

No maternity leave for women using surrogates: EU top court

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Women who use surrogate mothers to have a child do not have a legal right to maternity leave when the baby is born, the European Court of Justice ruled on Tuesday.

The European Union's highest court said EU "law does not establish a right to paid leave equal to [maternity leave](#) or adoption leave" for women having a [child](#) by a surrogate.

At the same time, EU member states are free to apply more accommodating rules if they choose to do so, it added.

The court was considering two cases: one of a British woman who could not get pregnant and had a child, fathered by her husband but carried by another woman and using another woman's egg.

The husband and wife were subsequently given full parental rights over the child with the consent of the [surrogate mother](#).

In the second case, a woman in Ireland who was fertile but had no uterus, used a surrogate mother in California. She and her husband were the child's full biological parents and recognised as such under US law.

In both cases, however, when the women asked for maternity leave so as to look after their babies, their employers turned them down on the grounds that neither had gone through a pregnancy or adopted their children.

Reviewing the cases against EU legislation on conditions for working mothers, fair treatment and physical handicap, the court said it could find no grounds to say that such a refusal of maternity leave breached EU law.

The relevant 1992 law stated that maternity leave must be granted to a [woman](#) "who has been pregnant and who has given birth to a child," it noted.

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