A COMPARATIVE ANALYSIS OF THE EMPLOYEE ON MATERNITY LEAVE BETWEEN PRIVATE SECTOR AND GOVERNMENT SECTOR

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Abstract - The personnel factor can be easily understood as a labor. If men or women agree to work in the company, their status will be changed according to the company regulation. Referring to the status, the term 'government officer' will be used by the government official or government organizations while the private sector favors the term 'employee'. This variance makes the difficulty in terms of law enforcement; especially, male and female employees are treated differently. In order to equalize the rights, the legislation has been enforced to protect the pregnant women, many countries state that the pregnant employees will have the rights to raise their newborns in the appropriate period of time. This leads Thailand to legislate The Labor Protection Act, B.E. 2541, but it will be only effective with the employee in private sector. Thus, the article aims to compare and analyze the principles of law regarding the maternity leave between the private sector and government official. The revision yields 3 significant suggestions that the duration of the leaving period should be extended to 180 days according to the WHO's recommendation while the employees in private sector should be granted the leaving allowance as same as the government official for the maternity hospitalization. Finally, the deduction of corporate tax income and the imposing of the subsidy should be proposed in order to ensure the fairness of the employers.

Keywords - Maternity Leave, Female Employee, Employer, the Labor Protection Act, B.E.2541, Government Officer

I. INTRODUCTION

Human beings are naturally perceived as the social animals. Their coexistences are considered from the people's interaction, which is accounted as the starting point of the truly human society. By the time, the earliest communication starts from the symbolic system to the usage of a language as the medium. The small agricultural society is further developed into the larger industrial community while the people's life concept thus changes its focus to the human dignity and gender equality. According to the industrial society, the business success depends on the factors of production, e.g. land, labor, capital, and entrepreneur. The bold emphasis is placed on the personnel factor of labor that is responsible as the primary mechanism driving the success of the employer (Surasak Meebua, 2018). Regardless of the gender consideration, the labor is the employees whose qualifications meet the purpose of the corporations. So, the objective of this article is to describe the different features of human labor at the present.

Earlier, the term 'labor' or 'labour' is often considered from a superior authority, and most of the societies are male-dominated. The hierarchies are expressly divided, so that the manpower can be easily managed. A Commoners-Slaves concept is coined for the lower class stating "Slavery is not human but a property of the slave master", which suggests that the slave master will have the right to act or not act on any of their properties. Such ideas are spreading all over the world causing the slave-trading in many countries, so this brings about the measure enforcing that the trading is illegal. (ChatChai Ekpunyasaku, 2010) By signing the employment contract, the employees will be protected under the law, and this also prevents the employer's exploitation. According to rapid development of the society, the measure shall be revised to suit the current situation; especially, the labor protection should be enacted to support female employees who are willing to have children. Despite the fact that this feminine requirement should be fulfilled, the current status of crucial features such as science and technology, economic growth, and the cost of living seemingly indicate the opposite results referring to the minimum income of the people. This trend will be supported by the figure belows: (Elderly Society and Demographic Dividend, 2018)

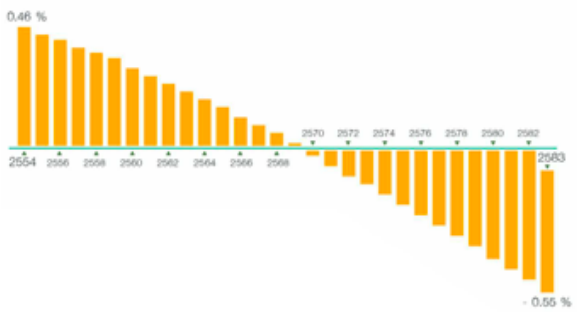


Figure 1: The rate of Population growth (Elderly Society and Demographic dividend)

According to Figure 1, it suggests that the proportion of the children and working age population has declined dramatically over 14 year-round, and this number tends to continue its decreasing. The labor shortage seems to be the critical issue for the nation, i.e. the population of children does not support the falling number of the elder. (Nattha O.pasthanathorn,

2561, P.563-570) The states are required to pay attention to the children who are perceived as the potential candidate for driving the country in the near future. By doing this, the cooperation between the major organizations should be implemented, e.g. Ministry of Public Health, Ministry of Labour, Ministry of Education etc. The organizations should specify the short- and long-term measures that are appropriate and effective enough for tackling with the possibly incoming obstacles. For example, the labor legislation for the maternity leave should be defined; easily speaking, the applicable law between the female employees in the private sector and the government organization is urged to state its particular descriptions, e.g. tax measure, baby bonus, free educational policy, the baby nutrient and breastfeeding policies, etc. Though the provisions of law or determined policies help solving such problems, the parenting should be done by the children's own parent. According to the World Health Organization and Principles of International Labour Protection Law, it is stated that all children are expected to receive the maximum care to ensure their survival and development; moreover, they are recommended to get the sufficient breastfeeding at least 6 months or 180 days afterward.

II. LITERATURE REVIEW

A labor law is the basic principle that restricts the employment policies under the same standard. Referring to its core principle, it states that the employers and the employees must be participated in the contract discussion; otherwise, the law will not be effective. This is due to the fact that the law is aimed establish rules and provisions between the employees and the employers, e.g. the employers are discussing the standard policy toward their duties and payments with the employees. However, the law is only effective for the employees in the private sector according to the Labor Protection Act B.E. 2541. In the past, there were no particular regulations for the labor employment in Thailand, which the employment was mostly developed from the superiority relations, e.g. slave master-slave form. According to the fact, the employment is initiated in the reign of the King Rama 3 because there are a lot of business in Sukhothai period; especially, the slavery was abolished in the reign of the King Rama 5. Theoretically speaking, the slavery cannot be thoroughly removed, so it leads to the particular regulation for the employment, i.e. the employment is the mutual agreement not forced. At present, the general employment contract is subjected to the Civil and Commercial Code Book 3 Specific contract Title 6 Hire of services Section 575-586. It states that the labor contract is a mutual agreement between the employee and the employer. The working will be overseen by the employer, which the benefits are clearly stated. Thus, this makes a perfect employment contract. The employer is supposed to make the formal consent preventing the unexpected obstacles though the Civil and Commercial Code does not prescribe the exact form of the contract, i.e. the employment can be done by the employer verbally. (Civil and Commercial Code B.E.2535, P.98-100)

According to the Labor Protection Act B.E. 2541, the rights between the employee and the employer are seen as the crucial element. So, the Chapter 3 aims to study on the issue "the employment of women: the pregnant employee on the maternity leave". The law categorizes its protection into three aspects: the protection toward the risky works, the protection toward the working hours, the protection toward the pregnant employee. According to this categorizations, it is understood that the physical condition of the woman is naturally weaker than the man. Also, the male one tends to possess a higher leadership than the female. Lastly, the work is not appropriate for the woman, e.g. risky works or dangerous works.

III. PRINCIPLES AND POLICIES OF LABOR PROTECTION LAW REGARDING THE RIGHT TO MATERNITY LEAVE

3.1 Labor Protection Law for the Private Sector

Referring to Labor Protection Act B.E. 2541, its protection only covers the employee in the private sector under Section 4, excluding the people working in other kinds of organizations, e.g. government official and State-owned company. Moreover, the pregnant employee is permitted to take a maternity leave not more than 90 days under Section 41, which the employee will not be paid more than 45 days during the leave under Section 59. (Labour Protection Act B.E. 2541, P.11,14)

Section 41 A female Employee who is pregnant shall be entitled to maternity leave of not more than ninety days for each pregnancy.

Ant Leave taken under paragraph one shall include Holidays during the period of Leave.

Section 59 An Employer shall pay Wages to a female Employee for maternity leave equivalent to Wages Day throughout the Leave period, but not exceeding forty-five days per year.

According to the original descriptions, the rights of maternity leave under the Labor Protection Act B.E. 2541 will be eligible for the female employee who has worked with the employer for 180 consecutive days. However, the law excludes its descriptions toward the duration of working days at the present. It can be seen that the law has changed its descriptions to support the other kinds of employments, e.g. temporary employees, permanent employees, or probationary employees. The purpose of Section 41 is the leaving for female employee during the periods of prenatal, date of birth, and postpartum dates in order to ensure the life of the newborn. So, it means that the law will not be effective for the other purposes, e.g. leaving for the checkup or leaving for the abortion.

The leaving duration is limited to be not more than 90 days per each pregnancy by the law, which the holidays are also counted. According to the duration of leaving period, the female employee who uses the rights under Section 41 will be paid not more than 45 days, but the employee who is insured with the Social Security law will receive the extra benefits, i.e. she will earn 4,000 baht and 50% of maternity allowance for 90 days. (Pongpat Sanunsilp, 2018, P.4-5)

3.2 Labor Protection Law for the Government Sector

Before the law amendment, the principles regarding a leave of the government officer B.E. 2535 are classified into 9 types of leaving in Chapter 2, Clause 16. One of them is the maternity leave according to the Clause 16(2) and its significance is presented in Clause 18 paragraph 1 as follows.

"A government officer who wishes to go on maternity leave requires the approval from the commander or the authorities before or on the date of leaving. This approval can also be requested by the others, but the leaving officer is required to submit his/her own approval immediately when available. The leaver will be granted 60 days of his/her salary once, without the doctor's certificate.

According to the leave of the government officer B.E. 2535, the principles are too outdated, so the new regulations are granted by the office of Prime Minister labeled as the leave of government officer B.E. 2555 to comply with the current situation. The leave is classified into 11 types of leaving in Chapter 2, Clause 17 including a maternity leave in the Clause 17(2) and maternal hospitalization in the Clause 17(3), which its significance regarding the leave is represented in Clause 19 paragraph 2 as follows.

"A maternity leave can be either granted before, after or on the date of birth, but not exceeding total 90 days" (the Regulations of the Office of the Prime Minister on leave for Government Official B.E.2555 (2012), P.5-6)

3.3 Measures and Policies of the State regarding Population Growth

By imposing the state measures and policies, it is partially considered as the solution for solving a population decline, which potentially leads to the labor shortage in the future. By cooperating with the relevant sectors, many measures have been done in order to increase the population, e.g. Firstly, tax measure; the allowance in tax deduction of the second child who was born in 2018 onwards is given additional 30,000 baht to 60,000 baht per child, not exceeding 3 children, and the 30,000 deduction is still allowed to first child. (The Revenue Code was amended by act (No. 44) B.E. 2560 (2017), P.24) (Amendment of the Revenue Code on Revenue exemption (No. …) B.E. …) Secondly, the 600 baht of subsidy or the Baby Bonus will be monthly granted to the newborn until the age of three. (Register of Baby bonus, 2018) Thirdly, the policy "Free Educational Policy 15 year" is granted in order to support the quality of the learning. (Guidelines on Free Educational 15 Year) (Free Educational Policy 15 Year, 2010) Fourthly, the Red-Cheeked Thai Woman Bear Children For the Nation with Wonderful Vitamins campaign will be granted to the female aging between 20 to 34 years old who plans to have children to receive the vitamins iron and folic acid. (The Red-Cheeked Thai Women Bear Children For the Nation with Wonderful Vitamins Campaign, 2010) Last but not least, the Breastfeeding policy mainly aims to support the child's health because the breastfeeding is considered as the fundamental source of nutrients encouraging the children growth. (Pakakrong Wanapisan, 2016)

3.4 Recommendations and Principles of International Labor Protection Law

Breast Milk is regarded as the most nutritious food for the newborn, which is full of highly beneficial nutritious. According to the World Health Organization (WHO), it is recommended that the infant should be fed exclusively with the breast milk within 1 hour postpartum for at least 6 months or 180 days. (WHO Suggestion and Support: The Benefit of Breastfeeding) Moreover, this should be continually done until the age of 2 years. Other kinds of food will be allowed when the baby reaches the age of 6 months. Besides, the Convention on the Right of the Child 1989, which Thailand is one of the members, also pay attention to the mother and the baby. Referring to the Convention, its Clause 6 indicates that the pregnant woman must live cautiously in order to ensure the life and the development of her baby. Also, Clause 24 states that the States Parties shall ensure the baby's rights for receiving the country's highest standard of caring service in order to reduce the deaths of infant and baby. Most importantly, the state must look after all children and mothers equally and appropriately, i.e. the mother should be looked after both prenatal and postnatal periods while the baby's health is supported by the breastfeeding. (Convention on the Rights of the Child 1989, P.1,3)

IV. COMPARISON AND ANALYSIS

A maternity leave is considered as a kind of the right provided by the state in form of the law and general regulations. Referring to the female employee's protection, the right will be differently implemented between the government official and private sector. According to Section 41 of Labor Protection Act B.E. 2541, it is stated that the pregnant employee is qualified to take the maternity leave for not more than 90 days. However, the new regulation does not specify the exact duration of the employment period of 180 days stating that the right will be only eligible for female gender. This indicates that the law expands its protection for the other types of employees whose

working hours are less than the mentioned period, e.g. temporary employees and probationary employees. The employees are able to take a maternity leave either prenatal, postnatal or the date of giving birth periods, but the overall durations must not exceed 90 days. Moreover, the maternity leave only defines its coverage as the leave in order to give birth, so other objectives are not classified as the maternity leave, e.g. leaving for the checkup or leaving for abortion. The holidays are also counted in the leaving period in the Section 41, Paragraph 2 stating that the employees are allowed to take a maternity for not more than 90 days, which all holidays are also accounted. According to the Section 59, it is stated that the female employee is eligible to earn the salary not more than 45 working days, i.e. the pregnant employee is able to take the leave for 90 days but she will earn the salary equivalent to 45 days. This right will be only eligible for the female employee in the private sector in accordance to the Section 4, The right does not cover the employees in government official and state-owned company.

According to the Regulation of the Office of the Prime Minister on Leave of Government Official B.E. 2555, the 11 types of leaving have been classified in the Clause 17, e.g. the maternity leave in (2), maternal hospitalization in (3). The significance regarding the leaves is described in the Clause 19 and the Clause 20. Referring to the Clause 19, the person who is qualified for the maternity leave must be the pregnant officer whose objective is to give a birth only, which the overall duration must not exceed 90 days regardless of the period of leaving. Though the regulations do not specify the salary and remuneration that the officer will earn during the leave, the officer is also eligible for earning the salary during the maternity leave for not more than 90 days in accordance to the Section 28 of Decree of the payroll. According to Decree amendment B.E. 2535 (No.2), the changes have been made to the Clause 20 stating that the male officer will be only eligible for the maternal hospitalization when his status is the lawful husband of the pregnant woman or the lawful father of the newborn according to the Civil and Commercial Code section 1457. Also, the male officer will be eligible for the right not more than 15 days; however, he will earn the salary during the leave in accordance to the Section 28/1 of Decree of the payroll. Moreover, the Decree amendment B.E. 2535 (No.5) specifies that the male officer leaving for the maternal hospitalization within 30 days from the date of childbirth will earn the salary not more than 15 working days, The salary will not be paid for maternity hospitalization's leaving beyond 30 days. However, this could be compromised by the commander ranking from general direction upwards or equivalent position, but the payment must not exceed 15 working days. By comparing the regulations between the Labor Protection Act B.E.2541 and the Regulations of the office of Prime Minister on Leave for Government Officer B.E.2555, there are no particular regulations that allow the male employee in the private sector leaving for the maternal hospitalization.

V. RESULTS AND DISCUSSION

When the world develops into the industrial society, the labor's importance is not decreasing. On the other hand, its demand increases accordingly because of the number of industry in the private sector. This indicates that the labor is the main factor driving the success of the employer business. The children are considered as the potential candidates, and could fill the missing gap in the future. Therefore, they are expected to develop efficiently to ensure their best qualities from the earliest society 'Family'. Parenting and guiding from the parent and the relatives is important. Especially, the parenting and breastfeeding from the mother should be done properly according to the recommendations from many corporations, e.g. the World Health Organization and Convention on the Right of the Child 1989. Many countries have paid attentions to the issue, so it emerges the measures tackling with the mother's requirements. While the Section 41 of the Labor Protection Act B.E.2541 would allow the female employee to take a maternity leave for at most 90 days, the female officer would be allowed at most 90 days in accordance to the Regulations of the Office of Prime Minister on Leave for Government Official B.E.2555 in Clause 19. The government officers, however, tend to serve and benefit the country, so their welfares will be higher granted, e.g. the right of maternal hospitalization for the male officer. So, this indicates that the number of leaving days and the benefits are still inadequate in order to support the maternity. Also, the policies provided by the government and the private sector seem inconsistent with the recommendations of the health organizations.

SUGGESTIONS

The suggestions and the supported information will be given as follows;

1. According to the recommendations of World Health Organization, the Section 41 of the Labor Protection Act B.E.2541, and the Regulations of the Office of Prime Minister on Leave for Government Official B.E.2555 of Clause 19 should adapt their regulations increasing by the leaving periods from 90 days to 180 days in order to support the highest benefits of children, female rights, and the country.
2. In order to equalize the rights between male and female, the Labor Protection Act B.E.2541 should add its regulations stating that the male employee shall be entitled to maternity hospitalization within proper periods as same as the male officer who is entitled for the leave

under the Regulations of the Office of Prime Minister on Leave for Government Official B.E.2555 in Clause 19. Despite the changing of the regulations, this could lead to the problem regarding the illegal between the employees and the employers.

3. Referring to the changes in the first and second, this could cause the negative effects to the employers and the commanders' business. The author believes that the state should impose the measures and policies to support the business. For example, the deduction of corporate income tax and the imposing of the subsidy should be proposed in order to ensure the fairness to the employers.

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