

# Application of the maternal jurisdiction in surrogate motherhood contracts: challenges in the colombian legal system\*

## Aplicación del fuero materno en los contratos de maternidad subrogada: retos y desafíos en el ordenamiento jurídico colombiano

## Aplicação da jurisdição materna em contratos de substituição: desafios no sistema jurídico colombiano

DOI: <https://doi.org/10.21803/penamer.15.29.511>

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### ¿Cómo citar este artículo?

Caballero, S., Lozano, J., Cruz, K. & Parra, A. (2022). Aplicación del fuero materno en los contratos de maternidad subrogada: retos y desafíos en el ordenamiento jurídico colombiano. *Pensamiento Americano*, e#:511. 15(29),139-151. DOI: <https://doi.org/10.21803/penamer.15.29.511>

### Abstract

**Introduction:** This article investigates the possibility of regulating the surrogate motherhood contract from the perspective of the employment relationship that may exist between the surrogate mother and the adoptive parents. So, the research objective is to analyze the application of the maternity jurisdiction in surrogate motherhood contracts, as well as to outline the existence of a labor relationship. Research that was carried out using a correlational, descriptive and explanatory **methodology**. On which the main **results** obtained were, on the one hand, the multiplicity of possible employment relationships in the surrogate motherhood contract and on the other hand the maternity jurisdiction, which must be applied in a total and partial way, depending on the surrogate mother or the adoptive mother. Finally, the main **conclusions** allow us to establish that there are three forms or modalities of employment relationship in such a way that since there is no strong regulation on the matter, there may be vicissitudes in its future application.

**Keywords:** Job stability; maternity leave; Pregnant mother; Adoptive mother; Surrogate motherhood.

### Resumen

**Introducción:** El presente artículo indaga acerca de la posibilidad de regular el contrato de maternidad subrogada desde una perspectiva de la relación laboral que puede existir entre la madre gestante y los padres adoptantes. De manera que se tiene como objetivo de investigación analizar la aplicación del fuero de maternidad en los contratos de maternidad subrogada, así como esbozar la existencia de una relación de carácter laboral. Investigación que se ejecutó mediante una **Metodología** correlacional, descriptiva y explicativa. Sobre las cuales los principales **resultados** obtenidos fueron, por una parte, la multiplicidad de relaciones laborales posibles en el contrato de maternidad subrogada y por otra parte el fuero de maternidad, que debe ser aplicado de manera total y parcial, dependiendo de la madre gestante o la madre adoptiva. Finalmente, las principales **conclusiones** permiten establecer que existen tres formas o modalidades de relación laboral de manera que al no encontrarse una regulación fuerte sobre la materia pueden presentarse vicisitudes en su aplicación futura.

**Palabras clave:** Estabilidad laboral; Fuero de maternidad; Madre gestante; Madre adoptiva; Maternidad subrogada.

### Resumo

**Introdução:** Este artigo investiga a possibilidade de regulamentar o contrato de substituição numa perspectiva da relação de trabalho que possa existir entre a mãe de substituição e os pais adotivos. O objetivo da investigação é analisar a aplicação da licença de maternidade em contratos de substituição, bem como delinear a existência de uma relação de trabalho. Esta investigação foi realizada utilizando uma **metodologia** correlativa, descritiva e explicativa. Os principais **resultados** obtidos foram, por um lado, a multiplicidade de relações laborais possíveis no contrato de substituição e, por outro lado, a licença de maternidade, que deve ser aplicada de forma total e parcial, dependendo da mãe gestacional ou da mãe adoptiva. Finalmente, as principais conclusões permitem-nos estabelecer que existem três formas ou modalidades de relação de emprego, de modo que, na ausência de uma forte regulamentação sobre a matéria, pode haver vicissitudes na sua aplicação futura.

**Palavras-chave:** Estabilidade no emprego; Licença de maternidade; Mãe adoptiva; Mãe adoptiva; Maternidade substituta.

\* Artículo producto del proyecto de investigación aplicación del fuero materno en los contratos de maternidad subrogada: retos y desafíos en el ordenamiento jurídico colombiano, de la Universidad Libre Seccional Socorro.



## INTRODUCTION

In the field of modern medicine, scientific advances in infertility and genetic deformations have presented solutions such as in vitro fertilization - hereinafter IVF -, artificial insemination and surrogate motherhood or also known as surrogate motherhood. The latter, object of study, is understood from the legal postulates as a contract, which, in accordance with the elements of the contractual relationship, is formed by two parties. On the one hand, there is the contracting couple and on the other, the pregnant woman. This introduced into the framework of contemporary law new changes in the paradigms faced by couples who, in their eagerness to form a family nucleus, resort to other means to achieve this end, whether or not they have problems derived from physiological or genetic pathologies. Hence, the relationship between the contracting parties and the gestational mother itself implies a margin of necessity, which in turn originates from economic and patrimonial issues.

Faced with the dynamics arising from a surrogacy contract, the Colombian State joins the list of countries that have not regulated this type of contract by legal means, finding its incorporation through the law, by means of case law decisions of the High Courts. Colombia does not prohibit their practice, but neither does it have legal means by which to guarantee the rights of the persons who signed such contracts.

The object of analysis of this research is the latter, which inquires about the application of this type of contract, which is eminently civil, but may have nuances of a possible labor relationship, since it is a legal relationship that complies with the guidelines and elements of an employment contract. Thus, by considering the contract as an employment contract, multiple situations arise for study, such as maternity leave and those who may acquire such guarantee within such scenario.

This generates legal and academic questions that are aimed at guiding the regulation of surrogate motherhood against patterns of guarantee of labor stability and protection of physical health. Therefore, the following question is posed as a form of case analysis and in relation to the issue of maternity leave as the main constitutional guarantee of labor nature by way of synthesis: Can the surrogate motherhood contract allow the application of the reinforced stability leave in cases of surrogate motherhood?

The article emphasizes and seeks to generate some conceptual and doctrinal clarifications regarding the guarantee of labor stability that the parties who sign a surrogacy contract would have, as well as the challenges and difficulties that this has to be incorporated into the framework of Colombian law, with emphasis on labor and contractual relations. To this end, two main issues were outlined (2) specific objectives: the first seeks to establish the surrogacy contract model in the Colombian State, its constitutional and jurisprudential construction, establishing the elements of the contract and of a possible labor relationship related to the problems that arise due to its lack of regulation and the second, exposes the synthesis of the maternity leave and how this derives directly for both parties that sign the contract, based on the hermeneutic analysis of the legal assumptions.

RESEARCH ARTICLE

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## ARTICLE DEVELOPMENT

### PRELIMINARY ASPECTS OF SURROGACY IN COLOMBIA.

With the enactment of the Constitution of 1991, Colombia becomes part of the States that adopted the neoconstitutionalism current, among others to be a member of the guaranteeing States (Estrada, 2014). Giving preponderance to the protection of fundamental and collective rights. This last category of rights includes rights such as labor, social security and family rights.

The Constitution establishes special emphasis and relevance to the protection of life by raising the term inviolable. Hence, authors such as Marín Vélez (2005), point out that this right also establishes sexual and reproductive rights, conferring a proclamation to human beings, so that collaterally they have total freedom to decide when to procreate and thus give rise to a new life, as well as to constitute a family nucleus. Hence, in Colombia we can speak of safeguarding rights such as life and the freedom of the realization of the human being, as well as the freedom to choose one's own activities to be carried out with the reproductive organs, thus establishing the legal and constitutional possibility of the surrogate motherhood contract.

Referring to the above, the surrogacy contract or surrogate motherhood is understood in the first place from the perspective of the Constitutional Court in Ruling T-968 of 2009 as:

"The reproductive act that generates the birth of a child gestated by a woman subject to a pact or commitment by which she must cede all rights over the newborn in favor of another woman who will appear as the mother of the child". (Sentence T-968/09).

The Constitutional Court also establishes that in the events in which this contract is signed, the woman carrying the pregnancy does not provide the eggs to be fertilized, since the mother voluntarily accepts in the contract to carry out the pregnancy until the moment of delivery, committing herself to deliver the child to the contracting parties, who in turn assume the payment of a certain amount of money, being able to establish in the contract also the expenses caused by the pregnancy, delivery and post-partum stage.

Therefore, it should be indicated that in Colombia this contract is a legal act by means of which a woman -pregnant mother- rents her uterus to the contracting party, with the purpose of gestate a new life. This legal act has in its legal content the elements that classify it as a contract, indicating that it is bilateral, onerous or altruistic -in the cases that it is agreed in this way in the contract- and random -not being able to specify the gender of the child that will be born as a result of this contract-. Likewise, a series of obligations are established, to give -to deliver the child- to do or not to do, indicating here the prerogatives on which civil conflicts may arise for the parties subscribed to the contract and labor for the labor relations related to other work performed by the mother who rents her womb and those who rent it (Guerra and López, 2016). Establishing civil liabilities, arising from contractual breaches and labor liabilities, derived from the conflicts subscribed by each of the parties in their respective work.

On the other hand, the legal precept of filiation that grants the quality of mother to the woman who has supported the labor of childbirth is in disjunction.

T-488 of 1999, defines such precept as the bond that is generated between the procreator and the procreated, as well as between the adopter and the adopted.

It is on the latter that there may be a relationship between adoption and surrogate motherhood based on the notion of filiation. The surrogate motherhood contract should not be confused with adoption as a legal figure, taking into account that, unlike surrogate motherhood, in adoption, the conceived child is ceded or given for economic or merely social reasons (Acevedo, 2003) to an entity that directly seeks to treat the minor, understood for the Colombian case as the Colombian Institute of Family Welfare, while, in surrogacy, gestation, delivery and postpartum are established by means of a contract and the ceding of the child resulting from this procedure is pre-established as the purpose of the same (Guerra and Lopez, 2016). This is reinforced by the concept indicated by Acevedo (2003) who establishes that the maternity contract exposed from the postulates of family law, is an agreement through which "A woman carries a child in her womb until the moment of giving birth, to subsequently deliver it to another woman considered as the social mother of the newborn" (p. 6), which allows differentiating the way in which filiation is achieved, since while in the maternity contract there is a legal business, in adoption filiation is acquired through the action of adopting.

However, in Colombia, all of the above is applicable doctrine since this type of contract is not properly regulated, acquiring validity through jurisprudence and the legitimate acts of society. The first difficulty and challenge is that civil and labor disputes arising from conflicts between the contracting party and the pregnant mother who at the time is working for a certain employer, who does not wish to give her special protection arguing that the child who is pregnant cannot be consolidated legally speaking. Therefore, the guarantees in these cases would be null and void for both mothers, on the one hand, for the one who lent her uterus and on the other hand for the social mother, therefore, by not acquiring the quality of pregnant or adopting<sup>1</sup> the maternity leave would be adrift.

### Elements of the surrogacy contract

In Colombia, the legal business of surrogate motherhood is not strictly prohibited by civil, family or labor law, which means that the same legal presumptions apply to this type of contract as to any other contract, however, the following will directly relate to the labor and civil factor that may prevail.

Initially, the Constitution enshrines the principle of good faith, also referred to by the doctrine as legitimate trust, as well as the principle of the will of autonomy, in maternity contracts the conclusion, execution - the gestational stage - and performance - the stage of delivery and delivery of the child - apply (Olano, 2011).

In the Constitution, good faith, starting from the perspective of the contractual relationship, derives from the trust that was deposited on the pregnant mother, for the fulfillment of the delivery of the child, as well as the mother jointly and severally in the economic fulfillment that is seen by reason of an adequate remuneration for the service rendered. Now, starting from the perspective of labor ties, it is plausible to indicate that

<sup>1</sup> It is to be understood that the linking of the legal figure of adoption is made by way of illustration and clarification, that is to say that it is necessary to link it to the narrative of the brief as a way of understanding that filiation is achieved by various means and that in matters of maternity leave both the pregnant woman and the adoptive mother -and as will be seen below the surrogate mother- can acquire said right in an analogical manner.

all rights that the pregnant mother must derive from the employer, be considered under this principle since, under penalty of the purpose that the gestation stage may constitute, these labor stability rights cannot be violated by arguing the existence of bad faith on the part of the mother, by not indicating that the child is the result of a contract outside the one agreed with an outside employer (Urrutikoetxea, 2016).

Without the agreement violating rights that may result in civil liability conflicts. In the same way, the delicate legal situation that establishes the surrogacy, allows theorizing the legal possibility of transforming the civil contract into a reality contract, according to the establishment within the contract, of certain activities and prerogatives that may cause the subordination of the gestational mother to the joint and several mother. In such a case, in order to avoid legal "entanglements", it is plausible to frame the rules that may be established in the legal business from a rational and equitable point of view, so as not to be eventually faced with a new way of looking at the labor contract (Marín Vélez, 2005).

Thus, the absence of a normative set that regulates the practice of this contract, results in analogical and hermeneutic work for the jurisdictional operator, which in the end will result in case law and from here, some type of legal certainty can be generated, in such a way that who resolves these conflicts are the courts, since there is no limit between civil liability and labor indemnification, on the subject of surrogate motherhood (Guerra and López, 2016). The latter in turn starts from understanding that in Colombia the regulatory vacuum that exists on this type of legal business has only perpetuated the violation of the human dignity of the people who are immersed in these businesses, Ardila and Bustamante (2020). Therefore, even when there is no such regulations, understanding the maternity contract from a labor perspective would allow increasing the guarantees and without the need to create a regulatory body, empowering people to access this way for an adequate legal business.

### **Subject matter of the surrogacy contract**

This legal business established as a womb or uterus rental contract, and as seen above, is not prevented in the Colombian State, supporting this postulate under the theory of civil liability, in this, when damage occurs during the stages of gestation and childbirth, as well as breach of the contract by either party, it enables and generates the opportunity to take action before the judicial operator (Ospina and Ospina, 2005). As in the previous paragraph, it is specified that depending on what was agreed in the contract and after having demonstrated subordination, the conflict may turn into a labor indemnity issue.

Such indemnity situation may be addressed in a court of law or directly by means of transaction and conciliation, i.e., as it happens in a labor process, in case the surrogate parents fail to pay social benefits and salaries, the pregnant mother may resort to this judicial means to make effective the payments indicated in the Substantive Labor Code.

Understanding this position of the surrogacy contract from a labor perspective can allow any aspect of this nature to be linked, such as indemnities, sanctions and faults. Excluding as far as possible dismissal insofar as the contract is in turn linked to a given purpose, which is the surrogacy of the womb and the subsequent delivery.

The Constitutional Court, in its Ruling T-968, ruled on the issue of the lawful object of the contract, as follows



of 2009, emphasizes the conventions and agreements, but quickly moves away from this position and transforms it into a contract, by indicating that surrogacy generates reciprocal obligations, and that it is at the same time a consensual, bilateral and atypical convention or agreement, which depends on the principle of the will of the parties for it to be entered into. In view of this, it is possible to consider that we are facing a contract that has constitutional and judicial legitimacy, since, under the standard of the aforementioned jurisprudence, we find the legal support of what is set forth in the Constitution, which states that adopted children are those conceived or "(...) procreated naturally or with scientific assistance, have equal rights and duties" (Const. Art. 42).

### Typicality of the surrogacy contract

The absence of regulation of this potentially beneficial tool for all those couples who, due to genetic problems, are unable to conceive children, makes it necessary to establish a body of rules, as specified in the preceding paragraphs. This legal business that, being applicable to it the rules and theory of punitive damages, as well as of the labor compensation, given the factual situations in which it is presented, may entail payments in favor of one of the parties, however, this may be insignificant, as well as null, due to the fact that the prejudice is not legally motivated (Zavala de Gonzalez, 2011).

Thus, with regard to the labor relationship, this can also be applicable to employers who, taking advantage of this situation, harass and harm the rights of the mother in solidarity, who, under penalty of not being in the gestation stage, is dismissed because she does not find reinforced stability. The legislator in his silence, has not issued such regulation by not establishing conceptually that it is not about the child that a legal business is made, but under the standards of understanding the uterus and the womb of the woman as a tool.

### EMPLOYMENT RELATIONSHIP DERIVED FROM SURROGATE MOTHERHOOD

The labor relationship is understood as the link between the subjects of the work, in which one is considered a worker and the other an employer, establishing a relationship of connections given as active or passive positions (Obando, 2016). In the labor relationship precisely converge elements that if not present will not be constituted as such, in this precept, such elements are the personal provision of the service, subordination and remuneration.

#### Personal activity

Article 23 of the Substantive Labor Code, in its paragraph b, establishes that any activity performed by the worker must be performed by him/herself, in this case, the activity by its nature in which the work tool and the means by which the service is performed is his/her body, is an element of the labor relationship that is presupposed, since the pregnant mother is the one who performs all the labor activity.

The Peruvian Society of Labor and Social Security Law (2012), indicates that in this labor element, the mother agrees to rent her uterus, since she is in a position to be the only one who can respond for such service, in the same way and in relation to other labor relationships that this woman may have, her condition does not represent a refusal to be able to carry out other labor activities, it is for this same situation that the surrogate motherhood contract is granted the character of *intuitu personae* (Pacheco, 2012, p. 15).



## Subordination of work activities

The Colombian Substantive Labor Code or Decree 2663 of 1950, regarding this element establishes that the employer is attributed:

"(...) empowers the latter to demand compliance with orders, at any time, as to the manner, time or amount of work, and to impose regulations, which must be maintained for the entire duration of the contract (...)" (Decree 2663, 1950).

This, in the case of a surrogacy contract, is totally dependent on what is directly agreed in the clauses of the contract, which, if present, would be a possible employment contract, in such a way that if a schedule of exercises, a schedule of therapies, as well as a place to carry them out, a diet regulation, among other prerogatives that may be agreed, it would be an imposition of subordination, constant surveillance, among other prerogatives that may be agreed, it would be in front of an imposition of subordination, different issue in which the OPS is maintained, gives place to understand that the subordination is not constant or agreed, on the contrary the purpose of the mother is only to take care of her uterus, to deliver the child and to give her the postpartum diet.

## Effective remuneration of the surrogacy service.

According to Article 27 of the Substantive Labor Code "*all work must be remunerated*". Such payment must be made to the person who rendered a service, this in terms of salary, remuneration or monetary guarantee (ILO, Convention 95, 1945). In the Colombian State, this issue has great variables, the first of them, and by virtue of an employment contract, the payment that must be made to the pregnant mother is due to all the social benefits, as well as a monthly salary and fees in favor of the delivery of the child according to the agreed and completed contract. Likewise, it would also create the obligation to compensate the gestational mother in case of labor disputes, due to a poor performance of the rented womb (Alonso and Casas, 2013).

A second variable in which the reality contract was not configured is the disproportion and the socioeconomic factors from which the price of surrogacy derives. This is due to the fact that one of the factors that transcends womb rental is the economic need of the pregnant mothers. Martínez and Rodríguez (2021) state that this aspect is one of the most important when used by opponents who consider that it objectifies the reproductive capacity of women and elevates it to an economic value. Although the above may have a margin of truth in the argumentative process, the reality is that criminalizing or prohibiting a practice only perpetuates its illegality. This means that regulating and permitting it not only from a civil but also from a labor point of view, may help the mothers involved in this type of legal business to have greater guarantees when accepting such contracts.

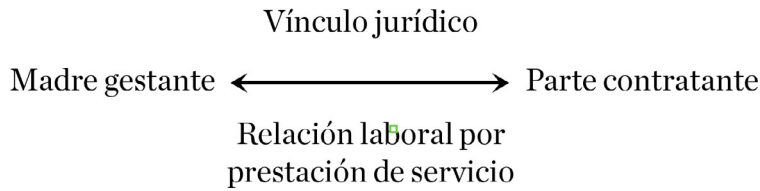
This is complemented in turn by Beetar (2019) who indicates that criminalization does not fulfill a real purpose even when the surrogacy contract meets all the requirements to be possible and even when there are rights of both minors and the surrogate mother at stake, taking it to the margin of the prohibitionist denies any form of regulation in these situations.



### The nuances of the employment relationship.

Based on hermeneutic criteria and sustaining the two variables that have been established throughout the article, where, on the one hand, the relationship is established from the contractual-civil postulates and on the other from the function of the labor-contractual ties. Below are three (3) graphs that will help to understand how the maternity leave could be applied in the surrogacy contracting.

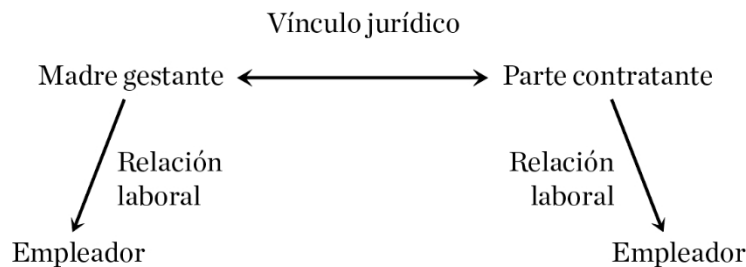
**Figure 1.**  
*Single employment relationship.*



Source: Own elaboration.

It is the legal relationship, in which in addition to the contractual relationship established by the Colombian Civil Code, the labor relationship is configured, based on the elements that constitute it, here the guarantees of labor stability derive directly from the contractual relationship between the pregnant mother as service provider and the contracting party as employer of the uterus rental service.

**Figure 2.**  
*Dual employment relationship.*



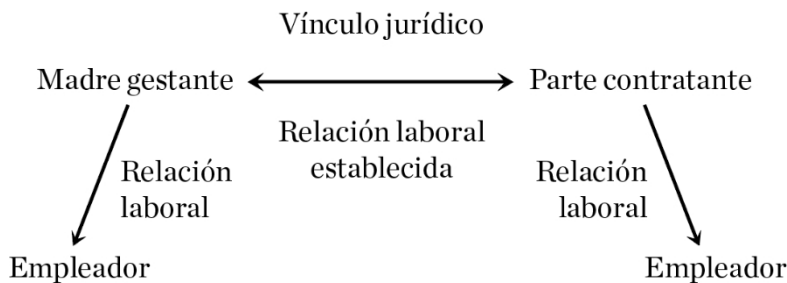
Source: Own elaboration.

Here the link is constituted as a contractual and eminently civil relationship, which generates liability for non-compliance. On the other hand, the labor relationship of subjection is based on the assumptions of the employers of each of the parties, thus creating the most common relationship, on which labor stability depends solely on each of the employers for whom the pregnant mother and the contracting party work.





**Figure 3.**  
*Triple employment relationship.*



Source: Own elaboration.

The last and possibly the most complex one, in this graph we can glimpse the relationship of triple composition. On the one hand, a contractual link with an employment relationship is established on the basis of subordination. On the other hand, the employment relationship that each of the parties that signed the surrogacy contract may have with their respective employers. Now, based on the lack of regulation of this contract, and the reinforced labor stability that the surrogate mother and the joint mother can obtain, the following question arises: on whom should the burden of the maternity leave fall? and likewise, which of the two mothers should enjoy the leaves and rights established by the Substantive Labor Code.

### **MATERNITY LEAVE IN SURROGACY, A LEGAL DILEMMA.**

There are multiple definitions that can be generated on the legal precept of "maternity leave", however, we turn to the norm that regulates everything related to labor law. Article 236 of the Substantive Labor Code establishes that "(...) every pregnant worker has the right to a leave (...) paid with the salary she earns to enjoy the rest (...)" Decree 2663, 1950).

This right is derived from the constitutional norms, which establish the pregnant woman and the child in her womb as subjects of protection and guarantee by the State, as well as protecting nursing and adopting mothers. Establishing a real and effective constitution to gender equality, as well as to life, family and labor stability. The Constitutional Court has indicated that pregnant women have a special constitutional care and this causes a reinforced labor stability, which was given the denomination of "maternity leave" (Sentence T-568, 1996).

In the development of this special protection for pregnant women, there is a growing tendency to discriminate against them, in which the dismissal cannot take place without the Labor Inspector granting permission for the dismissal, a question that must be weighed under the evidentiary standards of the existence of just cause.

Now, starting from the subject matter of the study, which is the surrogacy contract, it is pertinent to ask the following questions, which Armando Rojas (2002) asks: contractual agreement or the

Which of the two should prevail? Unfortunately in Colombia, it is not plausible to establish it directly, due to the non-existence of a law regulating the subject of surrogate motherhood, indications that do not give total certainty, but nevertheless allow us to deduce some doctrinal contributions on the subject.

### **Application of maternity leave according to the employment relationship.**

As an alteration to the present paragraph, three ways of understanding labor ties were indicated, however, these are summarized in the understanding of whether or not there is an employment relationship in surrogate motherhood contracts. On the one hand, there is the labor contract with the respective employers, which, although it must be applied on the one hand to the surrogate mother and to the surrogate mother in solidarity, this jurisdiction also covers the partner of each of these workers, regardless of the work they perform. In view of this, the Constitutional Court, by means of Ruling C-005 of 2017, decided to grant this right and extend it to the eventual dismissal of the current partners of each of the mothers in the gestational stage or in the adoption stage.

In the case of another situation in which, due to the lack of legislative regulation, this maternity leave does not cover the mother -contracting the uterus- due to the lack of legislative regulation, this should be argued under the precept established by the Constitutional Court in Ruling T-968 of 2009, which establishes that this scientific practice is carried out with the ovary of the contracting mother, therefore the maternity leave will eventually cover both mothers as well as the couples who are in a dual employment relationship.

In a third situation in which the civil-contractual relationship has been broken and transmutes into an eminently labor relationship, emanating from subordination, the payment of this leave falls on the contracting mother, as well as on the employer of the pregnant mother, whether she has it as a factor of a previously established labor relationship.

**Tabla 1.**

#### *Operatividad del fuero de maternidad*

Tipo de contrato	Hipótesis de fuero de maternidad en el contrato de maternidad subrogada.
Contrato de Trabajo	Quien debe responder por ella, es el empleador del actual trabajo, así mismo como la madre contratante.
OPS	Quien debe responder por la licencia de maternidad es el empleador del actual trabajo con quien tenga relación laboral, con la madre contratante al tener una relación civil esta no responde por ello.

*Fuente:* Realización propia a partir del documento *Fuero de maternidad en la tercerización e intermediación laboral* (2016).

## Contributions to the regulation of surrogacy contracts, including maternity leave.

Based on the considerations of the current legislation on surrogate maternity, which is null and void, except for the jurisprudential decisions that cover and attempt to provide legal certainty to this type of contract, it is appropriate to regulate the following aspects to avoid labor conflicts (Hurtado and Lozano, 2013).

- Both the pregnant mother and the contracting mother must be contributing to the SGSSS at the time, so that their rights as mothers are safeguarded.
- Both the pregnant mother and the employer must pay contributions for the duration of the child's pregnancy.
- Maternity leave and the total rights it may generate shall be granted as follows:
  - the pregnant mother's incapacity during childbirth.
  - The contracting mother is entitled to the payment of her maternity leave, as well as the right to be recognized as the mother after the delivery of the child.
  - With respect to the rights to breastfeeding leave derived from maternity leave, the following:
    - For the expectant mother, after the child has been relinquished, she must be assimilated to the privilege granted to the partner of the party or as the adopting mother.
    - The surrogate mother is responsible for providing food for the baby, even if she does not directly breastfeed the child, in accordance with the contract signed.

Finally, and based on the second-category employment relationship described above, it is possible for maternity leave to be granted to both mothers, without this representing an economic imbalance for the employers.

## METHODOLOGY

The structure developed in this article is carried out deductively, starting from the literature, to specifically cover how maternity leave can be related to these assisted human reproduction contracts, for which the information was classified in thematic axes for its development.

It is pertinent to report that the research is of a correlational, descriptive and explanatory type, as it seeks to relate two topics that have different ways of conceiving law; on the one hand, mention is made of the contract from its civil postures and on the other hand, a connection is made to the legal ties, which serve as a legal precept to guarantee the rights of a mother.

or adoptive mother. Finally, factual situations derived from the legal attributions of the jurisprudence and national norms of legal rank are exposed and described.

## CONCLUSIONS

As a result of the research carried out and based on interpretative analyses of the norm, jurisprudence and literary doctrine, the following conclusions were obtained:

- There are notorious gaps due to the lack of normative regulation on surrogate maternity, being this a contract of multiple nuances, on the one hand, the civil with the liability that entails the breach of contract, on the other hand, the family law and the new compositions and filial ties and finally the labor, on which three (3) different ways of understanding the labor relations themselves can be understood.
- Both civil and labor relations, which are based on this legal business, are possibly weak, and lack guarantees that make possible an eventual solution to conflicts that may arise.
- The three types of labor relationship that have arisen can be taken into account in turn with the conformation of labor subordination and therefore in the configuration of a reality contract, which, although it can be established from a civil contract, the security to enforce the rights that may arise from it are null and void, under penalty that the jurisdictional operator through the legal hermeneutics protects the rights and guarantees of the parties that signed the contract.
- The function of the maternity leave, this represents a real guarantee that has never before been taken into consideration according to the doctrine, since the legal prerogatives only observed it from an exegetic level to the norms, which, in front of the surrogate maternity contract, there are multiple ways of observing and applying the maternity leave.
- Maternity leave must be applied in a total or partial manner, depending on the mother on whom this right of reinforced labor stability is to be enforced.

Although, as a result of the research, it was possible to observe a certain way of applying the norms, this does not go beyond the level of legal theorization, and remains pending future legal reforms on the subject.



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