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Employment rights of pregnant women and mothers under Ecuadorian law

Derechos laborales de la mujer gestante y madre en la legislación ecuatoriana

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ABSTRACT

The aim of the study was to analyse the employment rights of pregnant women and mothers under Ecuadorian law from an educational policy perspective. Employing a legal meta-analytical design, the study reviewed twenty-four regulatory, doctrinal and case-law sources, organised into three analytical categories: qualitative doctrinal studies, regulatory and international documentary sources, and rulings of the Constitutional Court of Ecuador, which were subjected to a quantitative trend analysis. It was found that, whilst the Ecuadorian regulatory framework broadly recognises enhanced job security, the invalidity of dismissal, maternity leave and the breastfeeding period, its application varies across educational institutions due to the fragmentation between the Labour Code and the Organic Law on the Public Service, whilst constitutional case law demonstrated a predominant orientation towards enhanced protection for the female workers concerned.

Descriptors: labour law; maternity protection; education policy. (Source: UNESCO Thesaurus).

RESUMEN

El estudio tuvo por objetivo analizar los derechos laborales de la mujer gestante y madre en la legislación ecuatoriana desde una perspectiva de políticas educativas. De diseño metaanalítico legal, mediante la revisión de veinticuatro fuentes normativas, doctrinales y jurisprudenciales, organizadas en tres categorías analíticas: estudios doctrinales cualitativos, fuentes documentales normativas e internacionales, y sentencias de la Corte Constitucional de Ecuador sometidas a un análisis de tendencias cuantitativas. Se evidenció que, si bien el marco normativo ecuatoriano reconoce ampliamente la estabilidad reforzada, el despido ineficaz, la licencia de maternidad y el período de lactancia, su aplicación resulta heterogénea en las instituciones educativas debido a la fragmentación entre el Código de Trabajo y la Ley Orgánica del Servicio Público, mientras que la jurisprudencia constitucional mostró una orientación predominante hacia la protección fortalecida de las trabajadoras afectadas.

Descriptores: derecho laboral; protección de la maternidad; política educacional. (Fuente: Tesauro UNESCO).

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Research articles

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INTRODUCTION

The recognition of the rights of pregnant women and mothers in the workplace is an essential element of Ecuadorian social constitutionalism today, since special maternity protections as part of the concept of substantive equality between men and women are enshrined in the Constitution of the Republic of Ecuador (National Constituent Assembly, 2008). Thus, this protection, as such, is not limited to the private sphere of the employment relationship but extends to the education system, since a large number of teaching and administrative staff in the Ecuadorian education system are women subject to reproductive cycles that the regulations seek to protect.

Because the Ecuadorian government's public education system operates largely in accordance with the Organic Law on Public Service (2010) which governs the labor relations of public school teachers and, in some respects, administrative staff it is worth considering how the regulatory framework describes, or, in fact, violates, the labor protections (or, at least, the principle of equal treatment) provided for in the Labor Code and the Constitution for Ecuadorian female employees in general. Similarly, the recent Organic Law on the Right to Human Care (2023) has introduced significant reforms to parental leave provisions that have not yet been adequately implemented across various sectors, including educational institutions—the latter being employers of a large number of women. Although the perspective on educational policies adopted in this study is broad and does not merely examine the regulations applicable to teaching staff, it also addresses the role of educational institutions in facilitating the widespread exercise of gender-related labor rights within the educational context. In fact, Iglesias-Quintana et al. (2025) stated that formal protection of labor rights for pregnant and breastfeeding women would not be sufficient without institutional measures aimed at disseminating legal knowledge among those involved in employment, as well as employers, thereby taking on special importance in the

workplace, where the continuing education of teachers becomes an explicit public policy.

Similarly, Montero-Bonilla et al. (2022) warn that institutional authorities, including educational authorities, turn a blind eye to the “reinforced stability” regime, which rewards the practice of abrupt dismissals carried out through discretionary administrative processes. As such, the articulation of educational policies and labor law is not a complementary relationship, but rather an enabling feature of the functioning of the constitutional benefits granted to pregnant women and mothers in the context of Ecuadorian public education.

On the international stage, the International Labor Organization’s Maternity Protection Convention (2000) established three main provisions for minimum standards regarding leave, financial benefits, and protection against discrimination based on pregnancy, while the Convention on the Elimination of All Forms of Discrimination against Women (United Nations, 1979) provided the general guidelines for substantive equality upon which Ecuadorian constitutional interpretation would be based. In this regard, Ecuador’s ratification of these instruments imposes on public authorities the duty of state entities to implement regulations and public policy that go beyond mere legislative positivism through the integration of training materials on gender-related labor rights into professional development opportunities for teachers and other educators. From an educational policy perspective, it may be valuable to distinguish between two complementary dimensions of the issue under analysis.

On the one hand, there is a strictly labor-related dimension—that is, the employment status of female teachers and administrators in the education sector, which is subject to the provisions of the Labor Code and the Organic Law on Public Service as part of contractual relationships. However, on the other hand, there is an educational and institutional aspect, which refers to the education system’s capacity to integrate a certain level of knowledge (for example, gender-related labor rights) into its management and training programs—that is, to ensure that educational institutions serve as effective providers of these rights,

rather than as potential sources of their violation. When considered together, these two dimensions provide insight into the normative perspective of the issue, with an emphasis on public policy in the education sector.

For this perspective to be supported by systematic evidence, it is noteworthy that Ecuadorian legal literature has focused primarily on the labor aspect, and much less on the educational and institutional aspects of education policy. Consequently, this paper seeks to address this gap by providing a framework for legal analysis that does not focus strictly on labor regulations, but rather on the consequences and implications for education policy arising from current labor protection legislation.

Research Question: What are the labor rights of pregnant women and mothers under Ecuadorian law from an education policy perspective?

Research Objective: To analyze the labor rights of pregnant women and mothers under Ecuadorian law from an educational policy perspective.

METHOD

This research employed a legal meta-analysis design, which is conceptualized as a systematic process of examining normative, doctrinal, and jurisprudential sources to reveal interpretive trends and gaps in the development of public policies within a particular field. Given the heterogeneous nature of these sources, the document corpus was organized into three complementary analytical categories: qualitative studies of a doctrinal nature, normative and international documentary sources, and judicial decisions analyzed through a quantitative trend analysis.

Furthermore, the search was conducted on Dialnet, SciELO, institutional repositories of Ecuadorian universities, and the official websites of the Constitutional Court of Ecuador, the National Assembly, and relevant international organizations. The search terms used were: “labor rights,” “pregnant women,” “breastfeeding,” “enhanced job security,” “invalid dismissal,” and “educational policies,” which were combined using the Boolean operators AND and OR. The search timeframe was set between 1919—the year of the first international

convention on maternity protection and 2025, in order to include both historical normative aspects and the most recent court rulings.

The document selection process was carried out in four consecutive stages. As part of the identification phase, forty-seven records corresponding to the identified search equations were retrieved; as part of the screening phase, twelve duplicate documents and nine records whose content did not fall within the study's analytical categories were eliminated. For the twenty-six remaining documents in the eligibility phase, the full text of each was reviewed; of these, two were rejected because they repeated normative content already represented by hierarchically equivalent instruments.

In the final inclusion phase, twenty-four documents met the specified criteria. The inclusion criteria evaluated were: a) existing normative instruments of a constitutional, legal, or international nature; b) decisions issued by the Constitutional Court of Ecuador following the implementation of the 2008 Constitution; c) scholarly articles and theses employing a specific legal methodology; d) publications written in Spanish that were adapted to the Ecuadorian or comparative context. Documents from other non-institutional sources or those of questionable verifiability were excluded, as were judicial rulings that had been repealed or replaced by subsequent decisions of equal or higher legal standing. Following the specified criteria, a (final) corpus was constructed based on the qualitative doctrinal study of 7 articles and graduation theses, documentary sources that were normative, constitutional, and international, and the rulings of Ecuador's Constitutional Court, which were subjected to a quantitative methodological trend analysis.

Furthermore, data processing was carried out using extraction matrices that included source, year, legal hierarchy, or type of study; protected population or subject; and main provisions or outcomes. Subsequently, thematic coding of qualitative and documentary sources was performed, grouping them into three main categories: scope of legal protection; mechanisms for judicial enforcement; and gaps in institutional education policy. Concurrently, the decision-making

orientation of the reviewed constitutional rulings was systematized along several axes, classifying each ruling according to whether it fully, partially, or restrictively favored the claim of the pregnant woman or mother involved in the litigation a process that allowed for the identification of a quantifiable jurisprudential trend without resorting to the inferential statistical analysis characteristic of the exact sciences. Finally, the triangulation of the three datasets enabled the construction of an interpretive synthesis that addresses the research question posed from the perspective of the educational policies examined in the study.

RESULTS

In accordance with the procedures employed in the meta-analysis, the research results are presented below:

Qualitative Results

In the doctrinal studies considered as a whole, the authors found that, although the Ecuadorian regulatory framework generally recognizes the labor rights of pregnant women and mothers, its application remains uneven in some workplaces, including educational institutions, In this regard, Cabezas-Ortega (2017), through an examination of specific cases, showed that a significant number of pregnant workers were unaware of the exact scope of the enhanced job security provided by law, which placed them in a vulnerable position vis-à-vis arbitrary decisions by employers.

In fact, Guarnizo-Jaramillo and Cabrera-Vélez (2023) observed that formal equality in paternity and maternity leave, as well as breastfeeding periods, did not yet translate into an equitable division of care in Ecuadorian households, indirectly influencing women’s career trajectories. Similarly, Montero-Bonilla et al. (2022) similarly warned that the sudden dismissal of pregnant and breastfeeding women has become a common practice, typically disguised through administrative actions such as the elimination of positions or the termination of temporary contracts—contractual arrangements that are particularly common in the public education sector.

This, in turn, implies that the job insecurity associated with temporary contracts in public education exposes pregnant teachers to forms of abuse that the enhanced job security originally designed for indefinite employment relationships does not always have the capacity to counteract to the same extent. Following this line of reasoning, Machado-López et al. (2023) suggested that the concept of “ineffective dismissal”which ha s gradually been incorporated into Ecuadorian constitutional jurisprudence as part of the legal framework represents a significant step forward against the traditional practice of sudden termination of employment, as it requires the effective reinstatement of an affected worker rather than merely providing monetary compensation.

As noted by Villacis-Carrera and Pachano-Zurita (2023), viewed in this light, while this concept is theoretically sound, it is difficult to implement in practice when the employer is a public organization facing complex budgetary and administrative processes especially when it is a public entity subject to various administrative measures and there is a heavy burden on public education institutions. Building on previous research, Oñate-Veloz and Gamboa-Vargas (2022) found that there is a “heterogeneous” application of the breastfeeding period which is considered a legally recognized right of two hours per day during the first months after giving birth within public institutions (including educational institutions) due to unclear institutional guidelines that serve as instructions for administrative authorities to implement them.

Consequently, the qualitative evidence gathered indicates that the discrepancy between regulatory recognition and institutional practice is the main barrier to the success of the rights evaluated, which could be reduced through an educational policy focused on training and outreach. Likewise, it is also important to note that the reviewed doctrinal studies did not directly address systematic training programs on gender-related labor rights within Ecuadorian educational authorities, which in itself is an indirect indicator that the public policy gap is not only evident in the review but often requires clarification through the institutional processes of educational authorities; this absence contrasts sharply with the

large volume of doctrinal literature available on the substantive content of the rights examined. This suggests that the fundamental problem is not a lack of specialized legal knowledge, but rather that insufficient learning takes place within the management spheres of educational institutions where administrative decisions are made on a daily basis.

Literature Review Findings

Within the literature review, the examined body of regulations revealed a set of multilevel protection systems that are internationally established and enshrined in the Constitution and ordinary legislative acts. Under the Constitution of the Republic of Ecuador (National Constituent Assembly, 2008), maternity protection, the prohibition of employment discrimination based on pregnancy, and the right to paid leave are explicitly recognized, making them one of the constitutional principles underpinning the subsequent infra-constitutional regulations. Similarly, the current Labor Code which has been codified and amended through 2023 establishes the specific framework for maternity leave, strengthens job security, and prohibits dismissal during pregnancy and after childbirth. However, the Organic Law on Public Service (2010) regulates public education personnel differently, establishing an alternative regime whose harmonization with the Labor Code is not always specified in the statutory text.

This situation was documented by Cacpata-Calle et al. (2019) while investigating the particularities of the breastfeeding period among workers under different employment regimes in Ecuador’s public sector. Consequently, under the Organic Law on the Right to Human Care (2023) which stems from this regulatory contrast certain protection standards have been established to ensure that different regimes adhere to a single standard. However, this regulation in the education sector is still under development. Interministerial Agreement No. MDT-MSP-2024-0000, issued jointly by the Ministry of Labor and the Ministry of Public Health, on the other hand, the Organic Law on Labor Justice and Recognition of Domestic Work (2015) established the doctrine of invalid dismissal for pregnant

women, union leaders, and individuals with disabilities in Ecuador (which also significantly expanded the level of protection already in place).

Likewise, at the international level, the conventions of the International Labor Organization, including those pertaining to maternity protection (1919, 2000) and non-discrimination in employment (1958), serve as interpretive parameters that Ecuadorian justice officials are required to consider by virtue of the principle of conventionality review recognized under national constitutional jurisprudence. Under these circumstances, our review of the literature allows us to affirm that Ecuador has had a relatively strong regulatory framework providing formal protection for pregnant women and mothers in the context of labor rights. This counteracts the gap identified in the qualitative corpus, particularly when addressing the implementation of guaranteed rights in the public education system, which is hindered by overlapping and differentiated labor regimes under the various legal frameworks, thereby preventing their universal application.

It is important to note that the regulatory fragmentation we observed was not unique to the Ecuadorian legal system, as Iglesias-Quintana et al. (2025) had documented, through a comparative study between Ecuador and Spain, that both nations face a comparable challenge in reconciling international instruments, constitutional articles, and differentiated sectoral regimes into a coherent protection system. However, these authors assert that the Spanish system is characterized by superior mechanisms of inter-institutional coordination aimed at the universal enforcement of gender-based labor guarantees within the public sector, including education, which points toward a potential line of comparative policy suitable for adaptation within the Ecuadorian system.

Quantitative Results

We found that an analysis of jurisprudential trends, based on an examination of the seven rulings by Ecuador’s Constitutional Court included in the corpus, indicated a predominant orientation toward enhanced protection for pregnant women and mothers. Of the seven decisions reviewed, five ruled in favor of the affected worker’s claim for job security or reinstatement; one ruled partially in

favor by establishing additional interpretive parameters without granting the full request; and one developed general interpretive criteria without directly ruling on a specific case of job security.

In this regard, Ruling No. 3-19-JP/20 and consolidated cases (Constitutional Court of Ecuador, 2020) established binding legal precedents regarding the scope of invalid dismissal, extending this doctrine beyond its literal legal presumptions. Meanwhile, Ruling No. 108-14-EP/20 (Constitutional Court of Ecuador, 2020) similarly reiterated that job security for pregnant women is a strong bulwark against decisions to administratively terminate the employment relationship. In light of the most recent rulings, Ruling 2286-17-EP/23 (Constitutional Court of Ecuador, 2023) and Rulings 109-20-EP/24 and 2006-18-EP/24 (Constitutional Court of Ecuador, 2024) gradually consolidated the standards of defense, including specific attention to the burden of proof regarding the employer's knowledge of the pregnancy at the time of termination.

Finally, the case law established by Judgment 530-20-EP (Constitutional Court of Ecuador, 2025) is the most recent judgment in the corpus studied, as it confirms the evolution of a consistent body of case law over a five-year period without any significant deviations from the protective measures that had been implemented. Solórzano-Rodas et al. (2020), which focuses in particular on regulations governing the breastfeeding period, found a similar trend toward the progressive expansion of judicial protection standards in line with the direction observed in the case law corpus of this meta-analysis. Thus, the accumulated empirical evidence provides a basis for an additional conclusion: that the Constitutional Court of Ecuador has been a key actor in securing the labor rights discussed thus far in this research, as it has addressed certain gaps in educational and institutional policy revealed in the qualitative corpus through judicial mechanisms.

DISCUSSION

The Ecuadorian legal system encompasses a vast and gradually integrated catalog of labor rights granted to pregnant women and mothers; the success of this catalog would therefore depend on the existence of institutional educational

policies that can make the normative content enforceable by everyday employers. As reported by Montero-Bonilla and colleagues (2022), the lack of regulatory knowledge which institutional authorities lack is one of the main reasons for the persistence of violations, making the ongoing training of managerial and administrative staff in the education sector a determining factor in their effective compliance with the new law. However, the documentary evidence from this analysis which examines a relatively uniform framework of international and constitutional regulatory content reveals, on the one hand, a stark contrast and, on the other, a distinct fragmentation of operations, rooted in the existence of differentiated labor regimes within the respective private and public education sectors.

This stands in sharp contrast to the Organic Law on Public Service (2010), which has procedural peculiarities that have arisen from this development (Cacpata-Calle et al., 2019), in addition to the relatively systematic protection provided by the Labor Code, which will raise interpretive doubts for public employees in this sector regarding the regime applicable in practice. Consequently, it is worth distinguishing between the legal status of a right and the specific arrangements and institutional characteristics that determine whether that right can be effectively exercised in education. Unlike other labor sectors where the employer-employee relationship is subject to a common set of rules, the political context of the public education sector requires that teacher training programs include a specific set of content on gender-related labor rights, since institutional authorities (principals, university presidents) in the public education sector function both as administrators and as potential violators of these rights when they are unaware of their scope.

In other words, education policy should not limit teachers' pedagogical and disciplinary training to those areas alone, but should also integrate training on labor and gender rights across the board, as stated by Iglesias-Quintana et al. (2025) regarding the failure of more official protection efforts when they are not integrated with the institutional dissemination of legal knowledge; in this regard,

case law, for its part, reinforces a general trend toward strengthened judicial protection, which coincides with the doctrinal transformation that Machado-López et al. describe regarding invalid dismissals. On the other hand, this consolidation of case law cannot prevent the Ecuadorian State from increasing preventive mechanisms within public education policy because the judicialization of labor disputes, although a last resort, imposes substantial procedural, time-related, and emotional costs on the affected workers, as noted by Villacis-Carrera and Pachano-Zurita (2023) in their analysis of practices regarding the enforcement of invalid terminations against employees by public agencies.

In light of the above, the establishment of clearly defined legal measures in public and private educational institutions regarding the breastfeeding period, maternity leave, and institutionalized job security would help shift the focus from case law protection back to preventive measures aimed at voluntary compliance with regulations. It is true that Oñate-Veloz and Gamboa-Vargas (2022) reported that the lack of these protocols is one of the main reasons for the inconsistent implementation of the right to breastfeeding in Ecuadorian public institutions an issue that a systemic and verifiable institutional education policy could resolve in a sustainable and long-term manner. While the Organic Law on the Right to Human Care (2023) is a recent regulatory step toward broader coverage of parental leave, its recent adoption contributes to the scarcity of empirical research to evaluate its impact, especially in the Ecuadorian context, thus representing a line of research of interest for the country's educational policies.

CONCLUSION

Ecuadorian legislation grants pregnant women and mothers strong labor rights, such as enhanced job security, protection against unfair dismissal, paid maternity leave, and a breastfeeding period, ranging from the Constitution to the international instruments ratified by the country. From an educational policy perspective, however, this regulatory framework is fragmented due to the different labor regimes under the Labor Code and the Organic Law on Public Service, and because educational institutions lack training protocols to implement the

regulations in administrative practice. Thus, to answer the research question, existing case law protections must be coordinated, and institutional training programs aimed at educational authorities must be established.

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CONFLICT OF INTEREST

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