher education regulations in all federal states.

## **II. Administration**

In addition to these problematic technical and legal aspects, universities would have to cope with a multitude of administrative tasks for which additional staff would be required – a matter that has not been provided for in the basic funding thus far. The working conditions for pregnant students would have to be assessed, the results of the assessment of the working conditions documented and the students informed of these results. Furthermore, notification of pregnant and breastfeeding students would have to be given to the respective supervisory authority. However, the added value of these requirements for pregnant students is minor, since – for example – the Ordinance on Hazardous Substances and Biological Agents already applies to students.

In the light of the above, the Senate of the HRK is calling on the legislative bodies to prevent an extraneous and over-prescriptive inclusion of students in the scope of the Maternity Protection Act.