

MATERNITY LEAVE OF PREGNANT FEMALE EMPLOYEE IN CASE OF MISCARRIAGE UNDER THE LABOUR PROTECTION LAW IN COMPARISON WITH THE LAW OF REPUBLIC OF CHINA (TAIWAN)

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Abstract

This article is aimed to 1) study the basic concept of determining maternity leave of pregnant female employee in case of miscarriage; 2) study protection of maternity leave of pregnant female employee in case of miscarriage under Thai laws in comparison with the law of Republic of China (Taiwan); and 3) propose the guidelines for amending and improving Thai law regarding the determination of appropriate maternity leave for pregnant female employees in case of miscarriage. By means of the Qualitative Research with technique of collecting data and documents, the research has found that the Labour Protection Act B.E. 2541 (1998) specifies that a female Employee who is pregnant shall be entitled to maternity leave of not more than ninety-eight days for each pregnancy, exclusive of miscarriage. Consequently, pregnant female employees who have miscarriage are not entitled to maternity leave but instead they must take sick leave and receive wage for sick leave not exceeding 30 days per year. Therefore, the author proposes to amend the Labour Protection Act B.E. 2541 (1998) by specifying that the pregnant female employee who has miscarriage exceeding 3 months should be entitled to maternity leave not exceeding 3 weeks, provided that the employer shall pay the wage to them equal to the rate of working day during leave days but not exceeding 3 weeks. In case that the female employees who have miscarriage not exceeding 3 months, they should be entitled to take maternity leave not exceeding 1 week, provided that the employer shall pay the wage to them equal to the rate of working day but not exceeding 1 week to allow time for them to recuperate and regain strength and receive wage protection during that period.

Keywords: Maternity leave, pregnant female employee, miscarriage, Thai labour protection law, Gender Equality in Employment Act, 2002

Introduction

The role of women today has changed from in the past that they were housewives, took care for their children or did housework. Presently, women are more accepted by being the country's leaders, business owners or working in different business sectors of the economy system. However, from the physical condition of women who are weaker than men and must be pregnant in order to maintain the human race. This causes limitations in body movement or emotion of a pregnant female employee that has changed from the past due to the change of

body's hormone levels from before. As a result, during pregnancy, the works that pregnant women employees have done for their employers is less likely than before pregnancy.

In consideration of the Labour Protection Act B.E. 2541 (1998), the important laws to set the standard of minimum labour protection for employers to treat them not less than those specified by law,

In consideration of the Labour Protection Act B.E. 2541 (1998), which is the significant law specifying the minimum labour protection standard that the employer should treat the employee not less than those specified, it is found that it specifies the principles to protect pregnant female employee in Chapter 3: Employment of Women to determine the special condition to protect female employee beyond the normal employment in certain issues, which shall not discriminate due to the different sex. When considering the maternity leave specified in the said Act, Section 41 specifies only a female employee who is pregnant shall be entitled to maternity leave of not more than 98 days. However, in the case of a pregnant female employee having a non-viable miscarriage caused by any accident, excluding intentional miscarriage, this Act has not specified that the pregnant employee is entitled to maternity leave. On the contrary, any female employee whose physical health is affected, which is required to take leave to restore their physical health must take sick leave for the actual period of sickness according to Section 32.

In case of wage of the pregnant female employee who has miscarriage and take leave, Section 57 of the Labour Protection Act B.E. 2541 (1998) specifies that the employer shall pay the wage to the employee on the sick leave during the leave period. However, one year must not exceed 30 working days according to Section 32, equal to the wage rate on working days throughout the period of leave, provided that one year must not exceed 30 working days. From the stipulated provisions, it is reflected that pregnant female employees who suffer a miscarriage must use their right to sick leave only without the right to maternity leave because Section 41 stipulates that employees are entitled to maternity leave only in the event of normal childbirth, exclusive of miscarriages. As a result, pregnant female employees who have a miscarriage will lose their right to paid sick leave, which this Act specifies the maximum wages that employers must pay to employees not exceeding 30 days per year.

Objectives Of Study

1. To study the basic concept of determining maternity leave of pregnant female employee in case of miscarriage;
2. To study protection of maternity leave of pregnant female employee in case of miscarriage under Thai laws in comparison with the law of Republic of China (Taiwan); and
3. To propose the guidelines for amending and improving Thai law regarding the determination of appropriate maternity leave for pregnant female employees in case of miscarriage.

Scope Of Study

The author specified 2 scopes of the study, which are 1) period of maternity leave for pregnant female employees in case of miscarriage; and 2) wages on maternity leave for pregnant female employees in the event of a miscarriage by studying the laws in comparison with Thai law, namely the Labor Protection Act of 1998 and the law of the Republic of China (Taiwan), which is Gender Equality in Employment Act, 2002.

Methodology And Data Analysis

This study is a qualitative study by method of collecting documentary research (Khonglamthan, T., Pisitchinda, T., Poemrungruang, J., & Chuchoti, T., 2023) from secondary data that has been prepared or collected by the preparer or collector, which are books, textbooks, articles (Kakhai, P., 2023) and primary data, including laws of the Republic of China. (Taiwan) and Thai law. In addition, it is research from websites on the internet (Yoowattana, K., & Yoowattana, P., 2020), which the author will analyze and compare the obtained data and make the conclusions by using a narrative. (Kakhai, P., 2020)

Anticipated Benefits

1. To be aware of basic concepts regarding the determination of maternity leave for pregnant female employees in the event of a miscarriage.
2. To be aware of the protection of maternity leave for pregnant female employees in the case of miscarriage according to Thai law compared to the law of the Republic of China (Taiwan).
3. To obtain guidelines for amending and improving Thai law regarding the determination of maternity leave for pregnant female employees in the case of miscarriage according to Thai law that is appropriate.

Literature Review

A. Basic concept of the protection of maternity leave

Pregnancy among female employees increases the population of the country to replace workers who will retire. As a result, it will lead to replacement workers in the future. Thus, the general concept of maternity leave protection is incurred. This appears in the concept of labor rights, with the United Nations guaranteeing everyone the right to take leave from time to time with paid. As stipulated in the United Nations Universal Declaration of Human Rights, 1948, Article 24: Everyone has the right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay; and Article 25 (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. This includes the International Covenant on Economic, Social and Cultural Rights, 1966, Article 7(a)(1): The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work/

In addition, the International Labor Organization places importance on labor rights covering workers in all sectors whether it is workers in the system or workers outside the system. This includes female employees working in different sectors of the economy, which determines the principles of protection under which labor promotion is called “Decent Work” or “Fair Work” on June 2002, titled “Resolution on decent work and the informal economy” and announced on June 19, 2002. It is the principle in line with the United Nations Universal Declaration of Human Rights, 1948, to enhance the compliance of 4 major labour standards (Arom Pongpangan Foundation., 2024): 1) Rights at work comprise of receiving fair compensation, prohibition of forced labor, protection of employees who are children, prohibition of discrimination, meaning and forms of discrimination and the right to organize and collective bargaining. Most are the main labor standards of the International Labor Organization that member countries are encouraged to implement concept of equality, and

so that female employees have time to recuperate after giving birth and have time to care for their children closely. Maternity leave under this section shall include leave for prenatal pregnancy examinations by including holidays that are taken during leave as well. This is an extension of maternity leave from the original limit of not exceeding 90 days according to Section 7 of the Labor Protection Act (No. 7) B.E. 2562 (2019) to comply with the principles specifying in the Maternity Protection Convention, 2000 (No. 183) determining the ratified member shall revised the domestic law in compliance with the specified principle. It is Article 4 specifying that on production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.

The Labor Protection Act B.E. 2541 (1998) specifies the protection of maternity leave under Section 41 that *“a female employee who is pregnant shall be entitled to maternity leave of not more than ninety-eight days for each pregnancy.”*

Maternity leave under this Section shall be defined to include leave for medical examinations relating to her pregnancy.

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

In the case of wages on maternity leave the Labor Protection Act B.E 2541 (1998) stipulates that employers have a duty to pay wages to female employees on maternity leave equal to wages on working days throughout the leave period, but not more than 45 days as specified in Section 59 that *“An Employer shall pay Wages to a female Employee for maternity leave under Section 41 equivalent to Wages of a Working Day throughout the Leave period, but not exceeding forty five days per year.”*

Results And Discussion

A. Period of maternity leave for pregnant female employees in case of miscarriage

Although Section 41 of the Labor Protection Act B.E 2541 (1998) specifies that Pregnant female employees have the right to maternity leave for not exceeding 98 days per pregnancy which is in compliance with Article 4 of Maternity Protection Convention, 2000 (No. 183) specifying that on production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks, the pregnant female employee who has miscarriage without intention is not entitled to the maternity leave under such Act. The reason is that this Act specifies the criteria for the pregnant female employee who gives birth normally. It does not include miscarriage, which is premature birth in a non-viable manner. As a result, female employees who suffer a miscarriage and are physically weak and are required to take medical leave must request sick leave from their employers and receive wages during sick leave not exceeding 30 days per year.

In comparison with the law of Republic of China (Taiwan), it provides priority to the equality of male and female employees and has enacted the Equality in Employment Act, 2002 to specify that the female employees who have miscarriage are allowed time off work and are given maternity leave in proportion to the duration of their pregnancy, which are 1) in the event of a miscarriage after more than 3 months of pregnancy, female employees are allowed time off work and 4 weeks of maternity leave; 2) in the case of miscarriage after a

pregnancy of more than 2 months but not more than 3 months, female employees are allowed to take time off work and are given 1 week of maternity leave; and 3) in the case of a miscarriage after less than 2 months of pregnancy, female employees can take time off work and be given 5 days of maternity leave. This reflects that the law of Republic of China (Taiwan) has provided more protection to the pregnant female employees than Thai law.

B. Wages on maternity leave for pregnant female employees in the event of a miscarriage

Even though Section 59 of the Labor Protection Act B.E. 2541 (1998) allows employers to pay wages to female employees on maternity leave according to Section 41 equal to wages on working days throughout the period of leave, but not exceeding 45 days, when a pregnant female employee who has a miscarriage is not entitled to maternity leave according to Section 41, she does not receive wages while she receives medical treatment to recover her body to normal condition. This is different from the law of Republic of China (Taiwan), the Gender Equality in Employment Act, 2002. Section 15 of this law requires employers to allow female employees who have miscarried to take time off work and to take maternity leave in proportion to the pregnancy, by calculating wages during childbirth in accordance with the applicable laws and regulations.

Table 1: Table of comparison between the applicable laws regarding the protection of maternity leave of the pregnant female employee who has a miscarriage.

Country	Maternity Leave in Case of Miscarriage	Wage of Maternity Leave in Case of Giving birth and Miscarriage
Republic of China (Taiwan)	Specifying that pregnant female employees who have a miscarriage have the right to maternity leave.	Wages during childbirth shall be according to the applicable laws and regulations.
Thailand	Not specifying that pregnant female employees who have a miscarriage have the right to maternity leave.	Not receiving wages when the female employee takes leave in case of miscarriage.

Conclusion

Although the Labor Protection Act B.E. 2541 (1998) has the advantage of specifying criteria for protecting pregnant female employees in Chapter 3: Female Employment, that is more special than general employment in certain aspects, there is a disadvantage that protection for pregnant female employees is not specified to cover all matters, in particular maternity leave in case of a pregnant female employee having a miscarriage. This is different from the Gender Equality in Employment Act, 2002 of Republic of China (Taiwan) which it has the advantage of determining criteria for protecting pregnant female employees who suffer a miscarriage to have the right to maternity leave in proportion to the duration of their pregnancy.

The author recommends amending Section 41/1 of the Labor Protection Act B.E. 2541 (1998), to allow pregnant female employees who suffer a miscarriage that was not caused by an abortion to have the right to take maternity leave in proportion to the duration of their

pregnancy, which is entitled to receive wage during such period similar to Gender Equality in Employment Act, 2002 of Republic of China (Taiwan) as follows:-

Labor Protection Act B.E. 2541 (1998)

Section 41/1 specifies that “*The pregnant female employee who has a miscarriage after being pregnant for more than 3 months, shall be permitted to take maternity leave for not exceeding 3 weeks. In case of a miscarriage after being pregnant for less than 3 months, the female employee shall be entitled to maternity leave not exceeding 1 week.*”

Section 59/1 specifies that “*In case where the pregnant female employee who has a miscarriage after being pregnant for more than 3 months, the employer shall pay wage to the female employee on the maternity leave under Section 41/1 equal to the wage of working day during the leave period but not exceeding 3 weeks.*

In case of a miscarriage after being pregnant for less than 3 months, the employer shall pay the wage to the female employee on the maternity leave under Section 41/1 equal to working day during the leave period but not exceeding 1 week.”

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