

# LEGAL PROTECTION OF MATERNITY FOR FEMALE WORKERS – REALITY AND IMPROVEMENT DIRECTIONS

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**Abstract-** Gender equality has always been a major concern and an important part of human rights protection worldwide. It is not only about ensuring equal rights, opportunities, and treatment for men and women, but also about changing social perceptions of the roles and values of each gender in society (Nguyen Thanh Nien 2023, 1-4). The issue of gender equality in today's society is to ensure the legitimate rights and interests of people based on their gender characteristics throughout their lives. These include regulations and welfare policies for female workers during pregnancy and postpartum. In this article, the authors focus on analyzing the specific legal regulations for female workers in order to ensure the legitimate benefits for female workers who are pregnant and raising children during pregnancy and postpartum, thereby pointing out the shortcomings of the law and proposing solutions to contribute to the improvement of the law on gender equality in labor.

**Index Terms-** Protection, maternity, female labor, labor, gender equality

## I. INTRODUCTION

According to the ILO's 2015 Report on Gender Equality in Recruitment and Promotion Practices in Vietnam, discrimination against women is clearly evident in job advertisements, the majority of which specify gender requirements, with 70% requiring only male applicants and only 30% requesting female applicants (MSc. Hoang Van Thien 2023). Based on the inheritance of the National Strategy on Gender Equality for the period 2011 - 2020, continuing to implement the direction of the Party and State on the implementation of the goal of gender equality, contributing to achieving the sustainable development goals by 2030. The Government issued the National Strategy on gender equality for the period 2021 - 2030 (accompanied by Resolution No. 28/NQ-CP), the strategy sets out 06 specific goals to be implemented. Including the economic and labor fields with the goal of continuing to narrow the gender gap, creating conditions and opportunities for women and men to participate and enjoy equality in all areas of social life, contributing to the sustainable development of the country (Ngoc Vinh 2022). Therefore, it is necessary to improve the legal regulations to ensure the rights and benefits of workers so that they have the conditions to protect and enjoy policies and welfare in

In addition, the issue of gender equality is not simply about neutrality in welfare policies between men and women, but also about adapting to the physiological characteristics throughout their life cycle. This is also affirmed by Ms. Valentina Barucci, Acting Director of ILO in Vietnam, who stressed the need to ensure that men and women have equal opportunities throughout their lives. Equal opportunities for all are now enshrined in many policies and laws in Vietnam, but in reality this is not yet the case. Therefore, the law needs to be adjusted from gender-neutral to gender-sensitive, and then to gender-responsive (Vietnam Women's Union 2021).

According to the current labor law regulations, the 2019 Labor Code also provides separate regulations for female workers and ensures gender equality in Chapter X with 8 Clauses revolving around the issues of benefits for female workers during pregnancy, childcare, and ensuring benefits after the end of maternity leave, at the same time binding the obligation of female employers to have the responsibility to arrange and arrange to ensure maternity leave for pregnant female workers according to regulations. On the basis of analyzing the legal regulations on ensuring maternity leave and benefits for pregnant female workers. The author points out the unreasonable points and proposes solutions to improve the law to ensure gender equality in the current period towards the goal of gender responsiveness for workers.

## II. THE CURRENT LEGAL REGULATIONS ON MATERNITY PROTECTION FOR FEMALE WORKERS

Based on the inheritance of the National Strategy on Gender Equality for the period 2011 - 2020, continuing to implement the direction of the Party and State on the implementation of the goal of gender equality, contributing to achieving the sustainable development goals by 2030. The Government issued the National Strategy on gender equality for the period 2021 - 2030 (accompanied by Resolution No. 28/NQ-CP), the strategy sets out 06 specific goals to be implemented. Including the economic and labor fields with the goal of continuing to narrow the gender gap, creating conditions and opportunities for women and men to participate and enjoy equality in all areas of social life, contributing to the sustainable development of the country (Ngoc Vinh 2022). Therefore, it is necessary to improve the legal regulations to ensure the rights and benefits of workers so that they have the conditions to protect and enjoy policies and welfare in

labor relations. In particular, female workers need to be given priority protection because giving birth is a noble and sacred duty of a mother. From the specific regulations for female workers and ensuring gender equality in Chapter X of the Labor Code 2019, the author found that there are still some inappropriate issues, specifically as follows:

Firstly, according to point b, clause 1, Article 137 on maternity protection, it is stipulated as follows: Employers are not allowed to use employees to work at night, work overtime, and go on business trips in the case of "Raising children under 12 months old, except in cases where the employee agrees". Accordingly, the above regulation is more open than the regulation of the Labor Code 2012, because previously the law absolutely prohibited the use of female workers raising children under 12 months old to work at night, overtime or go on business trips without considering whether the employee agrees or not (National Assembly, 2012). To a certain extent, this helps to make the arrangement and assignment of labor more flexible and creates conditions for female workers in this case to have additional income to raise their children (Binh Thao 2021). However, from the author's point of view, if standing from the perspective of protecting the best interests of the mother and child, the above regulation is not suitable, specifically: In some certain jobs, for the period of time when the mother still has to raise children under 12 months old, it can adversely affect the health of the mother, thereby indirectly harming the health of the child under 12 months old, such as the quality of breast milk will be affected, causing harm when breastfeeding (Thu Vien Phap Luat 2018). Thus, their willingness to work at night, overtime and go on business trips, although reflecting their will and desire, cannot guarantee the development of the mother and child under 12 months old. Therefore, the author believes that it is necessary to maintain this maternity protection regime absolutely during the period of raising children under 12 months old, regardless of their will.

Secondly, according to the regulations at Point a, Clause 1, Article 137 of the 2019 Labor Code, employers are not allowed to use pregnant workers to work at night, work overtime, and go on business trips when: "pregnant from the 7th month or from the 6th month if working in mountainous areas, remote areas, remote areas, borders, and islands". Accordingly, the 2019 Labor Code bases on the geographical characteristics of the place of residence of pregnant workers to give two points in time for stopping the use of female workers to work at night, work overtime and go on business trips, regardless of the will of the workers. However, the health of pregnancy does not completely depend on natural geography and living conditions, but also depends on many other factors such as: genetics; the mother's height and weight before pregnancy; diet; number of fetuses; maternal diseases (Master, Doctor Tran Lam Khoa 2022) ... Therefore, the health of each pregnant person living in the same geographical area is completely different. Therefore, the author argues that it is necessary to allow pregnant female workers to express their wishes in the aforementioned issue in order to create conditions for female workers to be proactive in their work in accordance with their own health status.

Thirdly, the 2019 Labor Code also regulates the nature of work for female workers after pregnancy as follows: "Female workers who do heavy, dangerous, or hazardous work or work that has a negative impact on reproductive function and childcare when

pregnant and notify the employer shall be transferred by the employer to lighter, safer work or reduced by 01 working hour per day without a reduction in salary and rights and benefits until the end of the time of raising children under 12 months old" (National Assembly 2019). According to the regulations, female workers may be transferred by the employer to lighter, safer work. However, the lightness and safety of the work after the transfer depends entirely on the previous work of the female worker and currently the law does not have specific regulations on the characteristics and level of work that the employer must arrange for the female worker to ensure the reproductive function and childcare for female workers.

In addition, according to the above regulations, the law also gives employers the right to choose one of two methods: transferring the job position or reducing working hours by 01 hour without reducing the salary for pregnant female workers. The author argues that this regulation is still not reasonable, because the decision to resolve the work arrangements for pregnant female workers to ensure reproductive function and childcare must be based on the nature of the current job that the person is performing according to the appendix of Circular 10/2020/TT-BLDTBXH on the list of industries and occupations that have a negative impact on reproductive function. Accordingly, if female workers are doing jobs or industries that are toxic and polluting, and employers apply the method of reducing working hours according to regulations, then in the long run, reproductive function and childcare will still not be guaranteed because exposure to toxic substances regularly still causes health complications for workers. On that basis, lawmakers need to narrow the scope of the employer's decision-making power in arranging new jobs or reducing hours for female workers in order to ensure reproductive health for pregnant female workers, specifically, it is necessary to clearly specify the industries and occupations that require employers to transfer jobs for female workers instead of applying the method of cutting working hours.

Fourthly, the issue of ensuring employment for female workers after maternity leave is regulated in Article 140 of the 2019 Labor Code as follows: "Workers are guaranteed their old jobs when they return to work after the expiry of the period of leave prescribed in Clauses 1, 3 and 5 of Article 139 of this Code without a reduction in salary and rights and benefits compared to before the maternity leave; in case the old job is no longer available, the employer must arrange another job for them with a salary not lower than the salary before the maternity leave". According to the above regulations, after the maternity leave period, female workers are entitled to continue working in the previous position. In case the previous position is no longer available, the employer must arrange another job for them with a salary not lower than the salary before the maternity leave. Accordingly, the law only stops at ensuring that the salary of the replacement job is not lower than the job before the female worker's maternity leave, but does not mention the nature, characteristics, and frequency of the job that the employer arranges for the new job. In addition, in some industries and positions, certain jobs require workers to have high specialized knowledge and skills. Arranging jobs for female workers when the previous position is no longer available is extremely difficult, because in case the female worker does not have expertise in the field arranged, leading to the efficiency and objectives of the work not being achieved according to Point a, Article 36 of the 2019

Labor Code, there is a risk of being unilaterally terminated by the employer. On that basis, the author argues that the law needs to set out the responsibility of the employer to train and retrain within a certain period of time for the new position arranged for the female worker in case the previous position is no longer available and the new job has characteristics and expertise not equivalent to the current level and capacity of the worker.

### III. CONCLUSION

Gender equality in labor is not simply about equal employment opportunities and treatment for all workers in society, but it must also aim to provide the best conditions for workers to enjoy basic benefits and privileges that are appropriate to their gender characteristics throughout their lives. With the high and sacred duty of childbearing for women, creating conditions and policies so that female workers can be confident in having children is a major issue that deserves attention in gender equality, especially the legal regulations on protection of female workers who are pregnant and raising children under 12 months old.

Therefore, for the labor relationship between employers and female workers, the law needs to create a solid legal framework so that female workers have the basis to protect their legitimate rights and interests during pregnancy and childcare under 12 months old. In which, employers must have the responsibility to respect and create the best conditions for the development of mother and child during pregnancy and childcare under 12 months old according to legal regulations. At the same time, build reasonable policies and regimes to ensure their job positions, including benefits and working conditions after maternity leave, thereby moving towards the goal of gender equality for workers.

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