



FEMALE EMPLOYEES – POSITIVE DISCRIMINATION UNDER THE BAHRAIN LABOUR LAW FOR THE PRIVATE SECTOR

Reem Al Rayes, October 8, 2012

Gender equality is enshrined in the Kingdom of Bahrain's 2002 Constitution. Strictly, equality under the law implies that citizens, men and women, shall be entitled to enjoy the same rights. However, this is a conservative view. The prevention of discrimination and the implementation of special legislation to address gender differences and give women equal opportunities are arguably two aspects of the same issue; that of ensuring equality in practice. Men and women are not interchangeable and differences cannot be ignored in the name of equality. After all, whoever can talk about pregnant men?

In the Kingdom of Bahrain there is a strong political will to empower women in the public and private spheres. The Law No. (36) of 2012 Promulgating the Labour Law for the Private Sector (the '**New Labour Law**'), which came into effect on September 2, 2012, introduced comprehensive changes to the employment of women in the private sector, particularly, in relation to maternity leave, nursing hours, child care, and bereavement rights. Those changes seem to have provoked mixed reactions and they are briefly discussed in this paper.

Maternity Leave

Article (32) of the New Labour Law increased maternity leave from 45 days with full pay, and the right to take an additional 15 days without pay, under the repealed Labour Law No. (23) of 1976 as amended (the '**Labour Law of 1976**'), to 60 days with full pay, and the right to take an additional 15 days without pay.

Nursing Hours

Upon the employee's return to work after her maternity leave, she shall be entitled to a minimum of two nursing hours each day until the child reaches six months. Thereafter, the employee shall be entitled to a minimum of one nursing hour each day until the child reaches one year. The employer can specify the timing for nursing but the nursing hour(s) can be taken altogether or in two separate periods at the discretion of the employee (Article (35)).

Albeit the New Labour Law i) increased paid maternity leave by 15 days, and ii) increased the nursing hours from one hour to two hours for the first six months from the child's birth, the total period for benefitting from reduced working hours for nursing has been reduced from two years to one year. Furthermore, the employee will



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not be able to fully benefit from the two nursing hours since the employee will be on her maternity leave for a part of that first six months period. Under the New Labour Law, the employee may take maternity leave before or after the delivery of the child, provided that she takes at least 40 days after the delivery of the child.

Bereavement Leave for Muslim Female Employees

Another significant change introduced by the New Labour Law is the bereavement leave for Muslim female employees. In the event of the death of her husband, a Muslim female employee is entitled to one month's leave with full pay (Article (63) (c)) and shall have the right to complete her 'Uddah' (i.e. the waiting period prescribed under the Islamic Shariah) of three months and ten days from her annual leave and, if she has no annual leave balance, to take leave without pay. Under the repealed Labour Law of 1976, both, women and men, were entitled to three days of leave with pay in the event of the death of their spouse.

Child Care and Emergency Leave

Perhaps the most significant change introduced by the New Labour Law is the female employee's right to take unpaid leave three times during her period of service to take care of a child under six years old for up to six months each time (Article (34)). Employers should obtain legal advice on how to best deal with this without breaching the Law.

The New Labour Law also introduced the concept of "impeding leave", whereby an employee may lawfully absent himself/herself due to impeding circumstances for a maximum of two consecutive days each time for a maximum total of six days each year. The Law does not define the term impeding but it can be understood to cover emergency or urgent circumstances including child care and taking a child or other family member to hospital. Any such impeding leave is lawful and is deductible from the employee's annual leave entitlement in accordance with Article 59 (b) of the New Labour Law. Under the repealed Labour Law of 1976, employers had the option of taking disciplinary action against an employee for unauthorized absence.

No Discrimination

Article (29) of the New Labour Law prohibits gender discrimination in pay. Furthermore, Article (104) of the New Labour Law expressly provides that the termination of an employee because of gender, social status, family responsibilities, or the pregnancy of a female employee, or her birth, or her nursing her child, shall be deemed to be unlawful. This ensures that employers cannot get away with discrimination against their female employees.



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The intention of the special provisions introduced by the New Labour Law is to give women equal opportunities that would not be given to them in a male model law and it is certainly not to discourage future employers from recruiting female employees. Therefore, women have a great responsibility not to abuse the rights described above and to always consider the interests of the business and their employer.

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