

# The Legal Issues on the Duration and Payment on Maternity Leave and the Addition of Parental Leave in Labor Protection Act B.E. 2541: a comparative study with Swedish laws

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**Abstract—** According to Thai labor laws, Labor Protection Act B.E. 2541 only allows the female employee a maternity leave for delivery. Nevertheless, when we considered the duration of leaving regarding section 41 of such act, it was found that a female employee only has 90 days of maternity leave for 1 pregnancy, which is quite low. This causes female employees to have little time to breastfeed her babies, making her babies receive insufficient amount of nutrition in the process. The lack of time and insufficient amount of feeding might further affect the physical and mental development of the babies as well. I viewed that there should be amendment on such provision by extending the duration of maternity leave to be at least 180 days per 1 delivery. Additionally, there should have a right of parental leave for her and her spouse to be able to help in parenting for at least 30 days. For the parental benefit for the spouse of such female employee, it will be depended on the regulation of each entity. The parental leave is necessary as her spouse can help her in parenting, to increase the intimacy between the spouses of such female employee and also to persuade the population to have more children. Still, there should also be measures to support the employer during maternity leave and parental leave. Such supporting measures might be tax deduction measure, trade measure, or other necessary measures.

**Index Terms—** Employees, maternity leave, parental leave, Labor Protection Act B.E. 2541, Swedish Parental Leave Act (Föräldraledighetslagen), Swedish Social Insurance Code (Socialförsäkringsbalk).

## Introduction

Employees are the driving forces for the employers' business, helping the business to grow and further boosting the economy. Hence, each employee is extremely valuable asset to the business and employer. However, the current statuses of most employees in Thailand are under absolute control and command of the employers. This may lead to the case of abuse of power, bullying, and other kinds of action which are unfair to the employees. Regarding such problems, Labor Protection Act B.E. 2541 was legislated for

determining the minimum protection for employee such as an action of employer towards employees and minimum benefit (Teera Sritummarak, 2550, page 43). The minimum protection is necessary as it is a way to create a justice in employment and improve the national economy, promote the investment, and make the labor management and labor control to be in the same direction. (Kasemsun Wilawan, 2560, page 13). This act is only enforced on central government, regional government, and local government and state enterprise as established by State Enterprise Labor Relation Law (Paparsri Buasawan, 2560, Page 20). This act has been promulgated through Royal Gazette on February 20, B.E. 2541 and was effective since August 19, B.E. 2541 (Teera Sritummarak, 2550, page 43). The main purpose of this act is to protect the benefit of employees in every ways which are general labor, female labor, child labor, wage, overtime pay, holidays overtime pay, wage committee, welfare, safety, occupational health, workplace environment, labor control, suspension, compensation, filing and petition consideration, employee welfare fund, labor inspectors, document submission, punishment, and special provisions. For the provisions relevant to the duration of maternity leave, it should be included in female labor section.

## Objectives

1. Study the duration and payment of maternity leave as provided by Labor Protection Act B.E. 2541 by comparing it with Swedish laws

2. Suggest the appropriate duration and payment of maternity leave as provided by Labor Protection Act B.E. 2541

## Scope of Study

This thesis focuses on the study and analyses of the impact of the maternity leave which is no more than 90 days as provided by Labor Protection Act B.E. 2541. The purpose of the study is to suggest the revision of such provision by extending the duration of the maternity leave and allowing parental leave for both genders while providing some measures to prevent the impact to business.

### Methodology and Data Analysis

The Legal Issues on the Duration and Payment on Maternity Leave and the Addition of Parental Leave in Labor Protection Act B.E. 2541: a comparative study with Swedish laws uses a method of documentary research. The sources of information are primary source and secondary source. Primary sources are books and provisions and secondary sources are academic essay and electronic data (Chuencheewin Yimfuang, 2017).

### Expected Benefits

1. Know the origins, concepts, and durations of maternity leave as provided by Labor Protection Act B.E.2541 and durations of maternity leave and parental leave in Sweden
2. Know an appropriate duration for maternity leave as provided by Labor Protection Act B.E. 2541 and suitability of parental leave for Thailand

### Literature Review

Regarding the study on Labor Protection Act B.E.2541, it was found that the chapter about female labor of such act corresponds with the constitution in the matter of gender equality in employment. The exception is applied when the equality could not be given due to the nature or condition of such work (Section 15). In addition, if the work is similar in the nature and amount, the employer must equally give the wages, overtime pays, and holiday overtime pays, to both genders (Section 53).

There are some kinds of works which expecting female employees will not be allowed to do. These works are (Section 39)

1. Works about machines or engines which cause vibration
2. Works about driving or being in the vehicle
3. Work about lifting, carrying, carrying with both hands, loading, carrying over the head, dragging or pushing an object with a weight of over 15 kg
4. Work in watercraft
5. Other work as provided by ministerial act

**The determination for duration of maternity leave:** the employer cannot have the expecting female employees work during 22.00h - 06.00h, overtime, or on holidays. If the expecting female employees work in executive, academic, administrative, or accounting position, the employer may have such employee works overtime in the working days long as such works do not affect the health of such employees. The employers must have the consents from such employees per each time of work (Section 39/1). If the employers have the female employees working during 24.00 h - 06.00 h and the labor inspectors consider that the nature of such work might be harmful to her health and safety, the labor inspector shall report the case to the director general of Department of Labor Protection and Welfare or the ones assigned by the director general for consideration. After consideration, the director general of Department of Labor Protection and Welfare or the ones assigned by the director general will issue an order demanding the employer to change the working time or reduce the working time as he sees fit. (Section 40)

**The duration for maternity leave:** Labor Protection Act B.E. 2541 allows the maternity leave for no more than 90 days. The duration of maternity leave includes the holidays

during such leave. Such female employee can have a maternity leave prior or after delivery (Section 41) and the employers must pay for the wages of such female employees during such leave no more than 45 days (Section 59). During expecting, if the female employee submits the medical certificate confirming her pregnancy might hamper her work, such employee might call for temporary change of the kind of work, but can still be maintain her position, prior or before delivery, and the employer must give a suitable work to such employee (Section 42). Also, employers cannot terminate her employment by the reason that such female employee cannot work to full capacity as before becoming pregnant (Section 43). If the employers terminate the employment because of such reasons, they might face 6 months of imprisonment or be subject to a fine no more than THB 100,000.00 or both imprisonment and fine (Section 144). Still, this act does not prevent employers from terminating the employment by the reason of other transgressions, such as unfaithfulness to her duty, intentional commission of a crime on her employers, intentional causing of damages to her employer, a negligent act which causes severe damage to her employer, or a violation of workplace regulation or the employer's order which is legal and fair and the employer has already warned the employee by a written notice. The written notice process is excepted if the action of the employee was too severe and the exception will only for 1 years since the date of such action or expecting female employee leave her duties without a proper reason for 3 days continuously, whether there is a holiday or not during such leave, or lastly, having been sentenced by the final court decision except such offense was caused by negligence or classified as a petty offense (Section 119).

**A benefit during maternity leave as provided by social security law :** Social Security Act, B.E. 2533 was effective since September 2, B.E. 2533. Such law has created securities for the employees and other relevant parties by establishing a social security fund for supporting employees and related parties who has an accident, illness, disability or died by other cause besides working. This fund also covers delivery, child supporting, elderly care, and unemployment. When considering the maternity leave benefit as provided by such act, I found that employees during the ages between 15 years and 60 years who have been insured workers (section 33) can have such benefit once having paid social insurance contribution for at least 5 months and within 15 months before receiving medical treatment (section 65 paragraph 1). If the insured worker has no spouse but has been living openly with someone who acts as a spouse as provided by the regulation issued by the secretary of Social Security Office. The insured worker will then receive the benefits during maternity leave (section 65 paragraph 2). Such benefits will be accordant to a rule and a rate as provided by a doctor committee. This means that 1 delivery will be paid at THB 13,000 in a lump sum rate. If the insured worker takes a maternity leave, she will receive the maternity benefit for no more than 2 times and the employee will be paid at 50 percent of the wages which have been used for calculating the 90-day social insurance contribution (section 66 and section 67).

### **The duration for paid parental leave provided by Swedish laws**

There are 2 laws relevant to the parent leave in Sweden which are Swedish Parental Leave Act (Föräldraledighetslagen) and Sweden's Social Insurance Code (Socialförsäkringsbalk). The Parental Leave Act provides the rights of parental leave to the employee while the Social Insurance Code determines the number of "paid" parental leave. Also, the maternity leave in Swedish laws is just a type of a parental leave, which consist of 6 types of parental leave according to section 3.

In Sweden, a maternity leave can be taken for at least 7 weeks prior to the estimated time for delivery and seven weeks after the delivery, 14 weeks in total, according to section 4 of are Parental Leave Act (Föräldraledighetslagen). Also, the maternity leave of 2 weeks during the period prior to or after the delivery is obligatory if the female employee is not on such leave. This shows that Swedish government has concerned about the well being and safety of their citizens.

There was also a "parental leave" which allow both parents ("her or his employment" according to Parental Leave Act section 1) to spend time raising their child Thai law currently not provided. In Thailand, there was only maternity leave which will be paid at 45 days maximum. In Sweden, the parent can get paid for 480 days or 16 months as provided by section 12 as provided Sweden's Social Insurance Code (Socialförsäkringsbalk) and without having to consider it with maternity leave. Moreover, from the same provision, Swedish parents also gain extra 180 paid days of parental leave per 1 more childbirth.

The number of paid days is considerably higher than the ones provided by Labor Protection Act B.E. 2541. Furthermore, this act allows parental leave to her spouse as a way to give her spouse more time in parenting. The reason for this parental leave might be that Swedish economy is in a good condition and Sweden itself is a welfare state, making it provides welfare to citizen as much as possible, including maternity leave and parental leave.

### **Results and Discussion**

Labor Protection Act B.E. 2541 has already covered the rights of the expecting female employees in several ways such as types of works, times of works, and maternity leave. However, section 41 provides a maternity leave for only 90 days per 1 delivery and will not be paid more than 45 days. When the leave is complete, such female employee must resume working. Otherwise, the employer might terminate the employment without having to give severance pay as the termination is the result of such female employee leaving her duty without proper reason for 3 working days continuously without a proper reason as provided by section 119. Also, the duration of paid maternity leave is very low compared to Sweden's Social Insurance Code which allows 480 days of paid parental leave or 16 months. The long period of maternity leave causes a baby to have a sufficient amount of breastmilk as set by WHO and UNICEF. For at least 6 months, the child should receive only breastmilk. Afterwards, a child should have breastmilk with other age appropriate foods for 1-2 years or longer than

that if being considered suitable (Vachira Pengjun, 2560, online essay). This is because breastmilk is deemed to be the most complete and suitable source of nutrition for babies for boosting immunity as breastmilk consists of 200 types of nutrition. Beside boosting immunity, breastmilk also help in increasing antioxidant, supporting growth and mental development consistently. Regarding the online source, Thailand has the lowest rate of breastmilk feeding in Southeast Asia (Thai Health Promotion Foundation, 2557, online source). The low rate of breastfeeding will affect the development of the child and the quality of the working force in the future.

Moreover, Labor Protection Act B.E. 2541 only allows maternity leave but no parental leave for both genders. The reason for such provision might be caused by a Thai tradition and value which view that only mother should spend most of the time raising her child. The fathers only have a duty in supporting the family financially. Nevertheless, the society and lifestyle is currently changing. Parenting is a shared responsibility of both parents. Both father and mother now works to support their family and thus make the gender equality possible as provided by Thai constitution. When considering Swedish laws, I found that the parental leave is granted to both gender. Thus, we can see that Sweden do place importance on gender equality.

### **Conclusion**

The maternity leave provided by Labor Protection Act B.E. 2541 is the right thing and I myself agree with that. This is because female employee will have a time for postpartum recovery and breastfeeding. Also, such time will increase the intimacy between mother and her baby. However, I suggest that there should be an amendment on such provision by adding more paid days to maternity leave, from 45 days as provided by Labor Protection Act B.E.2541 to be 90 days or full maternity leave. Her payment during such leave will be 100% of her wage. Also, the maternity leave can take place on the date of delivery or thereafter. The overall days must be at least 180 days to give such female employee a time for postpartum recovery and breastfeeding. In addition, the female employee and her spouse should have the rights for parental leave, allowing them to spend more times with the babies for at 90 days with no payment. The purpose of the addition of parental leave is to allow more time for both parents in parenting, increase the intimacy between parents and child, and give the female employee more times in working and thus can progress in her career. Also, this will be a good persuasion to have more children and thus increase the labor force of Thailand in the long run. However, such parental leave will have no benefit as Thailand is still not as developed as Sweden and not a welfare state, making too much leave benefit a burden for the government.

Additionally, the extension of maternity leave and the addition of parental leave will surely affect the benefit of the employer as there will be no work produced during the leave. Therefore, there should be measures to support the employer's business during this time such as tax deduction measures, trade measure or any other kinds of measure which is deemed appropriate.

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