

Breastfeeding Facilities Policy at Work: Between the Cup and Lip

Wan Mardiana Wan Musa, Noorimah Misnan

Faculty of Law, Universiti Teknologi MARA, 23000 Dungun, Terengganu, Malaysia

Received: June 12, 2017

Accepted: August 29, 2017

ABSTRACT

Breastfeeding is accepted means of infant feeding with proven benefits not only to the parents or family of the child but its benefits extend to the employers and government as a whole. The aim of this paper is to examine the rights of female workers to breastfeed at work and the application of the current Employment Act 1955. Basically, maternity protections are governed under Employment Act 1955. Every female employee is entitled to 60 consecutive days of paid maternity leave but, there is no specific statutory provision regarding breastfeeding rights, breastfeeding breaks to express breast milk and breastfeeding facilities at the workplace. The implementation of National Breastfeeding Policy and the Baby Friendly Hospitals Initiatives by the government of Malaysia plays a significant role in promoting and supporting breastfeeding among female workers. It is recommended that the right to breastfeed should be included in the Employment Act 1955.

KEYWORDS: Maternity Protection, Breastfeeding Employee, National Breastfeeding Policy.

INTRODUCTION

Women participation in workforce in Malaysia is undeniably significant whereby they comprises more than 50% of labour participation rate. In 2016, the total percentage of female labour participation rate is 54.3% [4]. The numbers include working mothers who are also juggling between work and family responsibilities. Bearing children and breastfeeding is exclusive only to women. Therefore, it is very important that the female workers being given special rights to fit in both roles. The objective of this paper is to examine the rights of female workers to breastfeed at work in the purview of the current Employment Act 1955 [11]. The main question to be discussed in this paper is the reason why the current maternity protection provided by the Act insufficient to facilitate breastfeeding and how to integrate the government aspirations lay down in the National Breastfeeding Policy 1993 [14] into the Employment Act 1955. The methodology used in this paper is by way of examining the existing Employment Act 1955 [11] regarding maternity protection provision as well as the National Breastfeeding Policy [14], which is by way of secondary data collection.

LITERATURE REVIEW

Current Law and Policy Concerning Breastfeeding Rights

Generally, the Employment Act 1955 has no provision whatsoever regarding breastfeeding rights. The only provision close to the rights of breastfeeding is maternity protection under Part IX, sections 37 to 44A of the same. Before the amendment in 2012, the Employment Act 1955 [11] is only applicable to employees whose wages are below RM2000. For those earning more than RM2000 per month, reference should be made to employment contract or Industrial Relations Act 1967 [12]. However, with the new insertion of Section 44A, limitation of maximum wages is not conclusive with regard to maternity protection. Hence, every female employees are eligible to 60 consecutive days of maternity leave. Below are summary of maternity protection outlined by the Act:

- Section 37 provides for length of eligible period and entitlement to maternity protection whereby in general, every female employee is entitled to 60 consecutive days of maternity leave and is entitled to receive maternity allowance according to her ordinary rate of pay per day.
- Section 38 provides that such maternity allowance is treated as wages earned during the period of maternity leave.
- Section 39 provides the right of maternity allowance extends to nominated person or legal representatives in the event of death during the eligible period of maternity leave.

- Section 40 provides that the entitlement to receive maternity allowance is coupled with notification to the employer of pregnancy or the expected commencement period of maternity leave, failure which will render the female employee to lose her entitlement for maternity allowance.
- Section 41 provides the right of the female employee to nominate some other person to receive her maternity allowance and if so paid, shall be deemed to have been paid.
- Section 42 generally renders protection against dismissal after eligible period if the female employee is unfit to return to work with certification by a registered medical practitioner.
- Section 43 provides protection against any conditions of the contract which renounces female employees' rights to maternity protection is deemed void and the provision of the Act shall prevailed.
- Section 44 provides for the employers to keep a register regarding maternity allowance paid to the female employees in the prescribed form according to regulations made under the Act.
- Section 44A provides the maternity protection rights extend to every female employees irrespective of wages [11].

It should be noted the above summary is recapitulate generally without scrutiny to its exceptions and other conditions. Looking at the provisions above, there is clearly no mention whatsoever as to breastfeeding rights, what more breastfeeding breaks or facilities in the Act.

Besides the Act, the public sector is governed by the government service circular Vol 14 2010 which specifically provides directives regarding maternity leave [16]. Basically, the circular provides 300 days for the maternity leave entitlement of a woman officer throughout her period of service with flexibility to opt between 60 days through 90 days of maternity leave for each birth. Other than that, the circular also outlines the options can be taken by a woman officer to apply for unpaid maternity leave or compassionate leave for the purpose of breastfeeding as provided by the Service Circular Vol. 15 2007. The entitlement for compassionate leave is given for 1,825 days or 5 years. Unpaid compassionate leave can also be applied if the woman officer has utilised her 300 days paid maternity leave. There is neither mention in the circular regarding breastfeeding facilities at workplace nor there is any separate or related policy or directives regarding breastfeeding facilities at the workplace.

The NBP encapsulate the benefits of breastfeeding as well as guidelines to encourage breastfeeding, including methods to manage expressed breast milk and recommends for supportive worksite health promotion policies be introduced to support breastfeeding after mothers return to work [16]. In lieu to private sector, the Suruhanjaya Syarikat Malaysia (SSM) released Best Business Practice Circular 2/2011 which outlines a comprehensive guidelines to implement nursing mothers program at the workplace as an auspicious initiatives [18].

Benefits of Breastfeeding in Light of National Breastfeeding Policy

Breastfeeding does not only benefits the parents or family of the child but its benefits extend to the employers and government as a whole. For the parents, breastfeeding may help decrease health care cost as the breastfed children are healthier than their bottle-fed counterparts. This is evidenced by [3] whom found that children who were breastfed during their first year of life were significantly healthy as compared to formula-fed children. In [2] were of the opinion that benefits of breastfeeding continued long after the period of infancy. The breastfed infants has lower risk of obesity, possessed lower cholesterol level, having less probability of contracting type-2 diabetes as well as possessed healthy blood pressure when they reach adulthood. According to [7], the direct advantages of these long term effect are reduction of health care and medication cost born by parents. Thus, the parents can utilise their wages to cater other family necessities. Other than that, parents who practice breastfeeding save more money as they don't have to spend on purchasing formula milk as substitutes. Even though practicing breastfeeding also incur some costs especially in term of mother's nutrition, breast pumps and storage, the cost involved a one-off purchase and can be reused to the next children. Besides that, breastfeeding also benefits mothers and may reduce the healthcare cost of the mothers. According to [1], women who do not breastfeed face higher risk of breast and ovarian cancer, type 2 diabetes, metabolic syndrome and cardiovascular disease.

Employer's benefits more when there are diminution of absentees among workers due to taking care of sick children. Employers should realize that breastfeeding also can save money. An employer can get benefits for supporting breastfeeding because it can mitigate health care cost, lost productivity and absenteeism. In [3] agreed that when babies are healthier, their parents are less to miss work. The relationship between the employer and the employees also can be improved when the employer provides the workplace with more breastfeeding friendly. Thus, the retention of employees also can be reduced as well as the need for training and the loss of qualified personnel as agreed by [5]. As pointed out by [6], when lactation rooms and breast pumps are available in the work place, it can encourage the mother to continue to breastfeed. In [8] agreed that employees who can express milk at work are more loyal to the company as to show its gratitude and satisfaction to the employer.

According to [10], increased breastfeeding in certain populations may result in financial saving for the government, especially in term of subsidised medical cost. In Malaysia, medical costs are subsidised by the government, with RM1 and RM5 public hospital charging fees. These charges clearly don't reflect the actual costs borne by the public taxes. Malaysia Annual Budget for 2017 provides RM25 billion for various health purposes, with RM4 billion allocated for medicine, drugs and vaccines distributed to all public hospitals and health facilities throughout the country [15]. Therefore, breastfeeding may be the perfect solution for empowerment of human capital. According to [19], breastfeeding practice would prevent annual deaths in children below five years old as well as annual death of women caused by breast cancer. In [17] found that economic benefits for countries of promoting breastfeeding are likely to be substantial, even though further research needed to be done. Besides that, it also reduces morbidity and improves the educational potential of children and probably their earnings as an adult. In [2] found that breast milk is rich in nutrients such as DHA and AA which is very significant in brain development which influence the children performance in later life and to achieve the above benefits, duration of breastfeeding is very significant.

DISCUSSION

The implementation of NBP and the Baby Friendly Hospitals Initiatives by the government of Malaysia plays a significant roles in promoting and supporting breastfeeding among female workers. Besides that, the 2017 government budget offers special tax reductions on purchasing nursing facilities such as breast pumps such astounding aspirations to mothers around the nation to facilitate the effort of breastfeeding [15]. Besides having tremendous health benefits, the NBP also includes economic, family and environmental benefits in its lists. However, for working mothers, having to balance between breastfeeding and work may not be easy. The adequacy of breastfeeding facilities at work plays a significant roles in ensuring breastfeeding success. According to [9], there are three obstacles faced by working women to continue breastfeeding, insufficient maternity leave, lack of policy regarding breastfeeding breaks to express, store or feed baby at the workplace and lack of facilities to express breastmilk.

In [9] opined that the NBP should be translated into legal maternity protection to ensure its effectiveness for working women. The most effective way to facilitate breastfeeding at work is by way of having legislation and education regarding the need of breastfeeding working women. If we are looking at the scope of the Employment Act, the issue of breastfeeding rights, breastfeeding breaks to express breast milk, as well as breastfeeding facilities at the workplace is not addressed. Having said so, there is no delegated legislation arise therein. It should be noted under the principle of administrative law, there are three principal forms of delegated legislations namely regulations, rules and by-laws. The authority given to executive in making laws may come either from constitutional provisions or Parliament and subjected to be reviewed. According to [20], a circular, brochures or their equivalent, has the same legal position as the delegated legislation if they are made to construe or implement the law. The current policy and circulars that we have now is somewhat independent and scattered as to its origin. The National Breastfeeding Policy is more in the form of Ministry guidelines, the government service circular caters civil servants whilst the SSM Circular caters the private sector. In term of legal standing, one must understand the principle to implement the delegated legislation must always revert to the Parent Act of its origin. Caution must be made to any circulars or directives which is outside the scope of power given to the delegated authority. Therefore, if the government aspirations in the National Breastfeeding Policy is incorporated in the current Act, the legal standing of such aspirations is guaranteed. Furthermore, according to [13], subsidiary legislation is usually confined to matters of details as the legislature has neither time nor the technical knowledge to enact laws on every details. If there is general provision related to the matter, a circular is necessary and can be as good as the law. However, if the Parent Act has nothing to say regarding the matter, the validity of the subsidiary legislation may be challenged. As such, if there is nothing in the Act regarding breastfeeding rights, a circular or directives are not necessary.

CONCLUSION AND RECOMMENDATIONS

In light of the above discussion, it is suggested that a clear and firm provisions is necessary to ensure the rights of female employees is upheld through an Act of Parliament, so that its implementation is comprehensive and vast. As such, it is recommended that the right to breastfeed be included in the Employment Act 1955 by way of an insertion of new clause regarding breastfeeding rights so that the aspirations in the National Breastfeeding Policy may be integrated and materialised through Employment Act 1955.

Secondly, in the affirmation of the above resolution, a circular or policy may be outlined so as to give details and proportional guidelines of the implementations of the said rights in the public sector. In addition, we also would like to recommend the government to come out with its own circular regarding breastfeeding facilities in the public sector.

ACKNOWLEDGEMENTS

The authors wish to acknowledge Universiti Teknologi MARA Terengganu (UiTMT) for funding this project under the Special Interest Group (SIG) and the Research Management Unit (RMU) of UiTMT for managing the grant.

REFERENCES

1. Stuebe, A., 2009. The Risks of Not Breastfeeding for Mothers and Infants. *Reviews in Obstetrics and Gynecology*, 2 (4): 222-231.
2. Bernardo L. Horta and Cesar G. Victora, 2013. Long-term effects of breastfeeding: A systematic review. *World Health Organization*.
3. Colen, C.G. and D.M. Ramey, 2014. Is Breast Truly Best? Estimating the Effects of Breastfeeding on Long Term Child Health and Wellbeing in the United States Using Sibling Comparisons. *Social Science and Medicine*, 109: 55-65.
4. Department of Statistic Malaysia, 2017. Press release labour force survey report, Malaysia, 2016. Retrieved from <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=SGZCNnMrWW9ZTEdpYys4YW0yRlhoQT09>.
5. Turck, D., M. Vidailhet, A. Bocquet, J.L. Bresson, A. Briend, J.P. Chouraqui, D. Darmaun, C. Dupont, M.L. Frelut, J.P. Girardet and O. Goulet, 2013. Breastfeeding: Health Benefits for Child and Mother. *Archives de Pediatrie: Organe Officiel de la Societe Francaise de Pediatrie*, 20: S29-48.
6. Waller, K., 2007. Breastfeeding Works: The Role of Employers in Supporting Women Who Wish to Breastfeed and Work in Four Organisations in England. *Breastfeeding Review*, 15 (1): 42-43.
7. Ball, T.M. and Bennett, D.M., 2001. The Economic Impact of Breastfeeding. *Pediatric Clinics of North America*, 48 (1): 253-262.
8. Ortiz, J., K. McGilligan and P. Kelly, 2004. Duration of Breast Milk Expression Among Working Mothers Enrolled in an Employer-Sponsored Lactation Program. *Pediatric Nursing*, 30 (2): 111-119.
9. Hassan, K.H. and N.C. Musa, 2014. Women's Right to Breastfeed in the Workplace: Legal Lacunae in Malaysia. *Asian Women*, 30 (2): 85-108.
10. Karin, M.L. and R. Runge, 2014. Breastfeeding and a New Type of Employment Law. *Catholic University Law Review*, 63 (2): 329-370
11. Laws of Malaysia, 2012. Act 265: Employment Act 1955. Retrieved from <http://minimumwages.mohr.gov.my/pdf/Act-265.pdf>.
12. Laws of Malaysia, 2010. Act 177: Industrial Relations Act 1967. Retrieved from www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20177.pdf.
13. Min A. Wu, 2001. *The Malaysian legal system*. Pearson Education Malaysia.

14. Ministry of Health Malaysia, 2013. Malaysian dietary guidelines: Key message 12-Practise exclusive breastfeeding from birth until six months and continue to breastfeed until two years of age. Retrieved from <http://www2.moh.gov.my/images/gallery/GarisPanduan/diet/km12.pdf>.
15. NajibRazak.com. Retrieved from <https://www.najibrazak.com/bm/>.
16. Public Service Department, 2010. Malaysia government circular, 2010 vol. 14. Retrieved from http://www.jpa.gov.my/index.php?option=com_content&view=category&id=39:circulars-list&lang=en.
17. Rollins, N.C., N. Bhandari, N. Hajeebhoy, S. Horton, C.K. Lutter, J.C. Martines, E.G. Piwoz, L.M. Richter, C.G. Victora and T.L.B.S. Group, 2016. Why Invest, and What It Will Take to Improve Breastfeeding Practices? *The Lancet*, 387 (10017): 491-504.
18. Suruhanjaya Syarikat Malaysia, Best business practice circular 2/2011-Establishing a conducive working environment for women: Nursing mothers programme at the workplace. Retrieved from <https://www.unicef.org/malaysia/Unicef-BBPC-Nursing-Mothers-Program-at-Workplace-Malaysia.pdf>.
19. Victora, C.G., R. Bahl, A.J. Barros, G.V. França, S. Horton, J. Krasevec, S. Murch, M.J. Sankar, N. Walker, N.C. Rollins and T.L.B.S. Group, 2016. Breastfeeding in the 21st Century: Epidemiology, Mechanisms, and Lifelong Effect. *The Lancet*, 387 (10017): 475-490.
20. Wan A. Ahmad and Nik A. K. N. Mahmood, 2006. Administrative law in Malaysia. Sweet and Maxwell Asia.