



**HIS AND HERS: occupational hazards, health, justice  
and preventions actors**

*Seminar 13-14 FEV 2017 - BRUSSELS*

**GENDER AND RETURN TO WORK:  
the gap between legal prescription  
and real work improvement on parenting**

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das condições de trabalho**

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## LEGAL FRAMEWORK

- Portuguese Constitution;
- Labour Relations Code;
- Law Decree 91/2009;

## PORTUGUESE CONSTITUTION

The Portuguese Constitution recognizes motherhood and paternity as eminent social values.

## LABOUR RELATIONS CODE

- Directive 92/85/EEC

(measures to promote the improvement of the safety and health of workers pregnant women, workers who have recently given birth or are breastfeeding)

- Directive 96/34/EC (replaced by Directive 2010/18/EU)

(framework agreement on parental leave concluded by the Union of Industrial and Employers in Europe - UNICE, the European Center for Public Enterprises - CEEP and The European Trade Union Confederation – ETUC)

## LABOUR RELATIONS CODE

### - Directive 2000/43/EC

(implementing the principle of equality of treatment between persons irrespective of racial or ethnic origin)

### - Directive 2000/78/EC

(establishing a general framework for equal treatment in employment and occupation)

### - Directive 2006/54/EC

(application of the principle of equal opportunities and equal treatment between men and women in fields related to employment and occupation)

## LAW DECREE 91/2009

Defines and regulates the protection on parenting in the context of maternity, paternity and adoption for the social security system and the solidarity subsystem.

## PROTECTION ON PARENTING

Protection in parenthood takes place through the granting of the following rights to the worker:

- **Leave at a clinical risk during pregnancy**  
(paid: 100%; duration: according to clinical prescription)
- **Leave for termination of pregnancy**  
(paid: 100%; duration: 14-30 days/clinical prescription)

## [...] PROTECTION ON PARENTING

### - Parental leave (birth or adoption)

#### - *initial parental leave*

(duration: 120-150 days; 42 days mandatory - mother; 15 days mandatory - father; paid: 100% if both parents enjoy it; in some cases it can go to 180 days paid at 83%)

#### - *supplementary parental leave (for children up to 6 years)*

(for each parent: three months leave; or part-time work at 50% for 12 months; or an arrangement of both; paid: 25%)



**MEN WHO SHARED AT LEAST A 30 DAY PERÍOD ON PARENTING  
ABSENCE LEAVE (120/150 DAYS)**

<u>Anos</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
% on total births	19,4	21,4	22,7	25,5	----
% on total leave for women	22,9	23,6	26,7	28,3	30,3

FONTE: CITE

## [...] PROTECTION ON PARENTING

- **Leave for child care** (*for children up to 6 years*)  
(up to 2 years in consecutive or interpolated mode; in the case of a third child or more with a 3 years limit; paid at 65%)
- **Leave for assistance to a child with a disability or chronic illness**  
(the parents are entitled to leave for a period of up to six months, renewable for up to four years; paid: 65% up to ~850 €)

## [...] PROTECTION ON PARENTING

- Absence to work due to child disease
- Grandfather/Grandmother Leave;
- Exemption from work by a pregnant worker in case of protection of their safety and health;
- Exemption for prenatal medical consultation;
- Exemption for evaluation for adoption sessions;
- Exemption for breastfeeding and feeding;

## [...] PROTECTION ON PARENTING

- Part-time work for workers with family responsibilities;
- Flexible working time for workers with family responsibilities;
- Exemption from work on special worktime regimes;
- Exemption from working overtime;
- Exemption from night work.

## [...] PROTECTION ON PARENTING

The dismissal of pregnant workers, workers who have recently given birth or who are breastfeeding or in the use of parental leave always requires a prior mandatory opinion from the competent authority in the area of equal opportunities between men and women.

## [...] PROTECTION ON PARENTING

The non-renewal of a fixed-term employment contract with a pregnant worker, a worker who recently gave birth or who is breastfeeding always implies that the employer must give notice of that fact to the entity with competence in the area of equal opportunities between men and women.

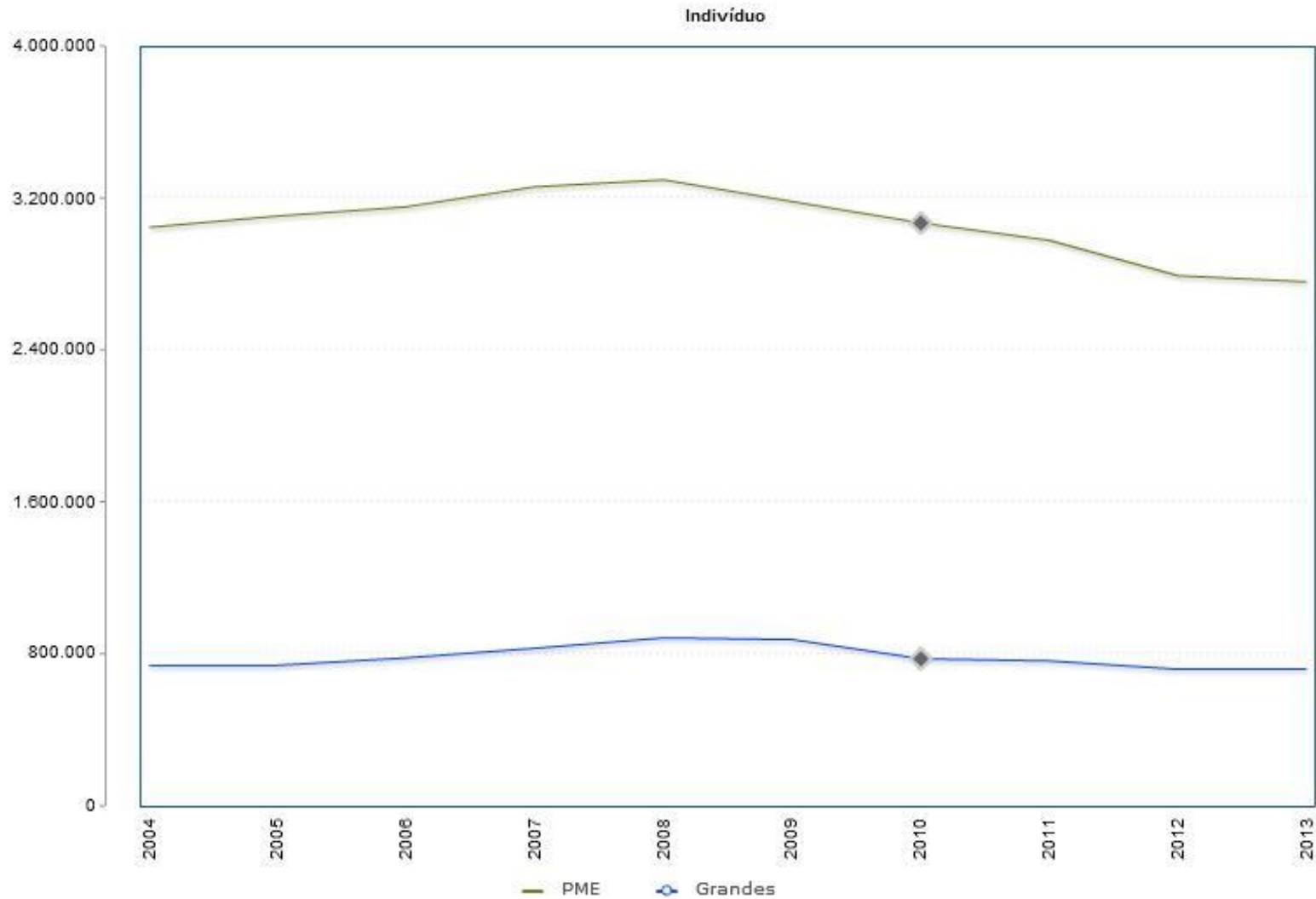
## OVERALL...

- Complete and fair system from a prescriptive point of view;
- Values the issues of parenting;
- Has also begun to highlight the place of the father through the attribution of compulsory time of leave.

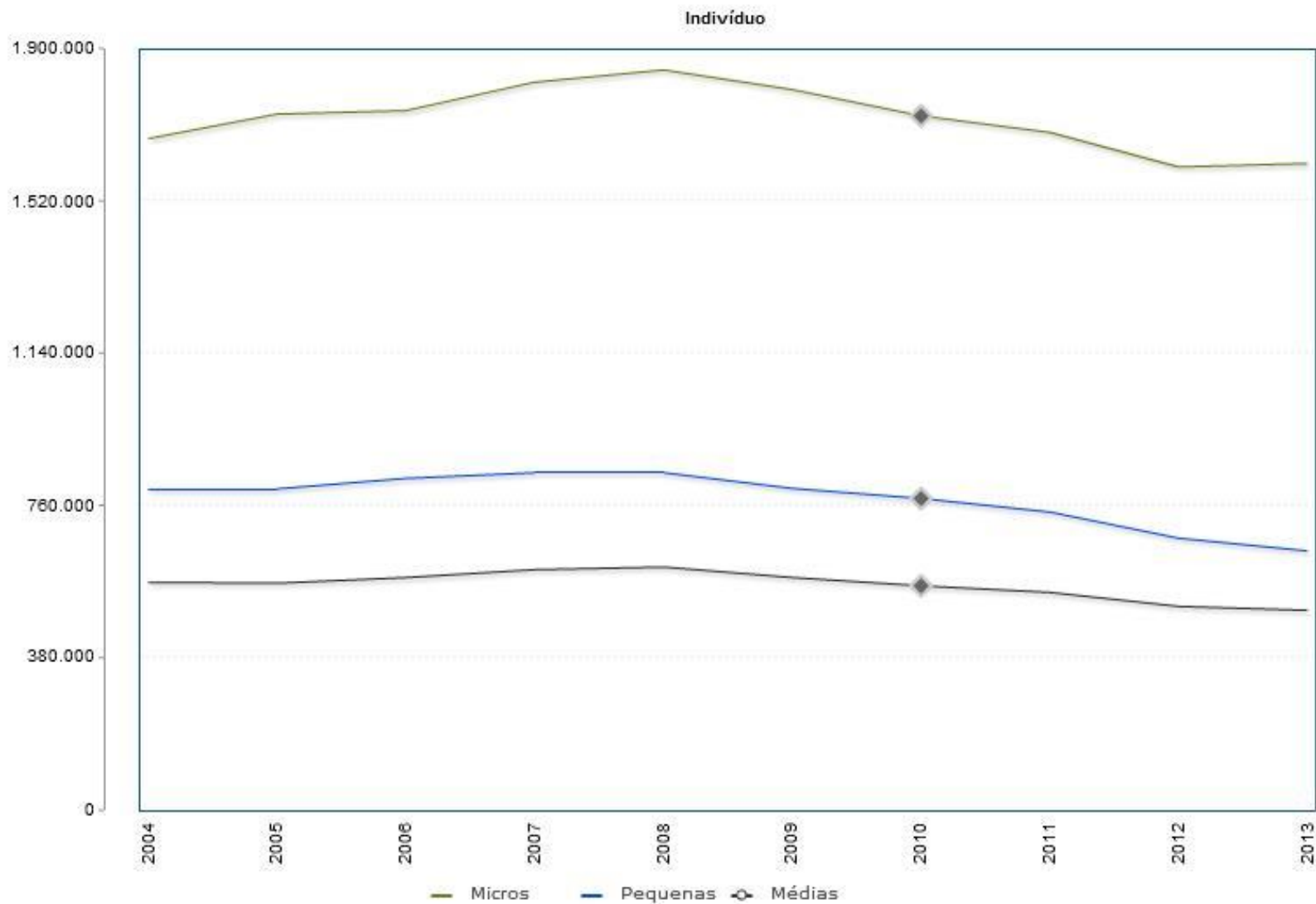
## SOME NOTES ON THE WORK CONTEXT

- 99.9 % (1.118.427) of portuguese companies are SME's (small and medium enterprises);
- Of which 96.2% are micro-enterprises, 3.2% are small enterprises and 0.5% are medium-sized enterprises;
- Micro-enterprise: < 10 workers; annual turnover < 2M€
- Small enterprise: workers [10, 50[; annual turnover [2M€; 10M€[
- Medium enterprise: [50, 250[; annual turnover [10M€; 43M€]





Fontes/Entidades: INE, PORDATA



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## [...] SOME NOTES ON THE WORK CONTEXT

- Out of a total of 2,243.8 employed women, 1,796.5 work in companies in the tertiary sector (banking, transport, distribution, education, health, retail, hotels and restaurants);
- The average size of enterprises in the tertiary sector varies between 1 and 3 workers.

## [...] SOME NOTES ON THE WORK CONTEXT

### **Small size companies**

- many times with a family management
- fragile financial situation
- with very particular modes of business management and customer relationship;

### **Big size companies**

- very demanding management styles
- sometimes with very low consideration on people (focused on profit)

## DIFFICULTIES IN RETURNING TO WORK

### Organization of working time

- breast-feeding
- exemption from work on special worktime regimes;
- exemption from working overtime;
- exemption from night work
- part-time work for workers with family responsibilities;
- flexible working time for workers with family responsibilities;

## DIFFICULTIES IN RETURNING TO WORK

- Adapting to changes in the workgroup and it's dynamics;
- Adapting to changes on business and customer relationships;
- Actions for dismissal;
- Harassment (geographical mobility; changes on timetables; changes on workstation)

## SOME IDEAS AROUND THIS QUESTION

- Cultural and symbolic value of parenting;
- Do the current legislative provisions contribute to reinforcing stereotypes of inequality?;

## SOME IDEAS AROUND THIS QUESTION

- More attention to the (necessary) integration of the worker on her/his return to work (this doesn't means formal plans)
- Some legislative changes should be made to contractual termination dispositions and to the amounts of amends due to a declaration of illegality of that termination;
- **Equality in law, inequality in the real?!**



**THANK YOU FOR YOUR ATTENTION**



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