

Protection of Female Workers' rights in Employment and Incomes in Vietnam

NGUYEN Thi Hong Loan^{1,*}, PHAM Thu Trang¹, NGUYEN Thi Ngoc Anh¹,
BUI Thi Thu Thuy¹, NGUYEN Hong Thai²

¹ Hanoi University of Mining and Geology, 18 Vien street, Hanoi, Vietnam

² Hong Thai and Colleague International law firm Ltd, Hanoi, Vietnam

Corresponding author: nguyenthihongloan@hmg.edu.vn

Abstract. As an important task of the country's socio-economic development, protecting the rights of female workers in employment and income is concerned and implemented by international organizations and all countries in the world. The COVID-19 pandemic has been affecting the global economy and hurt the incomes and employment of many female workers. In Vietnam nowadays, there is an increase in the unemployment rate of female workers, gender inequality in employment and income, and the ability to secure their jobs and income. The article analyzes the current regulations and their implementation in the employment and income of Vietnamese female workers in the context of the COVID-19 pandemic. The article also proposes some recommendations on legal provisions related to training backup jobs, arranging and employing female employees, providing income support for female employees during leave due to the COVID-19 epidemic; and policies related to female workers' rights and their employers. These recommendations will improve Vietnam's labor law on female workers' rights in employment and income and enhance the efficiency of human resource use and socio-economic development.

Keywords: Rights of female workers, Employment and income, Labor Law, Covid-19 epidemic

1. Introduction

The rights of female workers in employment and income are legal capabilities suitable for gender specificities and confirmed, regulated, and ensured to implement for female employees. Globally, international laws recognize and guarantee citizens' rights and national laws protect the rights of female workers. The protection of female workers' rights aims to protect the labor force and their legitimate rights, ensures gender equality in employment, occupation, income, dignity, and their needs of rest. In recent times, the Vietnamese labor law system on the rights of female workers, the promulgation and implementation of related socio-economic policies have shown progress in legal thought and ensure protection efficiency.

According to the International Labour Organization (ILO), by the end of 2019, 70% of working-age women have joined the labor market and account for about 49% of the labor force of Vietnam [1]. In addition, their opportunities to learn, develop themselves, and promote to decision-making positions in organizations are increasingly expanding. The data also showed that many Vietnamese women is working in vulnerable employment areas with an average income of 13.7% lower than males in 2019 (with comparable working hours). Besides, the proportion of female workers is about 50% in the labor force but less than 25% of decision-making positions in organizations/enterprises [2]. Significantly, the COVID-19 pandemic led to the change in entrepreneurs, the demand in the labor market that will increase existing gender inequalities in the Vietnamese labor market, create new imbalances, and reduce the ability of female workers to implement their rights' employment and income.

As stated by the National General Statistics Office, by the end of 2020, the unemployment rate of female workers in ages of 15 to 24 was 9.2%, nearly twice that of male workers (5.2%), that of female workers over 25 is 2.1% in comparison with 1.1% of male workers [3]. Only a few new jobs are created and concentrated in the informal sector later; therefore, by the first quarter of 2021, female workers in this sector increased by 2.5 percentage points while male workers were 1.2 [3]. There are several explanations for these numbers, such as (1) the inequality in employment and income by genders; (2) the proportion of professionally trained female workers is lower; hence, female workers are often working in the informal or self-employed sectors, and it is complicated to change into other sectors; (3) regulations on the creation and use of reserve vocational training funds and provision of vocational training for female workers have not been implemented effectively or suitable with the COVID-19 pandemic context; (4) female workers have to spend more time on housework, especially when their children have to stay at home and learn online. The abovementioned causes are obstacles to their employment opportunities and their ability to meet the

requirements of employers. Thus, they have to accept less stable jobs as long as they can ensure their incomes.

From these facts, the article analyzes the current protection of the rights in employment and income of female workers in Vietnam, especially in the context of the COVID-19 pandemic, thereby recommending relevant policies to strengthen the protection of female workers' rights in employment and income.

2. Overview of regulations on women workers' rights and gender equality

2.1 The female workers' rights to equality on occupation

The Universal Declaration of Human Rights of 1948 declared that “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work” (Articles 23 and 24) [4]. Therefore, the right to work is an inalienable right of all human beings, regardless of gender. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which the United Nations General Assembly adopted in Article 11 also affirmed that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights” [5]. According to the Article 11 of this Convention, the equal rights of women in the workplace include “(1) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (2) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (3) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (4) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (5) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”

Article 3 of Labor Code of the Philippines ensures equal rights for women at work. “The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work” [6]. Article 135 of this Code further clarifies that gender discrimination is illegal, significantly. “It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. The following are acts of discrimination: (a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and (b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes” [6].

Human rights and citizen rights are stipulated and protected by laws and the Constitution, including women and female workers' rights. The Constitution of the Social Republic of Vietnam (2013) stipulates “No one shall be discriminated in his or her political, civic, economic, cultural, and social life” (Article 16). The Constitution also clearly stipulates the role of the state, the society, and families in ensuring equal rights for women “(1) Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities, (2) The State, the society, and families create conditions for women’s comprehensive developments and promotion of their role in the society, (3) Sex discrimination is strictly prohibited” Article 26) [7]. Equal rights to work, to choose job and workplace are also affirmed “(1) Citizen has the right to work and to select career, job, and workplace, (2) Workers shall be provided equal and safe work conditions and shall be paid with salary and enjoy break policy, (3) Discrimination, forced labor, and employment of worker under the minimum age of labor are strictly prohibited” (Article 35) [8].

Vietnamese law also affirms that female workers have the right to choose jobs per their capacity and aspirations without being forced by any organization or individual [8]). Article 5 of this Code stipulates that “An employee has the rights to work; freely choose an occupation, workplace or occupation; participate in basic and advanced occupational training; develop professional skills; suffer no discrimination, forced labor and sexual harassment in the workplace”. According to this law, workers and female workers, in

particular, have the right to choose their own jobs, depending on their health and expertise. The State has policies to ensure the jobs for female workers: Article 135 stipulates that: “Necessary measures shall be implemented to create employment opportunities, improve working conditions, develop occupational skills, provide healthcare, and strengthen the material and spiritual welfare of female employees in order to assist them in developing effectively their vocational capacities and harmoniously combine their working lives with their family lives” [8]. In general, the provisions on woman workers’ right to work in Vietnam are similar to international conventions. These regulations aim at equal rights of female workers in training, work opportunities, recruitment, and employment.

Moreover, gender equality in workplace are also recognized in Article 13 of Law on Gender Equality in 2006, that “Man and woman are equal in terms of qualifications and age in recruitment, are treated equally in workplaces regarding work, wages, pay and bonus, social insurance, labour conditions and other working conditions”; and “Man and woman are equal in terms of qualifications and age when they are promoted or appointed to hold titles in the title-standard professions” [9].

Decree No. 145/2020/NĐ-CP, dated December 14, 2020 of the Government also details and guides the implementation of some articles of the Labour Code regarding gender equality, which states in Article 78: “Employers have the responsibility to ensure equality of male and female employees; implement measures for assurance of gender equality in terms of recruitment, employment, training, salary, rewarding, promotion, remuneration payment, social insurance, health insurance, unemployment insurance, working conditions, labor safety, working hours, rest periods, sick leave, maternal leave, other material and spiritual benefits”. Vietnam also encourages employing female workers by the statement: “The State encourages employers to: (a) Give priority to hiring females if they are qualified for works that are suitable for both genders; renew employment contracts with female employees when their employment contracts expire; (b) Provide benefits for female employees that are better than those prescribed by law” [10].

2.2 The female workers’ rights to equality on income

Universal declaration of the human right of 1948 set out: “Everyone, without any discrimination, has the right to equal pay for equal work”; and “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection” [4] (Article 23). ILO Convention No. 100 of 1951 stipulate: “The term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex” [11]; and “This principle may be applied by means of: (a) national laws or regulations; (b) legally established or recognized machinery for wage determination; (c) collective agreements between employers and workers; or (d) a combination of these various means” [12].

Article 11 of the 1948 CEDAW recognizes the right to equal pay between women and men for work : “The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work” [5]. A salary is an amount the employer pays the employee under an agreement for work performed by the latter. Salary equals (=) base salary plus (+) allowances and other additional amounts. Article 90 of the Labour Code provides for wage equality and nondiscrimination for female workers: “Employers shall pay salaries fairly without discrimination against genders of employees who perform equal works.” [8]

Article 13 of Law on Gender Equality in 2006 stipulates: “Man and woman are equal in terms of qualifications and age in recruitment, are treated equally in workplaces regarding work, wages, pay and bonus, social insurance, labour conditions, and other working conditions”; Employers pay wage equally between male and female workers basing on the agreed salary, productivity, and work quality. Equal pay between female workers and male workers is also considered one of the most important factors ensuring the effective implementation of the equal rights of female workers [9].

The above-mentioned regulations have proved that international international conventions and Vietnam laws always provide female workers' equal pay for equal work..

2.3 The rights of female workers on guaranteeing employment and income

International conventions and Vietnam laws also protect women's right to work. Employers must not dismiss an employee or unilaterally terminate the employment contract with an employee due to her

marriage, pregnancy, maternity leave, or nursing a child. Recommendation R191 of ILO stipulates: “A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her leave in the maternity leave period; and “A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing” [13].

For the purpose of preventing discrimination against women due to her marriage, pregnancy, maternity leave, or nursing a child, ensuring the right to work of female workers; Article 11 of CEDAW stipulates: “In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them” [5].

Article 137 of the Philippine Labor Code also affirms that It shall be unlawful for any employer to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.

The Vietnam Labor Code in 2019 regulates: “The employer must not dismiss an employee or unilaterally terminate the employment contract with an employee due to his/her marriage, pregnancy, maternity leave, or nursing a child under 12 months of age”. To ensure employment and income of female employees when the labor contract expires during maternity leave, Article 137 of the Vietnam Labor Code 2019 stipulates: “Upon expiration of the employment contract with female employee who is pregnant or nursing a child under 12 months of age, conclusion of a new employment contract shall be given priority”. In case the labor contract has not expired and after the maternity leave, the female employee's right to maintain employment and income is specified in Article 140 of the Labor Code 2019: “An employee shall be reinstated to his/her previous work when he/she returns to work after the maternity leave prescribed without any reduction in his/her salary, rights and benefits before the leave. In case the previous work is no longer available, the employer must assign another work to the employee with a salary not lower than the salary he/she received prior to the maternity leave” [8].

The above regulations do not ensure only employment and income of female workers during pregnancy, maternity leave, or nursing a child, but also her mental and physical health. This helps women feel secure to perform their motherhood well.

3. The implementation of regulations on women workers' rights and gender equality

3.1 The implementation of female workers' rights to equality on occupation

Vietnam regulations on women workers' rights in the workplace comply with the international conventions, especially CEDAW. To help women workers overcome joblessness and ensure backup occupations for female employees, Vietnam Labor Code 2019 notes: “The State shall develop various forms of training to enable female employees to acquire additional occupational skills that are suitable to their physical and physiological characteristics and their motherhood roles” (Article 135). Besides, “necessary measures shall be implemented to create employment opportunities, improve working conditions, develop occupational skills, provide healthcare, and strengthen the material and spiritual welfare of female employees to assist them in developing their vocational capacities effectively and harmoniously combine their working lives with their family lives”. “Employers are encouraged to enable both male and female employees to work regularly, and to widely apply the systems of flexible working hours, part-time work, or outwork” [8].

Regulations and enforcement of rules on recruitment, employment, and training of workers in state-owned enterprises and large economic groups have ensured the equality of female workers at work, recruitment and promotion opportunities. However, female workers' equal rights have not been effectively implemented in private sector, especially small and medium enterprises, in terms of recruitment and

promotion opportunities. Currently, many enterprises have included gender and/or age criteria in their recruitment standards. This has created inequality between male and female workers in recruitment.

The provisions of Decree 145/2020/ND-CP, Circular 32/2018/TT – BLDTBXH, are guidelines for the implementation of several articles of the Labor Code 2019 on labor conditions, labor relations or appoints employees, providing financial support for female employees to participate in training courses at vocational training institutions [10]. As the government has not yet issued any regulation to encourage enterprises to provide advanced vocational training for female workers, small and medium enterprises have not yet developed plans and organized training for them. Currently, pre-employment training has almost met the needs of indirect workers working in specialized departments, and direct female workers receive on-the-job training. In contrast, advanced vocational training, primarily preventive vocational training for female workers, has not been paid attention. Survey results of Vietnam Women's Union show that nearly 60% of female workers who need vocational training to improve their professional qualifications have been trained. They often have to arrange their study in the evenings and weekends. Most of them have not received financial support from the business during advanced training. Due to lack of preventive vocational training for female employees, specific regulations and implementation solutions, by the end of 2020, i.e. after one year suffering from COVID-19, businesses have encountered a lot of problems. With financial difficulties leading measures to reduce labor costs, the unemployment rate of female workers tends to increase. In addition, in labor reduction, age and sex discrimination are clearly demonstrated, whereby 6.9% of employers choose the elderly group of pregnant and nursing young children workers to give up or resign during this period. Therefore, there is a relatively large gap in the unemployment rate between female (9.2% among ages of 15-24 and 2.1% over 25 years old) with male workers (with the respective rates of 5.2% and 1.1%) [1].

3.2 The implementation of female workers' rights to equality on income

The equal income rights of female workers in Vietnam are protected through the provisions of the labor law on wages, which are consistent with the recommendations of the ILO, the requirements of the CEDAW, and the national socio-economic conditions. Although enterprises often implement a standard salary system for employees, without discrimination on age or gender, the income of female workers is always lower than that of male workers with the same qualifications and positions. The average income of female workers is 10.7% lower than that of male workers. The higher the level of education, the greater this disparity is. In 2016, the income of untrained female workers was only 8.1% lower than that of men with the same qualifications, and this difference was up to 19.7% in the group of university graduates or higher [14]. On the other hand, due to the duty of motherhood, female workers hardly have opportunities to participate in jobs that require with strict time but well paid and higher promotion opportunities.

3.3 The situation of protecting the rights of female workers on guaranteeing employment and income

The rights to be guaranteed by employment and income of female workers in Vietnam are in provisions on similar job and income if employees return to work after maternity leave, prioritizing to re-signed the expired labor contract during pregnancy, salary for days off work, maternity leave, salary from work in the break between shifts during pregnancy and an under 12 months of age child-rearing, etc. However, the determination of wages for female workers from work in the break between shifts has not ensured the principles of the labor market as well as promoted the rights of female workers

Facing the problematic situations due to the COVID-19, the Vietnamese government has issued many policies to support employees and employers, such as (1) interest rate support for employers with the fund of VND 250,000 billion; (2) temporary exempt from the obligation to pay fees of union, pension, and death insurance fund; (3) income support for affected employees in the pandemic from the fund of 62,000 billion VND [15]. Additionally, there are many supplement programs of trade unions, women's unions, social organizations, and employers for income for employees. Nevertheless, the actual efficiency of the policy was not as expected because of the administrative procedures and regulations that make buffer

According to the data of the Ministry of Labor - Invalids and Social Affairs, only employees with labor contracts can be supported. Others who are in the informal sector, freelancers, and seasonal workers cannot obtain the favor. Besides, it takes long time for employers to access the low-level loan support (one million VND per month), thus, many employers do not apply for this support.

In addition, to support the procedures in salary payment during the stoppage due to the epidemic, there is the issued document No 1064 dated March 25, 2020 guiding the payment of stoppage wages and settlement of benefits for employees [16].

However, from 80% of surveyed small and medium enterprises, payments are for the vital labor force, other employees are eliminated. On the other hand, the regulation of stoppage wages: "wage during the stoppage due to the pandemic will be determined on the basis of an agreement between the employees and employers but not lower than the regional minimum wage prescribed by the Government " has not really ensured the effective in protecting the rights of female workers, who is the weak party in the relationship with the employer .

4. Recommendations to strengthen the protection of female workers' rights in employment and income

4.1 Recommendations to improve the legal provisions on the rights of female employees in employment and income

Firstly, regulations on vocational training need to be perfected, especially regulations on vocational training, creating and using vocational training funds for female employees at enterprises. To ensure that the female worker can meet the requirements of the market and perform their motherhood well, to help them being quickly employed again and reducing the unemployment rate in rapid changed demand for labors and in industry structure, more specific regulations on vocational training and handling of violations of regulations on vocational training them should be applied. However, as 93.5% of enterprises in Vietnam are small and medium-sized [17] so it is relatively difficult for them to set up and implement the training plan of vocation and back up occupations for employees. Thus, it is necessary to supplement regulations on training association between enterprises and vocational training centers and stipulates on the responsibility of enterprises in setting up and using the back up occupation training fund for female workers. In addition, it is also necessary to issue more regulations, encouraging enterprises to implement solutions to improve female workers' skills, providing additional training in suitable preventive occupations to their physical, physiological characteristics and motherhood.

Secondly, regulations on work arrangements for female employees should be supplemented to ensure jobs and income for female workers. The regulations on encouraging enterprises apply the part-time or flexible working regime, or assign jobs at home, ensure regular jobs for female workers, has demonstrated the State's policies on protecting the rights of female workers, and is suitable for the conditions of the economy being impacted by the Covid-19. However, there should be specific regulations and financial mechanisms to support employers in implementing solutions to ensure the government policies' energy, reducing the burden, and promoting companies in implementing the law's provisions. Moreover, to ensure the rights of female employees to work during pregnancy, childbirth, and child-rearing, it is advisable to empower them and their employers to make agreement on business traveling during pregnancy, the extra wages for the work during their break time due to raising children under 12 months of age. The regulations will promote their rights in employment and income, and ensure a balance between their rights and their employers' interests.

Thirdly, It is necessary to supplement to the labour law regulations on job and income security for female workers. Due to the social distancing in COVID-19, companies lessen their business. Consequently, employees' income has significantly decreased, although they are still provided supported income from employers. Therefore, it is necessary to have regulations on insurance or income support for employees due to the pandemic as well as force majeure reasons. Enterprises can ensure a financial balance in maintaining employees and income, life of female workers are also guaranteed

4.2 Recommendations on improving the efficiency of implementing female workers' rights in terms of employment and income

Firstly, it should be raising the awareness of female workers and employers about labor law, especially labor law on female workers' rights. It is necessary to flexibly apply various dissemination and training for female workers with labor law, such as direct dissemination activities, social networks (facebook, zalo, instagram, tiktok, etc.) or campaigns "for female workers' rights", etc. These measures help workers have full information, good awareness of the labor law and the rights of female workers, know how to protect their rights themselves, especially the rights in recruiting and appointing to important positions. Besides, to increase the knowledge of labor laws and female workers' rights, enterprises should regularly organize

periodic training for managers and leaders to promptly and adequately update legal regulations to raise gender awareness in employees' recruitment, training, and appointment.

Secondly, policies to support businesses and workers should be synchronously and effectively implementing in order to quickly restore production and restore the economy after the time of the COVID-19. Effectively enforce policies for supporting social security, creating jobs, training human resources and conditions for female workers to get the jobs rapidly, ensure the labor force for increasing production and business. These solutions ensure female workers' rights and promote economic development and recovery after COVID-19.

Thirdly, the inspection, examination and handling of violations of the labor law should be strengthening. In recent years, the review and investigation of violations of the labor law are not sufficient. Disadvantages are the handling of violations, gender inequality in recruitment and payment, the illegal firing of the employees, the violation in wages, working hours, etc. Therefore, it is necessary to improve the quality of inspection and examination by unifying the inspection order, promulgating clear regulations on assessment and evaluation, and strengthening the contingent of inspectors. Consequently, correct and sufficient implementation of the legal provisions in the rights of female workers will be ensured and effective.

Fourthly, it should be implementing income tax exemption and reduction policy on multi-field corporations such as e-commerce, digital technology, and communication corporations. The Law on Tax Administration stipulates that production, construction, and transportation enterprises with many female employees are entitled to a reduction in corporate income tax equal to the number of additional expenditures on female employees. However, the current reality is that the occupations in digital technology, telecommunications, e-commerce, etc are developing and attracting many female workers to join. Jobs in the Industry Revolution 4.0 require the application of high-tech knowledge and skills and a modern working environment suitable for female workers. The government should have more policies to encourage enterprises to use female workers to create more female workers to develop higher incomes for suitable working positions. The exemption and reduction of income tax for female employees encourage employers to recruit female employees, comply with specific regulations for female employees, and increase expenditures for training purposes for female workers' development.

Fifthly, it is necessary to raise the efficiency of policies in loan incentives for businesses to deal with difficulties due to Covid-19. The efficiency can be achieved by reforming administrative procedures in borrowing to shorten the loan duration or applying support measures for businesses to face difficulties due to Covid-19 such as prolonging repayment, favoring with loan interest and reducing fees, etc.,

5. Conclusions

The COVID-19 pandemic has badly affected the labor market of countries worldwide. It thereby affects the effectiveness of implementing the rights of female workers in general and the rights in employment and income in particular.

In Vietnam, the Labor Code was passed in 2019 and takes effect from 2021, when there are significant fluctuations on the labor market, many changes in the business methods, and the limitation of the female labor force in terms of conditions, working time, skills, etc. Thus, it is necessary to improve the regulations in the Labor Code and its relevant documents to ensure suitability and efficiency.

The article proposes some recommendations to improve the provisions of the Labor Law, which are focus on maintaining gender equality on employment and income, ensuring jobs and income for female labors during pregnancy, childbirth and child-rearing. The article also suggests solutions to ensuring jobs and income for female labors due to pandemic such as the COVID-19. In addition, the article proposes several recommendations for planning, carrying out Government policies, for applying Labor Laws regulations of female employees and employers. The recommendations will improve the implementation efficiency of female labors' rights, thereby contributing to promoting the rights of female laborers and strengthening the protection of their rights in employment and income. Paper was presented during the 6th VIET-POL International Conference Scientific-Research Cooperation between Vietnam and Poland, 10-14.11.2021, HUMG, Hanoi, Vietnam.

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