

NEW MATERNITY PROTECTIONS FOR PROFESSIONAL WOMEN'S FOOTBALL PLAYERS



Introduction



This article aims to analyse the maternity protections introduced in FIFA's Regulations on the Status and Transfers of Players (RSTP) for professional women's football players, which came into force on 1 June 2024.

It will analyse how this reform was conceived, discussed and finally approved, what are the positive aspects and what remains to be improved. Indeed, while FIFA is to be applauded for the progressive steps taken in recent years in this area, there are still elements that need to be improved in order to further enhance the rights of professional football players and normalise parenthood in football, such as automatic contract extensions for pregnant players or players in maternity leave, as well as the inclusion of male players in the various parental protections provided by FIFA.

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WHERE DO WE COME FROM?

It was at the International Labour Conference in 1919 that the first Convention on maternity protection (Convention No. 3) was adopted. This Convention was followed by two others: Convention No. 103 in 1952 and Convention No. 183 in 2000, which gradually expanded the scope of maternity protection at work¹.

One hundred years had passed since that first protection, it was 2019 and professional footballers had no internationally enshrined protections that would allow them to be mothers and continue to do their job: playing football. It was 2019, and in most countries, the professional footballers could not choose motherhood, because if they did, it generally meant the end of their career.

This was an unfair situation on a personal level for the players, but it also presented an impediment to the development of women's football, as players were retiring before reaching their peak performance. By not reaching their peak performance, we could not see their football at its best.

One of the main reasons for the players' retirement was the desire to become mothers².



FIRST INTERNATIONAL REGULATION IN A SPORT

In 2019, FIFPRO prepared a proposal which it submitted to FIFA at the beginning of 2020, and this was the basis on which FIFA developed its parental policy. From 2021 onwards, absolutely fundamental protections for professional female players came into force. In a nutshell, these protections were:

- The right to maternity leave of a minimum of 14 weeks, paid at least at 2/3 of the salary;
 - The right of the player to decide whether or not to continue playing once she knew she was pregnant (as long as her health or the baby's health was not at risk);
 - The right to alternative work during pregnancy;
 - The right to full pay during pregnancy, and until the start of maternity leave;
 - The right of the player to remain registered. If the player agreed to be de-registered, the club could re-register her outside the transfer period;
 - Special protection for dismissal due to, or related to, pregnancy;
 - Presumption against the club if it dismissed a pregnant player;
 - Special compensation in case of unfair dismissal during pregnancy or maternity leave;
- Right to breastfeed or express milk at the workplace, in appropriate facilities, in accordance with national law.

The protections set out in the FIFA RSTP in 2021 were the first of its kind in international football, but also the first international protections in any sport. In addition, it was established that they were provisions that were mandatory at national level, so all national regulations of football federations were required to incorporate these protections, at a minimum, as set out in the FIFA RSTP, by 1 July 2021.

This was revolutionary in that, while the protections were 100 years too late, making them mandatory at the national level meant that, in some cases, professional women's football players would have maternity-related protections when other workers in other industries in their country may not yet have any protection at all. These were protections that could bring about social change, and contribute, in a small way, to a better world.

However, the impact was not as great as we had hoped, because many FIFA member associations do not comply with the FIFA regulations, even if mandatory.

We do not have the exact number of FIFA member associations (football federations) that have implemented these protections, as this is not publicly available information. However, a considerable number of FIFA member associations have unfortunately not yet implemented them, and are in breach of the mandatory FIFA regulations for 3 consecutive years, without facing any consequences.

It should be clarified that even in those federations that self-define women's football as being purely amateur, these provisions are mandatory and must be incorporated into their rules. Whether the competition is classified as amateur or professional by the football federation or league is not relevant. What is relevant is the reality of the status of the individual player. If she has a written contract (even if not formally called an employment contract) and earns more than she spends to play football, then she is a professional player according to article 2 of the FIFA RSTP, which is also mandatory at national level. She is therefore supposed to be protected by all the provisions that will be described.

PROOF THAT THE *Regulation was necessary*

These protections, which, however natural, were absolutely revolutionary, were soon put to the test. And the proof came in the form of a case that was not expected, as the club in breach was one of the biggest women's football clubs in the world.

It was the case of Icelandic footballer Sara Bjork Gunnarsdottir against Olympique Lyonnais Club, from France, for non-payment of her full salary during her pregnancy and until the beginning of her maternity leave³.

The claim was filed in September 2021 before the FIFA Dispute Resolution Chamber (FIFA DRC). The decision, dated May 2022, with grounds in August 2022, was in favour of the player, and the club was ordered to pay the player's full salary during the period of her pregnancy and until the player commenced her maternity leave. The dispute arose because the club understood that as the player was no longer providing services to the club, (they had consented that she would spend her pregnancy with her family in Iceland) the club was no longer obliged to cover her salary.

The club failed to provide any information to the player before she departed to Iceland and to explain its position or interpretation of the rules to the player. This included her right to do alternative work.

One of the conclusions of the case was that the maternity provisions set out in the FIFA regulations were minimal, and therefore prevailed over national laws and regulations if the standards were lower.

The FIFA DRC also came to a very important conclusion, not only for this particular case, but for all employment cases of football players in general: there is a clear recognition of the duty of care that the club, as employer, owes to the player, as worker. While the player won the claim and received her full salary, it was not entirely clear from the FIFA DRC decision whether a player had to provide alternative services in order to continue to receive her full salary during pregnancy and until the start of maternity leave. In this specific case, the fact that the player offered her services, and the club did not respond, was considered to be a relevant factor in reaching this decision.

This left us with an important question: what would have happened if the player had not offered her alternative services?

This is one of the questions that the new rules resolve, as will be discussed below.

WHAT ARE THE NEW PROTECTIONS?

The new protections inserted into the FIFA RSTP seek to improve the system, and they definitely do so. FIFA has thus set some important new steps to ensure the normalisation of motherhood in professional football.

The most substantial improvements, perhaps, are adoption and family leave, and the addition of another protected figure: the female coach.



Adoption leave:

This is an innovation in the RSTP, added in definition number 42:

“Adoption leave: a minimum period of eight weeks’ paid absence granted to a female player/coach in case of the adoption of a child who is younger than the age of two. The period of paid absence is reduced to four weeks for a child between two and four years of age and to two weeks for a child who is older than the age of four. The adoption leave must be taken within six months of the date of the formal adoption and cannot be accumulated with family leave for the same child.”

If a professional football player adopts a child she is entitled, as of 1 June 2024 to adoption leave, paid at least at 2/3 of her salary.

The length of the adoption leave depends on the adopted child:

- If the child is less than 2 years old, the leave will be 8 weeks;
- If the child is between 2 and 4 years old, the leave will be 4 weeks;
- If the child is over 4 years old, the leave will be 2 weeks.

This leave must be taken within 6 months of the adoption of the child. It cannot be cumulated with the family leave described below.

The difference in the length of the leave is based on the idea that depending on the age of the child, more or less time is needed for care and adaptation.

FIFPRO is however critical of this difference and believes that the same leave should be granted to any parent adopting a minor. Furthermore, the curious thing about this provision is that it only gives the right to adoption leave to professional women’s football players, but not to male professional footballers. This remarkable difference will be described later on in this article.

Family leave:

Family leave is an excellent addition to the protections for professional women’s football players, inserted in the RSTP definitions as number 43:

“Family leave: a minimum period of eight weeks’ paid absence granted to a female player/coach other than the biological mother following the birth of the child. The family leave must be taken within six months of the date of birth of the child and cannot be accumulated with adoption leave for the same child.”

It is a provision that entitles the non-bearing child mother to take leave to accompany in those first delicate and special moments for both the parents and the newborn child.

This leave can be taken within the first 6 months of the birth of the baby. The idea of this time limit was to give some flexibility, taking into account the need for special care in the first months of life, but also the maternity leave recognised in the RSTP, which has a minimum of 14 weeks. The idea was that if the player in question is the partner of another player, she can take the leave once the bearing-child mother has finished her maternity leave.

It is not cumulative with adoption leave for the same child.

Family leave was one of the issues that FIFPRO proposed to FIFA in our 2020 parental policy proposal. The difference is that in that project we talked about leave for the non-bearing child parent, i.e. including men. Again, the remarkable difference in not providing for these rights for male professional players will be outlined below.

PROHIBITION OF PREGNANCY TEST REQUIREMENT

The RSTP⁴ now clearly states that the validity of a contract cannot be made conditional on the existence of a pregnancy test. It also sanctions the termination of a contract for refusing to take a pregnancy test.

"18quater Special provisions relating to pregnancy, adoption and family leave Validity of an employment contract

- 1. The validity of a contract may not be made subject to the taking of, or the result of, a pregnancy test, the player being or becoming pregnant during its term, being on maternity, adoption or family leave, or utilising rights related to maternity, adoption or family leave in general. Terminating a contract without just cause and consequences*
- 2. If a club unilaterally terminates a contract on the grounds of a player refusing to take a pregnancy test, being or becoming pregnant, being on maternity, adoption or family leave, or utilising rights related to maternity, adoption or family leave in general, the club will be deemed to have terminated the contract without just cause."*

While this behaviour on the part of a club is logically abusive, and without the regulation most jurisdictions would probably not have accepted it, it is commendable that the regulation is clear about what can and cannot be done, to prevent discussions and different interpretations, and above all abuses.

WAGE PAYMENT

During pregnancy

These provisions are not new, as the right to 100% pay during pregnancy and until maternity leave was exercised, was already enshrined in the 2021 protections.

However, especially since the Sara Bjork Gunnarsdottir case referred to above, discussions have arisen as to whether a player who is no longer providing services to the club (either in football or in an alternative manner) should be paid her salary.

With the new wording, Article 18c(4) sets out each of the possible scenarios and their consequences as follows:

"4. Where a player becomes pregnant during the term of her contract, the following shall apply:

- a) The player has the right to continue providing sporting services to her club (i.e. playing and training). The club has an obligation to respect the decision and formalise a plan for her continued sporting participation in a safe manner, prioritising her health and that of the unborn child. The player shall be entitled to receive her full remuneration, until such time that she utilises maternity leave.*
- b) Should the player deem that it is not safe for her to continue providing sporting services, or should she choose not to exercise her right to continue providing sporting services, the club shall offer the player the possibility to provide employment services in an alternative manner. If she renders employment services in an alternative manner, or if the club is unable to offer alternative employment services that can reasonably be expected in the context of the ongoing contract, the player shall be entitled to receive her full remuneration, until such time that she utilises her maternity leave.*

c) If, for medical reasons related to a pregnancy, a player is unable to provide sporting or employment services in an alternative manner, then the player is entitled to medical leave, subject to the production of a valid medical certificate issued by her personal gynaecologist or specialist medical practitioner. The player shall be entitled to full remuneration, until such time that she utilises maternity leave."



In a nutshell, this means the following:

- If the player continues to practice at the club (because she so decided and there is no medical objection as the FIFA RSTP allows her to do) she will continue to receive 100% of her salary until she decides to start her maternity leave (she can start from 6 weeks before the due date). In this case the club is obliged to formalise a plan, together with the player, for a safe sporting continuation, prioritising the health of the player and the unborn child.
- If the player decides not to continue playing for the club:
 - If the club offers her a reasonable alternative job and she accepts: she will collect 100% of her salary until she decides to start her maternity leave (she can start from 6 weeks before her due date).
 - If the club does not offer her an alternative job or offers her an unreasonable alternative job: she will be paid 100% of her salary until she decides to start her maternity leave (she can start from 6 weeks before her due date), even if she does not work.
 - If the club offers her a reasonable alternative job and she refuses to work: she will not be entitled to salary during the pregnancy and until she decides to start her maternity leave (she can start from 6 weeks before the due date).
 - If the player is unable to provide sporting or alternative services due to medical indication: she will receive 100% of her salary until she decides to start her maternity leave (she can start from 6 weeks before the due date).

Ultimately, the player will in all cases receive 100% of her salary until the maternity leave begins. The only exception is if a player with no medical objections decides not to continue providing sports services and refuses the offer of a reasonable alternative job.

But what is reasonable alternative work?

In the explanatory notes⁵ published by FIFA, it is stated that the test of reasonableness must be passed: the alternative services must be sufficiently connected to the player's task as a footballer, and a player can reasonably be expected to perform that activity.

In other words, the alternative service, in order to be reasonable, should not be cleaning, or administrative work, as there is no connection between these jobs and playing football.

Would Sara Bjork have won the case if we had had this wording when she sued?

It is highly likely that she would, as the club failed to offer her any alternative work. Worse, when she offered it to the club (which was not, and is not under the new wording, the player's obligation) the club chose to ignore it.



POSTPARTUM PLAN

The RSTP incorporates the concept of a postpartum plan. There was previously a reference to a training plan if the player decided to continue playing, but this was prior to the birth.

The postpartum plan is a plan to be developed by the club together with the player, in order to design her return to football. This plan will be individualised, and will depend on many variants, such as whether the birth was natural or by caesarean section, the mother's state of health, the child's state of health, the club's possibilities to support the player's recovery, etc. In short, the more support the player receives from her employer, providing her with professionals such as specialised physiotherapists, nutritionists, etc., the quicker she will be able to return to sport.

In the explanatory notes published by FIFA⁶, a number of recommendations are made as to what should be included in such a postpartum plan.

Within the recommendations, on page 9 of the explanatory notes, there is an embedded link to a document prepared by FIFPRO. That document belongs to a larger project, called 'Postpartum Return to Play', where FIFPRO suggests that both FIFA and all member associations incorporate the provisions explained therein, in their regulations, for a better support of the player during her pregnancy, and after having her baby, for an effective and efficient (and therefore happy) return to football.

On this topic, in August 2024, FIFPRO will publish a guide that was prepared together with football players who actually experienced motherhood while they were professionals and with doctors and physiotherapists specialised in maternity in professional sport. Input from those individuals – especially from the players that have experienced giving birth – has been of paramount importance and the guide prepared on the basis of their experiences fill a gap that had been left. This gap occurred when maternity was regulated, but there was no corresponding training or education around this fundamental topic. Various times, these players would tell the same story in that clubs did not know what to do (beyond what was established in the regulations). Indeed, the players described that when they became pregnant, they asked the club, the physiotherapists, etc. what they should do, and nobody knew exactly which were the most adequate exercises, which muscles needed priority, etc.

This guide, created by FIFPRO, has 3 parts, one dedicated to the player, one dedicated to her entourage, which includes clubs and federations, and one part composed of our normative recommendation.

MENSTRUAL HEALTH

This is a new concept in the FIFA RSTP⁷ and its main purpose is to raise awareness of menstruation among female football players, to naturalise it, and to give special attention to those specific cases where the player is in such pain that she cannot play football, clearly stating that, after obtaining a medical certificate, she can take a day off or several days off and that day or days off will be paid.

Article 18quinquies states:

"Menstrual health

Clubs shall at all times respect the needs of female players related to their menstrual cycle and menstrual health. Subject to the production of a valid medical certificate issued by her personal gynaecologist or specialist medical practitioner, a female player shall be entitled to be absent from training or matches whenever her menstrual health so requires. The player shall be entitled to receive her full remuneration when exercising these rights related to menstrual health."

Ultimately, it would not seem to add a right, since, if the player felt unwell, for whatever reason, she could already go to the doctor and obtain a certificate. But the article seeks to give legal certainty that in this case her day could not be deducted.



PROTECTED Female coaches

Another major innovation was to add female coaches to the protections. It should be noted that in the discussions with FIFA there was no representative for female coaches, as the only workers' representative was FIFPRO, representing professional women's football players. However, all international stakeholders agreed that these protections were necessary.

It is regulated that the provisions of Articles 18.7 and 18c (except for 4a and b) apply to female coaches.

This makes a lot of sense, and follows the line that FIFA⁸ has been taking, whereby coaches have also been included some years ago in the protection against non-payment of salaries, for example.

Female coaches will be entitled to maternity leave, adoption leave and family leave, with the minimums established in the RSTP.

Female coaches are entitled to full pay in case of medical incapacity during pregnancy, as are female football players. Where there is a difference is that the player can decide whether to continue playing or not, and can carry out an alternative job. These options are not given to female coaches, as it was understood that they are not as necessary. The physical activity of a female coach is much less, and so is the moving contact with other players, so it was not considered relevant to include them in these special protections for women's football players.



STRENGTHENING COLLECTIVE BARGAINING AGREEMENTS (CBAS)

Another addition in the FIFA RSTP is the second paragraph to article 1.3. This paragraph states that the provisions of the FIFA RSTP are mandatory at the national level, as a minimum, but there is one exception, only one, and that is the Collective Bargaining Agreement (CBA). If there is a validly negotiated collective bargaining agreement, then it is possible to accept lower conditions, because it is understood that the players preferred to exchange these minimums for others that they consider more important, depending on the context and situation of the particular country.

Players may also choose not to include the maternity issue in their collective bargaining agreement, so that the FIFA RSTP minimums apply, and regulate other issues through CBAs. They may also seek, through CBAs, to negotiate better or more detailed standards, such as those currently in place in women's football in the USA or Australia, both at competition and national team level.

It is important to understand that the only exception to go below minimum standards is a validly negotiated collective bargaining agreement, so an agreement without union representation, for example, would not be sufficient. Neither would an agreement made with the participation of a yellow union?

When national law regulates the matter, it will only come into play if it has provisions that are more favourable than the minimum guaranteed by the FIFA RSTP. Where this is the case, those specific provisions of the law will prevail; and other provisions in the FIFA RSTP that are not regulated in the law or are regulated in the law in a way that is less favourable to the player, will apply. In short, it applies what is most beneficial to the player, but not as a whole body of law but provision by provision. And the only exception to this is the valid conclusion of a collective bargaining agreement, which will override the rest.

This provision was added because there were different positions on the application of the rules of the FIFA RSTP as opposed to a collective labour agreement. The rule clarifies the issue and provides legal certainty.

PROMOTING *The acceptance of children* IN THE NATIONAL TEAM ENVIRONMENT

FIFA, through this new provision, encourages its members, in consultation with the players of their national teams, to adopt guidelines to allow the accompaniment of children during the final stages of competitions.

Article 1bis. 11, in Annex 1of the FIFA RSTP states:

"As of the final stages of the final competitions of the FIFA Women's World Cup™, the Women's Olympic Football Tournament and the championships for women's "A" representative teams of the confederations, the association(s) are encouraged to provide a family-friendly environment for female players with children."

Unfortunately, this provision remained a mere recommendation and not an obligation. However, it is of utmost importance that this regulation is increasingly applied in the national teams. National team players sometimes spend 2 to 6 weeks away from their children, often abroad, which obviously affects them as individuals and, therefore, their performance. What is more, in some countries the national team acts as an employer and the player's livelihood is connected to the services rendered with the national team. The role of national teams in women's football is therefore crucial and maternity protections are needed.

This is another provision that should also apply to men's football, for obvious reasons.

What should be included in order to have an open environment for families according to FIFA's explanatory notes?

- the possibility for families to stay in the same hotel as the team, or at least in close proximity, during the final tournament;
- provide adequate facilities, in accordance with national legislation, for breastfeeding and/or expressing breast milk, if necessary;
- provide all necessary sanitary facilities for players with babies;
- cover travel and/or accommodation costs for families; and
- facilitate the provision of childcare services.

REGISTRATION

Outside registration periods

This protection was already enshrined in the regulations added in 2021¹⁰. It is to authorise, exceptionally, the registration of a player returning from maternity leave, outside the registration periods (the transfer window). The new regulation adds the cases of adoption leave and family leave to this exception.

There is also a reference to return from recuperation in relation to pregnancy. Perhaps this provision could have been clearer, but it deals with cases of abortion, for example. If a footballer had been deregistered due to pregnancy and loses her baby, for example through miscarriage, there is also in this case the exception of registration outside the window, to give the footballer the possibility to return to work.

TEMPORARY REPLACEMENT OF THE PLAYER

In the previous regulation, it had been stated that this temporary replacement of the player could take place when the player exercised her right to maternity leave. This had been an oversight in the previous wording of the FIFA RSTP, as the idea was also to allow for the possibility of a replacement if the player no longer played for the team during her pregnancy and before the start of her leave, if she decided not to continue playing. The new regulations now correct the oversight, replacing the term 'maternity leave' with 'maternity-related rights', and specifically includes adoption leave and family leave.



WHAT PROTECTIONS ARE MISSING IN RELATION TO

Maternity and paternity?

There are many aspects that can be improved, but there are two which are fundamental:

1. The extension of the professional footballer's contract in case it comes to an end during pregnancy or maternity leave;
2. The extension of the protections to male professional football players.

EXTENSION OF THE PLAYER'S CONTRACT

The average contract term of a professional women's football player worldwide is one year¹¹. Only one year.

So, while we again greatly welcome the regulatory developments as incorporated by FIFA, we must remember that rights that cannot be exercised are not real rights. Therefore, it is an obligation of the wider football community to ensure that these rights are effective. Hence, to give effect to the protections provided by the RSTP, we must have longer contracts in the women's game.

It is humanly nearly impossible to enjoy all the rights provided by the RSTP if the player's contract is only for one year. The player would have to become pregnant just after signing the contract, or be pregnant before signing the contract, to be able to enjoy the benefits of maternity leave, for example.

That is why FIFPRO has been advocating since the beginning of the first discussions for the automatic extension of the contract, when the contract ends during pregnancy or during maternity leave, adoption leave or family leave.

What does FIFPRO propose? The automatic extension of the contract until the next transfer period (setting a minimum after the end of maternity leave).

This is not at all far-fetched, it is even in force in various countries, like Argentina or Spain, and it is only natural, otherwise we are erasing with our elbow what we write with our hand.

EXTENSION OF PROTECTIONS FOR MALE PROFESSIONAL FOOTBALLERS

And male football players are not entitled to paternity protection? No.

FIFA Circular 1887, which introduces these protections for professional women's football players, states that it is intended to reflect the reality of women's football, and to promote inclusivity, by enshrining the right to adoptive parents and non-biological mothers.

The choice of the word 'parents' is not completely accurate, given that it is not protecting the rights of all parents, but only of those players who are a woman.

Then, when referring to family leave, it refers to adoptive mothers.

Nor does it seem to be the best explanation of the insertion of this protection to refer to inclusivity, when a whole gender is being left out. Or is fatherhood not part of the reality of men and men's football?

Since the first discussions FIFPRO has been advocating for the protection of the rights of the non-bearing child parent, which should include the same rights for male professional players. Fatherhood is undoubtedly as important as motherhood, and we should strive to remove the stigma that male players should not enjoy the same rights as female players to spend time with the newborn child. Another stigma that needs to be removed is that women are the only ones who should be taking care of children. Today, this is enshrined in the family leave, but only for women, which simply cannot be explained.

This is a right for male footballers, a right for the partners of those men who go through nothing less than childbirth, or adopt, and most especially a right for that child to have his or her father present at such a crucial moment. Let us evolve.

CONCLUSION

Progress continues to be made in the protection of maternity rights, in their various forms, and today we have a robust and protective regulation of which I, representing FIFPRO, but also personally, am very proud.

This progress is a sign that it is possible to come to concrete solutions and that the discussions can be very fruitful, and I hope it will set an example for the future discussions that are still to come on this very important topic that is finally getting the attention it deserves.

Although there is still a long way to go, we are on the right track.




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ABOUT FIFPRO

FIFPRO represents the collective international voice of the world's professional footballers and over 65 national player unions. We work every day on behalf of more than 65,000 players, both men and women, spread across our affiliated national player associations.

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