

PROTECTION OF WORKING MOTHER IN JORDANIAN LABOR LAW COMPARED TO INTERNATIONAL LABOR LAW

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ABSTRACT

Jordanian labor legislator has found some restrictions and guarantees aim at protecting working women in general and working mother in particular (pregnancy, delivery, and maternity).

This study deals with protective measures existed in Jordanian labor law to take care of working mother and her children, namely : maternity leave , breaks or a daily reduction of hours of work to breastfeed the baby , leave to dedicate herself for nurturing her children , employers obligation to prepare a suitable place as a nursery . All through the analyses of related provisions in labor code compared to International labor Organization (ILO) and Arab Labor Organization (ALO) Standards, following the comparative analytical method, in order to reach a legal system that provides necessary measures to protect and take care of working mother . Finally I got to a conclusions and recommendations, referring to the main key in the findings of this paper which is "The Mother's role is highly important stage in the human resources management, therefore employers, employees, and government should carry out its burden to enable the working mother to match between her role in labor market and her role as a mother.

Key words: *working mother, maternity leave, nurturing childhood.*

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INTRODUCTION

The woman has social role as a mother raising children, looking after family affairs, and economic role as a worker in the labor market. Matching between the two roles has become important issue in the international labor standards and national legislations. The main question faces the legislator to match between the two roles of working mother is who pays? Or who will carry out the burden of the paid maternity leave, nursing the baby ...etc., of working mother? , some employers used to get rid of such these responsibilities by not recruiting females, or terminating the employment of a woman during her pregnancy or her absence on maternity leaveetc. This situation calls us to ask our society , including employers , workers and government to share this responsibility to enable working mothers to continue their mission as workers and mothers (Elias , alyousf 2006 , page 187). This was assured in ILO Declaration on Equality of opportunity and treatment for women issued in 1975, and it has been referred to in the Preamble of ILO Convention, 2000, No 183 on Maternity Protection, which says; Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are shared responsibility of government and society. Accordingly article 6 para 8 of this convention mentioned that (In order to protect the situation of women in the labor market, benefits in respect of the leave referred to in Articles 4 and 5 (Maternity leave and leave in case of illness or complications) shall be provided through compulsory social insurance or public funds , or in a manner determined by national law and practice .An employer shall not be individually liable for the direct cost of any monetary benefit to a woman employed by him or her without that employers specific agreement except where : (a) such is provided for in national law or practice in a member state prior to the date of adoption of this convention by the international labor conference , or (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers .

As for Jordan , Labor Legislations , specially Labor Law No 8 for the year 1996 and its amendments grant the working mother ; maternity leave , breaks or daily reduction hours for breastfeed her baby , one year not paid leave to take care of her children . Besides, the employer has to prepare a suitable place under the supervision of qualified nursemaid for the children of the working mothers. But unfortunately we still have certain groups of female workers which not covered by the mentioned labor law, like females working in Agriculture and Informal sectors, as well as the house maids. (see article 3 of Jordanian labor law No8 for the year 1996).

Accordingly, in this paper, I will discuss the provisions related to these matters compared with I L O and A L O standards leading to conclusions and recommendations shedding lights on the cause of working mothers protection and the suitable provisions to achieve the public welfare , taking in consideration that we need more studies to be conducted in this field aiming at protecting working mothers and increasing female participating ratio in labor market, this needs more efforts in Jordan and internationally.

MATERNITY LEAVE :

This leave is considered one of the most important rights decided by the legislator to save the health of the working mother and her infant, and to enable her to match between her work and her right in regeneration (Abdel Halem, Salameh Abdel TAWAB 2009, PAGE 6, Alotoum, Mansour Ibrahim 2008, page 123, Ramadan, Syed M ahmoud 2005, page 372, Aldawodi, G., page 158.)

Article (70) of Jordanian Labor Law stated that ; (The working woman shall be entitled to a full paid maternity leave before and after delivery, the total of this shall be ten weeks provided that the period subsequent to delivery shall be not less than six weeks, it is prohibited to make her work before the expiry of that period). In comparing these provisions with I L O and A L O conventions, we find that there are aspects of agreement in one hand, and some differences in the other, as follows:

Faces of harmony are :

- According to Article (70) of Jordanian Labor Law, and to Article (4) para (4) of I L O Conv. No 183, and to Article (65) of A L O Conv. No (6) of the year 1976 on LABOR STANDARDES, and article (10) of ALO Conv. No (5) on Working woman, Maternity leave should be not less than six weeks after delivery.

-Furthermore the Jordanian legislator goes hand in hand with Article (3) of the above mentioned I L O Conv. Regarding specifying the dangerous works that pregnant working women are prohibited to perform, such as exposing to X rays or to Atomic rays ...etc., this is confirmed and illustrated in Labor minister decision issued according to article (69) of Jordanian labor law. It is noticed that this prohibition is applied on pregnant as well as breast feeding working mother.

-Besides, Jordanian labor law provisions agreed with Article (8) para (1) of I L O Conv. No 183. And with Article (65) of the A L O Conv. No 6 which prohibited employment termination of the female worker, neither during her pregnancy nor during her maternity leave (article 27 of Jordanian Labor Law)

Aspects of differences :

- According to article 4/1 of the ILO convention No. 183 for the year 2000; the period of maternity leave is 14 weeks, while the Arab labor organization in article 65 of the Arab labor convention No.6 for 1976; limited it with 10 weeks only, which the Jordanian legislator follows in article(70) of labor code No.8 for the year 1996. In fact; this period (10 weeks) is suitable and is in harmony with economies of the developing countries and its economic policies.

-In the mean time I L O Convention stipulates that the working woman has to supply the employer with a medical report declaring the probable date of delivery (Article 4/1 of the I L O Convention No 183 for the year 2000),while this obligation is not mentioned in the Jordanian labor law, irrespective of its positive benefits for the employer represented in the prior knowledge which gives him enough time to arrange his work in the absence of working mother during her maternity leave.

- its noticed that article(65) of the Arab labor convention No.6 of the year 1976 stipulates that the working woman should work for the establishment not less than 6 months prior the due time for her maternity leave, mean while the Jordanian legislator makes a good step of following the ILO convention No. 183 of the year 2000; in which both did not restrict the maternity leave with such condition; therefore the working mother shall gain such leave nevertheless the working period for the same employer (Alotoum, M, & abumezer, S, 2011, P. 23)

- its noticed that article 5 of I L O convention No 183, as well as article (11) of ALO convention No. (5)of the year 1976 on working woman, stated that the working mother shall gain leave before and after maternity leave -according to a medical report- if she faced sickness and complications, or risk of complications, arising of pregnancy or childbirth, and this leave may determined according to the national legislations, however the Jordanian labor code didn't deal with such matter. It seems that this attitude taking in consideration not to over burden the employer with this obligation.

But there is no prohibition if she got sick after delivery to get her annual sick leave, after maternity leave.

Important legislative development

it is important to refer to the recent development of the concerned legislation in Jordan regarding the responsibility of working mother payment during her 10 weeks maternity leave upon the social security fund, therefore; article 3/A of the Jordanian social security law No. 7 for the year 2010 stated that maternity insurance one of the different insurances covered by the mentioned law. Accordingly, article 4 of the executive insurance regulation (published in the official gazette No.5076 dated 16/1/2011) stipulates that insured working mother deserves benefits of maternity leave for four deliveries in maximum from the date of maternity insurance coverage.

Therefore, it is noticed that the Jordanian legislator has become more similar with the international instruments; such as the contribution of social funds in taking the responsibility of covering the maternity leave payments taking in consideration that the

Jordanian employers still carry out the wages of maternity leave in certain cases; such as working mother not covered in social insurance or she got delivery for the fifth time, because the social insurance corporation does not cover the fifth childbirth maternity leave, or because the working mother was not covered with maternity insurance during the late nine months before the childbirth according to article 4/A of the executive insurance regulation referred to.

Breastfeeding of the infant

In the time that both I L O Convention (No ;183) and A L O Convention (No; 6) did point out to breaks or a daily reduction of hours for the working mother to breastfeed her infant, we find article (71) of Jordan labor law No 8 of the year 1996 stipulates that the working woman has the right, after her maternity leave which mentioned in article (70) of the law, to get during the year which follows her delivery a paid break or breaks to breastfeed her infant.

This right is useless if the infant is not in a nursery or housing annex or near to work place to enable the working woman to breastfeed her infant, and fulfill the logic of this right.

It is noticed that the Jordanian legislator limited the maximum time for breastfeeding by one hour without limiting the minimum time. We notice that it is more logic to limit the minimum time to protect working woman and to limit the maximum time in order not to harm the employer (Elyas, yosouf 2006, page 199), especially that the breastfeeding periods are considered part of work time.

Mother's leave to nurture her children

Article 67 of Jordanian labor law No 8 of the year 1996 and its amendments stipulates that a woman working in a establishment that employs ten workers or more shall have the right to get unpaid leave for a period not exceeding a year to dedicate her self for nurturing her children, she may return to her work after the expiry of that leave, provided that she may lose this right if she has work in any other establishment with pay during that period. So Jordanian Legislator has followed article (14)of ALO convention No.(5)of the year 1976, which referred to such leave.

This leave is one of the new leaves introduced by Jordanian legislator to safeguard childhood and to protect working mother in raising her children and enjoying motherhood.

It is worth mentioning that either I L O Convention No 183 nor A L O Convention No 6 mentioned such text, although International recommendation No 191 for the year 2000 stipulates that any of the working parents child has the right to enjoy a parental leave after the end of the maternity leave, on condition that the period for this leave should be specified and limited (sub-Para 10/3 and 10/4 of the Recommendation No 191).

Any how we notice that Jordanian labor law didn't specify how many times working woman can benefit from such leave during the period of her service in the same establishment, which I believe should not exceed two times as in the Egyptian labor law No 12 for the year 2003 (article 24), because un limitation may harm the employer in his work stability.

In our point of view thus leave realize a kind of balance between sacrificing the income that the working mother loosing and satisfying her important social role aiming at realizing mission that the whole society sharing with.

Affording a nursery to take care of the working mother children

It is noticed that I L O Conv. No 183 didn't mention the obligation of nursery, but it is mentioned in I L O recommendation No 191 that all arrangements should be taken where it is available, to set out place for breastfeeding in suitable healthy environment in work place or near to (para 9).

But the A L O Conv. No 6 states that the establishment alone or in cooperation with other establishments which employ a big number of women to set out nursery, and the legislator in every state shall specify the establishments which are covered by this obligation, and the conditions of setting up these nurseries (9).

Accordingly article (72) of Jordanian labor law states that employer who employs not less than twenty married women shall prepare a suitable place under the supervision of a qualified nursemaid for the children of the working women whose ages are less than four years, provided that their numbers shall not be less than ten children. Later on this article was amended in 2010 by abolishing the word married to widen its application.

In this respect we notice that Jordanian legislator takes in consideration the financial capability of the employer regarding the obligation of setting up nursery by adopting numerical criteria (number of working women which should be not less than 20, and number of infants not to be less than 10).

Nevertheless, application of this article seems not easy enough to be implemented by the employers due to its financial cost. There for we ask why the employer alone should carry this burden? And why does not the whole society share this

responsibility? We raise these questions because we know that raising children is profitable investment for all partners in the society. This fact makes us suggest that all social partners (employers, employees, and government) should share the burden of establishing nurseries for the children of working mothers.

Penalties for violating previous provisions

Article (77) of Jordanian labor law stipulates that: The employer the establishment manager shall be punished For any violation of any of the previous provisions with a fine not less than three hundred Jordan dinar (430\$) and not exceeding five hundred Jordanian dinar (700 \$). The fine shall be aggravated in case of recurrence and it might not be mitigated less than its minimum.

These penalties are not deterrence and don't match the subject of the violation, for that I propose increasing the quantity of the fine to match the dangers of these violations.

Conclusions

In reference to the explanation and analysis above, the conclusions are as follows:

- The mother's role is highly important stage in the Human resources management, so employers, employees, and government should carry out its burden to enable the working mother to match between her role in work and her role as a mother.
- The period of the maternity leave in Jordanian labor law is 10 weeks which is suitable and matching economies of the developing countries
- The working mother deserves maternity leave irrespective of her length of services in the establishment
- Social insurance Fund carries out the wages of the maternity leave for four deliveries as supporting partners to the employers
- Jordanian labor law is in harmony with I L O and A L O in nursing the working mothers infants by granting the right of Breastfeeding breaks during working hours
- The Jordanian legislator granted the working mother unpaid leave for one year to take care of her children, although this right is neither mentioned in the I L O or the A L O conventions ,but it is mentioned in I L O Recommendation No 191 of the year 2000
- The Jordanian labor law is matching I L O Recommendation No 191 of the year 2000 and the A L O convention no 6 of the year 1976 which obliged the employer who employs not less than 20 women to afford a nursery for the children of the working women according to defined conditions.
- In the future we look for a comprehensive study for social legislations which related to female workers, protection of working mother, and studying the ability of finding an impressive role for ILO and ALO in this field.

Recommendation

On this occasion the writer propose the following recommendations:

- Spreading legal education between employers to informed them about their social and legal responsibilities towards their female workers, regarding maternity leaves, nurseries and legal and social rights of the female workers
- Amending Jordanian labor law to adhere working woman to supply the employer with Medical Report that shows the probable date of her delivery
- To legislate a new right for working women to grant her a sick leave following her maternity leave ,according to medical report that she got sickness from pregnancy or delivery .
- The legislator should decide the minimum period for breastfeeding
- The legislator should decide the times of granting annual unpaid leaves for taking care of the children of the working mother through her service period.
- It is necessary to amend legislation to get the government ,and the society involved in setting out the nursery for the children of the working women .
- Increasing the amount of fines on the employers who ignore provisions of working mothers protection and her children guidance to make these fines more deterrence due to the relevance of these violations .

- The legislator has to issue laws aiming to deal with female home workers, family female workers, and female workers in agriculture and informal sector.

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