

MATERNITY LEAVE AND BREAKS DURING WORK FOR BREASTFEEDING OF FEMALE EMPLOYEES ACCORDING TO THAI LABOR PROTECTION LAWS: A COMPARATIVE STUDY OF INTERNATIONAL LABOR STANDARDS AND FOREIGN LAWS

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ABSTRACT

This research has the objective to: 1. Study the concept of maternity leave and break during work for breastfeeding of the female employee; 2. Study and comparatively analyze the maternity leave and breaks during work for breastfeeding of female employee under Thai labour protection law, international labour standard and foreign laws; 3. Propose the appropriate guideline to amend and revise maternity leave and break during work for breastfeeding of female employee under Thai labour protection law by the Qualitative Research by means of the Documentary Research. The research's result is that Thai Labour Protection Act B.E. 2541 (1998) allows female employee to be entitled to maternity leave of not more than 98 days per each pregnancy, which has not the period of maternity leave in case of having at least 2 children at a time and has not stipulated that the employer must provide the break for breastfeeding of female employee with paid. This is neither in compliance with the international labour standard nor foreign law which allows them to take additional maternity leave days if she has a pregnancy of at least 2 children and the employer gives the female employee with child under 1 year upon request to take a break for breastfeeding of 30 minutes or more for 2 times per days with paid during such period. Thai female employees have not been appropriately protected regarding maternity leave. Therefore, Thai Labour Protection Act B.E. 2541 (1998) should be amended to increase the maternity leave days for female employee who has 2 children in one pregnancy and employer to enable the female employee who has children to take a break for breastfeeding so that their children will be breastfed for a reasonable period.

Keywords: Maternity leave, breaks during work to breastfeed Labour Protection Act B.E. 2541 (1998), International Labour Standards

INTRODUCTION

Based on the estimation of Thailand's birth rate in 2023, it is lower than 500,000 children from the anticipated target of 700,000 children and it is probable to continually reduce, in contrast with the death rate which is reduced or the amount of elderly people over 60 years is increased. According to the medical development to lengthen people's life, it is a challenge for Thailand to face during the past until present and it is expected to be more serious because of popularity of new generation that they have no children or have only one child due to economic declination, imbalance of working conditions with the relaxation of working age, decadent society. Although the Labour Protection Act B.E. 2541 (1998) providing the scope of enforcement for all employees, has specified the maternity leave for employee before and after childbirth, it is unable to convince them to increase more population of the country.

OBJECTIVES OF STUDY

1. To study the concept of maternity leave and break during work for breastfeeding of the female employee.
2. To study and comparatively analyze the maternity leave and breaks during work for breastfeeding of female employee under Thai labour protection law, international labour standard and foreign laws.
3. To propose the appropriate guideline to amend and revise maternity leave and break during work for breastfeeding of female employee under Thai labour protection law.

SCOPE OF STUDY

In this study, the author determines the scope of study in 2 issues pursuant to the Labour Protection Act B.E. 2541 (1998): 1) Problem of deficiency of increasing the maternity leave period for the pregnant employee if she has 2 children at 1 pregnancy; 2) Problem of deficiency of specifying the rest period during work for breastfeeding of the female employee by comparative analysis with the labour standard of the International Labour Organization from the Convention and Recommendation which are Maternity Protection Convention, 2000 (No. 183) and Maternity Protection Recommendation, 2000 (No. 191), including comparative study of foreign laws of 2 countries: 1) South Korea - Labor Standards Act, 2021; 2) Taiwan - Gender Equality in Employment Act, 2002 in order to properly synthesize the concept of revising Thai law.

METHODOLOGY AND DATA ANALYSIS

This study is the Qualitative Research by means of Documentary Research from academic works in Thailand and overseas collected by the author from books, documents, and laws, which relates to the period of maternity leave of pregnant employee if she has 2 children at a time and nursing period during work for breastfeeding of female employee. Therefore, the author will explain, analyze, and compare Thailand, international labour standard and foreign laws for analysis of the concept of revising Thai laws.

ANTICIPATED BENEFITS

1. To recognize the concept of maternity leave and break during work for breastfeeding of female employee.

2. To be capable of comparatively analyzing maternity leave and break during work for breastfeeding of female employee, which is woman under the labour protection law of Thailand, international labour measure and foreign laws.

3. To properly propose the revision of maternity leave and break during work for breastfeeding of female employee under the labour protection law of Thailand.

LITERATURE REVIEW

A. Concept of maternity leave and break during work for breastfeeding of female employee.

The Labour Protection Act B.E. 2541 (1998) categorizes 5 types of leaves, which Section 5 defines that “Leave” means a day upon which an employee takes sick leave, leave for sterilization, leave to attend necessary personal business, leave for military service, leave for training or developing his/her knowledge and ability, or maternity leave. The law has not directly defined the meaning of “Maternity leave”. However, Pongrat Krueklin viewed that the pregnant employee who will take maternity leave, shall meet 2 conditions which are the female employee is in the state of readiness of delivery which shall be pregnant for not less than 28 week and shall have the objective of childbirth. Thereafter, “pregnant woman” means pregnant woman according to the fact, regardless of whether it is legitimate marriage or not and whether the man who gets a woman pregnant is appeared or not. The maternity leave is determined with objective for the pregnant woman whose labor is close to take while waiting for delivery, take leave before and after childbirth, including leave for pregnancy check-up prior to delivery and leave for raising and breastfeeding their children. However, in fact, the female employee who is pregnant mostly takes leave after childbirth to have extended period of taking care and breastfeeding her child which the last paragraph of Section 32 specifies that the maternity leave is not considered as sick leave.

B. International labour standards

The International Labour Organization has prioritized the protection of mothers and unborn children. Therefore, it has issued the international instrument in form of convention to prescribe the principles for the state members which have ratified to develop their local laws to comply with them, or issue the recommendation to support the convention in the same matter or mention the details of such convention to the member states to apply as guideline that is suitable and in compliance with the context of economy and society but it has no objectives to create legal binding. Therefore, the international instrument in form of recommendation is the mechanism that will be applied as tools to create concrete convention.

In consideration of the significant convention which is Maternity Protection Convention (No. 183) 2000, Article 4, women to whom this Convention applies shall be entitled to a period of maternity leave not less than 14 weeks to protect better health of mothers and children. The period of maternity leave should include the period of 6 weeks after delivery. If agreed at the international level, be the highest representative of employers’ organization and representative of the employees’ organization. In addition, Article 10 specifies the principle of women who give birth to be entitled to one or more daily breaks or a daily reduction of hours of work to breastfeed their children although the maternity leave is ended, by providing them with breaks for breastfeeding or reduction of hours of works with paid during such period.

In case of the international instrument in type of recommendation issued by the International Labour Organization which is the Maternity Protection Recommendation, 2000 (No. 191), Article 1 recommends the state members to use their endeavors to extend the additional period of maternity leave. According to the Maternity Protection Convention (No. 183) 2000, Article 4 specifies that women shall

be entitled to a period of maternity leave not less than 14 weeks by extending the period to at least 18 weeks, including providing recommendation to extend maternity leave in the event of multiple births at the same pregnant or twin births. Based on the abovementioned recommendation, it can be found that the International Labour Organization provides priority to female employees who have additional burdens to raise children more than one child at a time. It is recommended to extend the maternity leave period.

C. Law of South Korea

The Labor Standards Act, 2021, Article 74 specifies that a pregnant woman shall be granted a total of a 90-day maternity leave (120-day maternity leave, if she is pregnant with at least two children at a time) before and after childbirth. In such cases, at least 45 days (60 days, if she is pregnant with at least two children at a time) of the leave period after childbirth shall be allowed. In terms of wages during maternity leave, the employer shall pay the compensation for maternity leave of 60 days (75 days if she has at least 2 children at a time). In case of break for breastfeeding, the Labour Standards Act, 2021, Article 75 specifies that the employer shall grant thirty-minute or longer paid nursing time twice a day to those female employees who have infants under the age of one, upon request, with paid during such period.

D. Law of Taiwan

The Gender Equality in Employment Act, 2002), Article 1 is enacted to protect gender equality in right-to-work, implement thoroughly the constitutional mandate of eliminating gender discrimination, and promote the spirit of substantial gender equality. In Article 18, if female employees who need to personally feed their babies who are less than 2 years old or need to collect breast milk, their employers shall provide them with the time for feeding or breast milk collection 60 minutes a day. This is in addition to the regular rest period(s). Moreover, employees who work overtime in excess of 1 hour of daily normal work hours, their employers shall provide them with an additional 30 minutes for feeding or breast milk collection. The time for feeding or breast milk collection referred to in the preceding paragraphs shall be deemed as working time.

E. Law of Thailand

The Constitution of The Kingdom of Thailand 2017 provides the priority of protection of pregnant women. Therefore, it specifies that during pregnancy, they should be entitled to be reasonably supported and to be reasonably recovered after delivery. The principle is provided in Chapter 3: Rights and Liberties of Thai People, which specifies that “the rights of a mother during the period prior to and after giving birth shall be protected and assisted as provided by law” in Section 48 paragraph one. According to the above principles, the subordinate is issued in the form of the Act, which is the Labour Protection Act B.E. 2541 (1998) to apply to the employment of employees in general pursuant to the employment agreements. This Act prescribes the right of the employee who is pregnant woman and the duties of the employers in Section 41 paragraph one that “A female employee who is pregnant shall be entitled to maternity leave of not more than 98 days for each pregnancy”. The wages of working days throughout the leave period are protected according to Section 59, specifying that “An employer shall pay wages to a female employee for maternity leave equivalent to wages of a working day throughout the leave period, but not exceeding 45 days per year” for them to earn income during maternity leave to persuade the female employees to be pregnant and to increase the population and workforce in the future.

RESULTS AND DISCUSSION

A. The problem of absence of increasing the maternity leave period of the female employees who are pregnant if they have at least 2 children at a time.

In consideration of the Labour Protection Act B.E. 2541 (1998), Section 41 paragraph one specifies that a female Employee who is pregnant shall be entitled to maternity leave of not more than 98 days for each pregnancy without extension of the maternity leave period for the case that they have at least 2 children at a time. The author has the opinion that it is not appropriate enormously because it is not in compliance with the fact that the female employees have more burden and duties, causing them to be exhausted more than giving birth of only 1 child. In comparison with the international labour standard, the International Labour Organization has issued the Maternity Protection Recommendation, 2000 (No. 191), which Article 4 specifies that a woman shall be entitled to a period of maternity leave of not less than 18 weeks and has recommended to extend the maternity leave in the event of multiple births and twin births. This is incompliance with the law of South Korea which has been issued in compliance with such recommendation, Labor Standards Act, 2021, which Article 74 specifies that a pregnant woman shall be entitled to a total of a 90-day maternity leave or 120-day maternity leave, if she is pregnant with at least two children at a time, with paid during such leave, which the employer shall pay the compensation for the first 60 days or the first 75 days, if she has at least 2 children at a time. It reflects that South Korea has developed the better direction than the law of Thailand in terms of increasing the maternity leave days and wage protection during these periods.

In consideration of the international laws, it can be found that the status of the recommendation is only considered as the international instrument issued to supplement the Convention or it mentioned the details of such Convention but has not objectives to create legal binding. Since the law of Thailand has not increased the period more than 98 days to the female employees, it shall not be created the international enforcement measure which Thailand shall apply by amending the Labour Protection Act B.E. 2541 (1998) to extend the maternity leave period. However, the author has the opinion that although in terms of international laws, Thailand is not required to comply with such Recommendation, the increase of maternity leave period for female employee with paid would be the mechanism to encourage people to be pregnant and have more children, which will further increase the country's population.

B. Problem of absence of break during working for breastfeeding of female employees

According to Section 41 paragraph one of the Labour Protection Act B.E. 2541 (1998), the female employee who is pregnant is entitled to take maternity leave not exceeding 98 days, but it has not prescribed the employer to provide the breck for breastfeeding during work or collect breast milk after the end of the maternity leave period, which the female employee has to return to work as normal. This is incompliance with the information of the World Health Organization that has recommended the period which the child should be breastfed is the first 6 months after childbirth. This will have an impact on their greatest growth and immunity because mothers' breast milk has high nutrient value. In comparison with the Maternity Protection Convention, 2000 (No. 183), Thai law is incompliance with the principle of Article 10 that a woman who gives birth shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child although the maternity leave period is ended, which the break for breastfeeding or reduction of hours of works shall be counted as working period with wage payment during such period.

Internationally, Thailand has not ratified such Convention. Therefore, Thailand has not made a commitment to apply local law to comply with such specified principle. Nevertheless, in comparison with the laws of South Korea and Taiwan, both countries has issued the laws to comply with Article 75

of the Labor Standards Act, 2021, that an employer shall grant 30 minutes or longer paid nursing time twice a day to those female employees who have infants under the age of one, upon request, and Article 18 of the Gender Equality in Employment Act, 2002 that for the employees who need to personally feed their babies who are less than 2 years old or need to collect breast milk, their employers shall provide them with the time for feeding or breast milk collection sixty minutes a day. This is in addition to the regular rest period(s), although South Korea and Taiwan have not executed to rarify such Convention, similar to Thailand. However, they have applied such principles to establish the local law to come into effect until now. This reflects the priority of children who will be born to be breastfed during the reasonable period.

ILO	South Korea	Taiwan	Thailand
The state members who have ratified C-183, shall grant the right to the women who give birth to take a break for breastfeeding once a day or more, or reduction of hours of work for children to be breastfed from their mothers and R-191 has recommended to extend the period of maternity leave for multiple births or twin births.	A pregnant woman shall be entitled to a total of a 90 - day maternity leave (120-day maternity leave, if she is pregnant with at least two children at a time) before and after childbirth and an employer shall grant thirty-minute or longer paid nursing time twice a day to those female employees who have infants under the age of one, with paid.	For employees who need to personally feed their babies who are less than 2 years old or need to collect breast milk, their employers shall provide them with the time for feeding or breast milk collection sixty minutes a day. This is in addition to the regular rest period(s).	A female employee who is pregnant shall be entitled to maternity leave of not more than 98 days for each pregnancy, regardless of how many children at a time shall be delivered. It has not specified the nursing period for female employees.

Table 1: Comparative table of maternity leave of the female employees who are pregnant or have at least 2 children at a time and nursing time during work

CONCLUSION

The author has the opinion that Thai laws which is current effective is neither appropriate nor in compliance with the principles of the international labour standard and foreign laws, as well as incompliance with nutrition of children's bodies which their mother's breast milk with high nutrition value should be fed throughout the appropriate period. Therefore, the amendment of the Labour Protection Act B.E. 2541 (1998) should be amended as follows:

A. For the period of maternity leave, it is proposed to amend Section 41 paragraph one from "A female Employee who is pregnant shall be entitled to maternity leave of not more than 98 days for each pregnancy" to "A female employee who is pregnant shall be entitled to maternity leave of not more than 98 days for each pregnancy or not more than 120 days, if the female employee is pregnant and gives birth at least 2 children at a time" for providing additional time to them to raise their children, which is in compliance with the fact that the female employee is exhausted from raising her children more than 1 child. In addition, it is proposed to amend Section 59 from "An employer shall pay wages to a female employee for maternity leave equivalent to wages of a working day throughout the leave period, but not exceeding 45 days per year" to "An employer shall pay wages to a female employee for maternity leave pursuant to Section 41 equivalent to wages of a working day throughout the leave period, but not exceeding 45 days per year or 60 days per year, if the female employee is pregnant and gives birth at

least 2 children at a time” for them to receive the wage in consistent with the maternity leave for further raising their children.

B. For the nursing period, it is proposed to add paragraph four of Section 41 that “A female employee who have infants under the age of one shall be granted thirty-minute or longer paid nursing time twice a day” for children to have the opportunity of continuously breastfeeding from their mothers which have beneficial nutrients pursuant to the reasonable period and it is the promotion of enabling breastfeeding.

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