

RIGHTS OF FEMALE WORKERS IN THE PRIVATE SECTOR TO BREASTFEEDING BREAKS AND BREASTFEEDING FACILITIES^{*}

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Abstract

This article examines the major problems of Labour Protection Act B.E 2541 concerning the lack of rights and protection to enable female workers in the private sector to properly breastfeed, express and store breast milk in the workplace. However, unlike Thailand, the International Labour Organisation (ILO), the UK, Sweden and Vietnam properly provide the rights of female workers to breastfeeding breaks and breastfeeding facilities. Therefore, this article analyses and surveys the ILO standards, the labour laws of the UK, Sweden and Vietnam in order to find the recommendations for solving the problems in Thailand.

The analysis demonstrates that in the ILO standards, British, Swedish and Vietnamese laws, female workers in the private sector are entitled to rights to breastfeeding breaks and breastfeeding facilities to support them to continue breastfeeding during work in order to increase the rate of breastfeeding and alleviate the health problems of both mothers and children. This can be adopted into Thailand by amending Labour Protection Act B.E. 2541 to properly increase rights of female workers in the private sector to breastfeeding breaks and breastfeeding facilities.

Keywords: Breastfeeding Breaks, Breastfeeding Facilities, Nursing Mothers, Breast Milk, Breastfeeding, Rights of Female Workers in the Private Sector, Female Workers in the Private Sector, Childcare Center, Labour Laws.

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Introduction

Breast milk is the best food for infants after birth, since it is composed of appropriate nutrition that is important for them to grow and be protected from any diseases.¹ This article is mainly focused on the lack of legal rights and protection to support female workers in the private sector to properly breastfeed in the workplace. Most female workers are forced to return to work soon after giving birth because of financial problems and the short length of maternity leave. If work and breastfeeding cannot be reconciled, it will definitely have negative effects on the rate of breastfeeding, the health of both mothers and children, society and the economy, respectively.

The International Labour Organisation (ILO) recognises the WHO's recommendation which is the standard for mothers to feed their children with breast milk for at least six months and children should continue to be breastfed until they are two years of age or more.² The Maternity Protection Convention No.183 and Recommendation No.191³ set the minimum standard for breastfeeding break and breastfeeding facilities for female workers in the private sector. Moreover, The laws of the United Kingdom, Sweden and Vietnam, which are member States of the

¹ Karleen D Gribble, 'Mental health, attachment and breastfeeding: implications for adopted children and their mothers' (International Breastfeeding Journal, 9 March 2006) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1459116/>> accessed 11 October 2017

² World Health Organization, 'Exclusive breastfeeding for six months best for babies everywhere' (statement, 15 January 2011) <http://www.who.int/mediacentre/news/statements/2011/breastfeeding_20110115/en/> accessed 11 October 2017

³ International Labour Organization, 'International Labour Standards on Social security' (ILO) <<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>> accessed 11 October 2017

International Labour Organisation,⁴ set breastfeeding breaks and breastfeeding facilities for female workers in the private sector.

In Thailand, the rights of a mother during the period prior to and after giving birth shall be protected and assisted as provided by law according to the Constitution.⁵ Thai Labour Protection Act B.E. 2541 is inconsistent with the provision to protect mothers after childbirth under the ILO standard and the Constitution since it does not provide sufficient support to workers to breastfeed particularly in the workplace. The lack of these rights and protection under Thai laws leads to the problems of maternity protection after childbirth and increase improper behaviour on the part of female workers. Hence, there is a great need to amend the Thai Labour Protection Act B.E.2541.

1. Rights to Breastfeeding Breaks and Breastfeeding Facilities under Thai Laws, International Standards and Foreign Laws

1.1 Breastfeeding Breaks

Breastfeeding breaks are time for female workers who are nursing mothers to breastfeed their children, pump milk for storage or rest during the long hours at work. The ILO Convention⁶ requires employers to provide breastfeeding breaks and breastfeeding facilities to female workers. The ILO aims to reconcile work with breastfeeding, extending the length of breastfeeding time for mothers to increase the breastfeeding rate.

⁴ International Labour Organization, 'Alphabetical list of ILO member countries' (ILO, 12 January 2017) <<http://www.ilo.org/public/english/standards/relm/country.htm>> accessed 11 October 2017

⁵ The Constitution of the Kingdom of Thailand B.E.2560, s 48

⁶ Maternity Protection Convention No.183 (adopted 15 June 2000, entered into force 07 Feb 2002) art 10
<https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C183>

Vietnam has established the rights to breastfeeding breaks and breastfeeding facilities⁷ in accordance with the ILO standard and requires employers to provide female workers with breastfeeding breaks at works. This is aimed to increase the breastfeeding rate in Vietnam and distinguish it from other Asian countries that fail to provide the proper protection for female workers.

The UK and Sweden have established their laws differently from the ILO Convention. They do not explicitly require employers to provide breastfeeding breaks; however, female workers in both countries are entitled to breastfeeding breaks and breastfeeding facilities after a long maternity leave on request or collective bargaining. Both countries apply a long length of maternity leave with more than 80% of pay.

In Thailand, rights to breastfeeding breaks and breastfeeding facilities are not explicitly or specifically provided to female workers under Thai laws. Only the policy of the Breastfeeding Foundation Centre and Department of Labour Protection, Welfare and other co-work organisations promotes the provision of breastfeeding breaks and facilities to female workers. In this author's opinion, Thailand should set special regulations to provide breastfeeding under the law to demonstrate that Thailand sufficiently supports breastfeeding and to reconcile breastfeeding with work. Besides, Thailand is a developing country which provides improper maternity leave⁸ which is too short for exclusive breastfeeding.

1.2 Duration of Breastfeeding Breaks

The duration of breastfeeding is a daily break or a reduction of hour of work. The ILO sets the standard for breastfeeding breaks under Convention No. 183, which includes various durations for a break such as a

⁷ Labour Code of Vietnam 2012, art 155 cl 5 and its Decree No.85/2015, art 7 cl 3 a) <https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91650>

⁸ Labour Protection Act B.E. 2541, s 41

one-time break, more than one time or reduced working time.⁹ However, the UK and Sweden do not set breastfeeding breaks pursuant to the ILO standard. Breastfeeding breaks do not explicitly appear under their national law because they provide female workers with a long length of paid leave so that the mothers can stay at home and spend lots of time breastfeeding their children. The duration of breaks depends on the employees and employers have the duty to allow the appropriate time based on the employee's request. The employers cannot refuse to provide breastfeeding breaks for mothers, since it may lead to unfair practice in the workplace.

As a South-east Asian country, Vietnam has set breastfeeding break for 60 minutes once a day and mothers can take the break until their child is twelve months old. Vietnam provides a clear duration for female workers in accordance with the ILO standard. Thailand should also set an appropriate duration for female workers to take breastfeeding breaks by applying the standard.

1.3 Wages during Breastfeeding Breaks

Female workers should be entitled to these breaks after returning to work. Unpaid breastfeeding breaks are not fair to female. It may lead to health problems for children and nursing mothers who work instead of taking a break to breastfeed and store breast milk for children. The International Labour Convention has set its standard to provide paid breastfeeding breaks for female workers.¹⁰ In addition, Vietnam also sets its

⁹ Maternity Protection Convention No.183 (adopted 15 June 2000, entered into force 07 Feb 2002) art 10

<https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C183lin>

¹⁰ Ibid

Labour Code to meet the international standard by providing full pay for nursing mothers.¹¹

1.4 Breastfeeding Facilities

Breastfeeding facilities are places for breastfeeding, anything that is important for breastfeeding and childcare centres. Breastfeeding places and facilities are explicitly provided under ILO Recommendation No. 191 and Vietnamese law,¹² although they are not obviously provided in the British and Swedish laws. Breastfeeding places are clean rooms or corners with a screen composed of any important facilities for breastfeeding, such as a chair, table, electronic breast pump, refrigerator, breast milk storage bags, washbasin and toilet tissue. In addition, childcare centres are places that can support mothers who have to work and nurse their children. Female workers can leave their children in the childcare centre and go to work free of anxiety or burdens. There are no specific regulations to enforce employers to provide childcare centre at or near the workplaces under ILO Recommendation No.191, the UK laws or Swedish laws. The Vietnamese Labour Code provides a regulation about kindergartens or nursery schools¹³ as guidelines for employers who want to prepare a centre for female workers, and although it does not enforce employers, it offers incentives to those who establish a childcare centre in the workplace.¹⁴

¹¹ Labour Code of Vietnam 2012, art 155 cl 5 and its Decree No.85/2015, art 7 cl 3 b) < https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91650 >

¹² Decree of Vietnam Labour Code No.85/2015, art 3 cl 3 and art 7 cl 4 <http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100428&p_country=VNM&p_count=573>

¹³ Ibid., art 9 and 10

¹⁴ Ibid., art 11

2. Nonexistence of Rights to Breastfeeding Breaks and Breastfeeding Facilities for Female Workers in the Private Sector in Thailand

The National Health Act B.E. 2550 aims to protect the health of children, supports women's health and provides general protection for nursing mothers who need specific healthcare.¹⁵ Employers should promote nursing mothers and breastfeeding and must provide a workplace that is environmentally-friendly for their female employees, since the lacking of breastfeeding, proper places to breastfeed or give breast milk to children may damage the health of female workers and their children. However, this Act does not contain a specific regulation that requires employers to provide breastfeeding breaks and facilities in the workplace for female workers.

The Occupational Safety, Health and Environment Act B.E. 2554 aims to protect all workers from any injuries caused by their position and conditions of work. Female workers who want to breastfeed their children at work should be protected from any improper work that endangers their physical health. The strength of the Act is that it can require employers to provide employees with the proper working conditions and environment.¹⁶ However, there are no specific regulations to provide breastfeeding breaks and breastfeeding facilities under this Act.

Furthermore, maternity protection after childbirth under the Thai Labour Protection Act B.E. 2541 still fails to meet the international standards based on the fact that the minimum standard of ILO sets breastfeeding breaks and breastfeeding facilities as essential for inclusion in labour laws. Thai female employees are only entitled to a normal break of at least an hour every day without pay.¹⁷ This implies that mothers who want to take a breastfeeding break may have to use this break time for breastfeeding or

¹⁵ National Health Act B.E.2550, s 5 and 6

¹⁶ Occupational Safety, Health and Environment Act B.E. 2554, s 6

¹⁷ Labour Protection Act B.E.2541, s 27

pumping milk in the workplace. Thus, the significant weaknesses of Thai laws are that there is no a specific provision under the specific laws which could assure mothers' rights to breastfeeding and breastfeeding facilities.

3. Conclusion and Recommendations

3.1 Conclusion

Having compared and analysed Thai laws related to breastfeeding breaks, specific regulations to grant breastfeeding breaks and breastfeeding facilities to female workers in the private sector, it can be concluded that these rights are obviously unavailable under any related Thai laws. Unlike the ILO Convention and Recommendation, Vietnam, the UK and Sweden, which provide the right to breastfeeding breaks and facilities.

3.2 Recommendations for the new amendment

The addition of new sections in Chapter 3 Maternity Protection of Labour Protection Act B.E. 2541 is recommended, as follows.

3.2.1 Breastfeeding Breaks

The definition of breastfeeding breaks should be provided in the new section as “Breastfeeding breaks are break times for female workers to breastfeed, pump breast milk, collect breast milk or take a rest” because providing the definition of breastfeeding breaks can facilitate employers and female employees to better understand the need for breastfeeding breaks. The daily period for breastfeeding should not be too short because female workers need more time to breastfeed, pump milk or take a rest. Break times should not be too long to interrupt the business. For example, “Two thirty-minute breastfeeding breaks each day in the late morning and at noon respectively for a period one year after childbirth. The length of female workers to be entitled to breastfeeding breaks should be set according to the WHO's recommendation, which is more than six months for breastfeeding. The writer would like to recommend that female workers

should be entitled to this break for one year to enable children to receive enough breast milk for their growth, increase breastfeeding rate and it is a proper duration for employers' business.

The breaks should be counted as working time so that female workers should be entitled to full pay unlike normal break time.¹⁸ Full wages will encourage mothers to continue their breastfeeding and take breastfeeding breaks.

3.2.2 Breastfeeding Facilities

Employers should provide breastfeeding facilities to female workers to reduce the obstacles to breastfeed in the workplace. Breastfeeding facilities are appropriate places and related facilities for breastfeeding. Moreover, employers may provide childcare centres for their workers at or near the workplace and those who do should receive benefits pursuant to the government's policy, such as a tax reduction or budget to assist them.

3.2.3 Legal Penalty

The punishment for employers who do not provide breastfeeding breaks and facilities to female workers should not be severe such as imprisonment for a criminal offence. The punishment for employers should be a fine in an amount set by the labour inspector, but not exceeding the amount under the law.

¹⁸ Labour Protection Act B.E. 2541, s 27

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