



CURRENT SITUATION OF IMPLEMENTATION AND SOLUTIONS TO IMPROVE THE LAW ON EMPLOYMENT OF FEMALE WORKERS IN VIETNAM

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Abstract:

Vietnam is one of the countries with advanced female labor policies in the region as well as in the world. The Labor Code 2019 has 1 chapter with 11 separate articles stipulating policies for female employees such as employer responsibilities, regimes of maternity, sickness, employment, and gender equality. The Employment Law (2013) also details employment and policies related to employment for employees in general and female employees in particular. In recent years, the government and organizations have introduced many policies and measures to promote employment law enforcement for female workers in Viet Nam. However, the enforcement of employment laws for female workers in Vietnam still has many shortcomings such as the scarcity of resources and skills for education and training programs, the lack of pressure on enterprises that do not comply with policies to protect the rights of female workers. Therefore, it is necessary to improve the law to increase the ability to implement policies to support and enhance the rights of female workers. This article discusses the current situation of law enforcement and employment of female workers in Vietnam in a number of aspects and offers solutions to improve the law to promote the implementation of this content in practice.

Keywords: law, employment law, employment, female labor, legal improvement

1. Current situation of law enforcement and employment of female workers

According to the General Statistics Office of Vietnam's Labor and Employment Situation Report for the fourth quarter of 2022, the labor force aged 15 and above in the fourth quarter of 2022 was 52.1 million. The labor force participation rate for the fourth quarter of 2022 was 68.9%, up 0.2 percentage points from the previous quarter and up 1.1 percentage points from the same period last year. The labor force participation rate for women is 62.7%, 12.8 percentage points lower than that of men (75.4%). The labor force

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participation rate in urban areas was 66.4%, while the rate in rural areas was 70.4%. Considered by age group, the labor force participation rate in urban areas was lower than in rural areas in the very young age groups and older age groups, with the largest disparity recorded in the 55 and older age groups (urban area: 32.7%; rural area: 46.7%) and the 15-24-year-old group (urban area: 34,8%; rural area: 44.1%). This shows that people in rural areas enter the labor market earlier and leave the market much later than those who are in urban areas; This is a typical feature of the labor market with the structure of labor participating in the agricultural sector accounting for a high proportionⁱⁱ. At the same time, the employment rate of male workers still tends to be slightly higher than the employment rate of female workers, causing discrimination, and inequality in employment for female workers.

Law enforcement against female employees is the duty of enterprises. Enterprises are responsible for stipulating labor in the internal labor regulations, including female employees-related to regulations. However, when asked about whether the internal labor regulations provide for policies on the employment of female employees, 71.8% of surveyed employees said that the employers where they worked for did not issue any internal documents regulating issues on the employment of female employees; Only 28.2% of respondents said such employers did. Accordingly, many employers merely quote the provisions of the Labor Code, only a few employers concretize the provisions of the Labor Code to suit the situation of employing female employees of their units. Statistics in this regard are presented in the following chart:

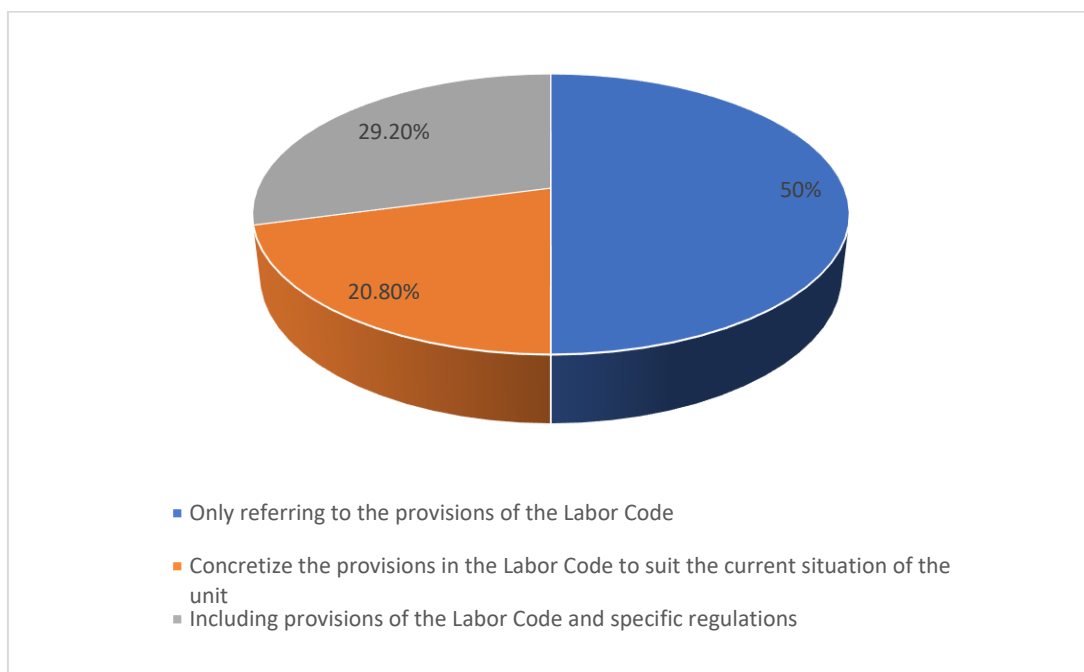
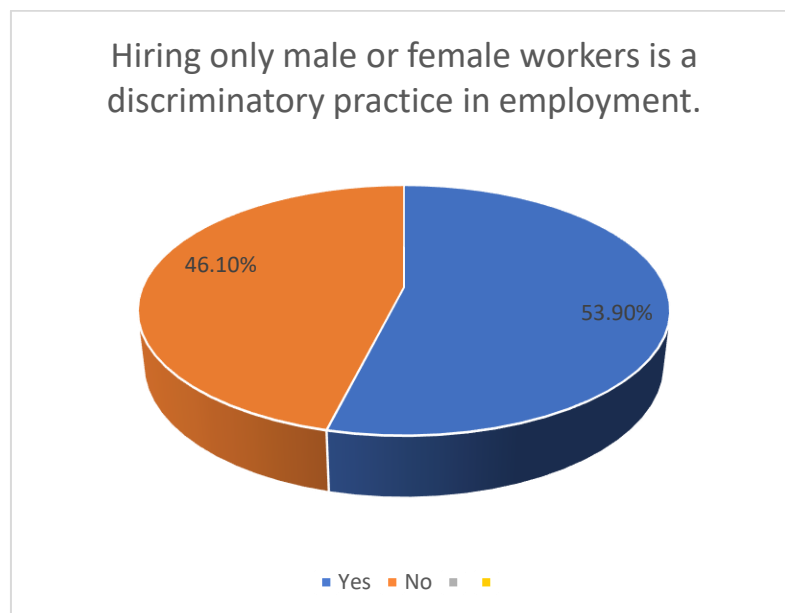


Chart 1: Current situation of concretizing employment regulations of female employees in internal labor regulations of enterprises according to opinions of employees

ⁱⁱ <https://www.gso.gov.vn/tin-tuc-thong-ke/2023/01/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iv-va-nam-2022/> [accessed on February 01, 2023].

- Only 20% of employees said gender was a factor in their rejection, while 29.9% of employers said gender was their concern when hiring. At the same time, 89% of surveyed female workers said they had never encountered a recruitment notice stating only male or female employees when submitting their job application or interview; The remaining 10% said that they had seen job postings stating only male employees or bald employers or whether female employees planned to have a baby in the near future. It can be seen that the phenomenon of employers refusing to hire female employees for gender reasons is not a common phenomenon in the labor market. This data is consistent with recruitment practices when factors such as attitude, work experience or professional skills are factors that employers are interested in.
- There is a disparity between workers' and employers' responses to views of labor discrimination. Details are as follows: According to the author's survey results, when asked whether it is a discriminatory act of employers to recruit male employees instead of female employees, up to 61.4% of surveyed employees said that it was not labor discrimination against female employees. The majority of surveyed employees believe that employers prioritize recruiting male employees due to the nature and requirements of the job. Some respondents said that the preference for hiring male employees over female employees is due to factors related to maternity (multiple births) or personality traits (perceived as meticulous or detail-oriented for women, while men are seen as easygoing). In the same question, 53.90% of employers agreed that preference for hiring male workers was a form of discrimination in employment, while the remaining 46% disagreed. The slight difference in opinions indicates that there is still no consensus among employers about the concept of *discrimination in labor*.



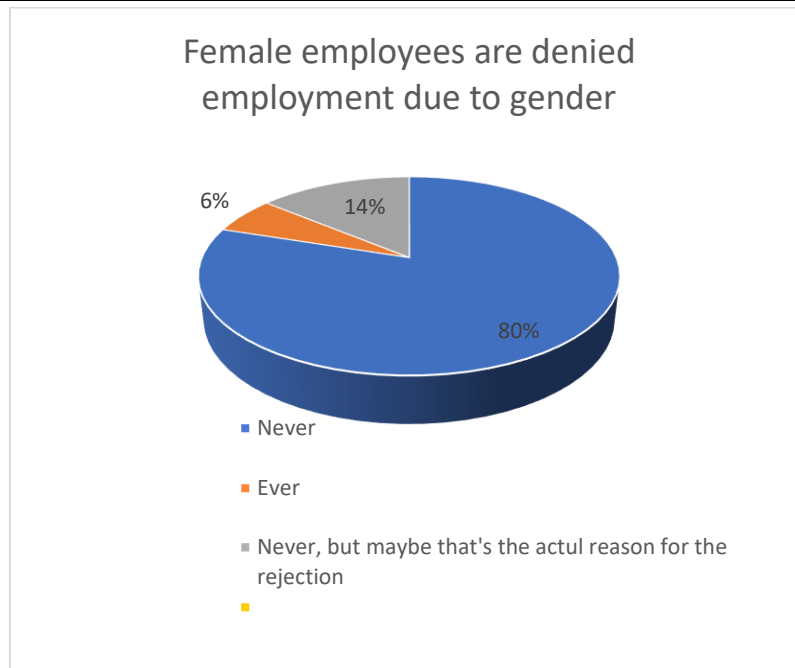


Chart 2: Comparison of opinions of Employers (above) and Employees (below) on gender discrimination in recruitment

- *The percentage of employers who are unaware of the provisions of the Labor Code on the protection of female employees who are pregnant or nursing children under 12 months old is still relatively high. Up to 41.4% of employers responded against requiring female employees who are nursing children under 12 months old to work at night, work overtime and go on long business trips, such requirements are contrary to labor laws. However, almost 100% of employers said they had never required female employees working for their employers to work overtime, work at night and go on long business trips while pregnant or raising children under 12 months old.*
- *Employers often tend not to sign new labor contracts with female employees who are pregnant or nursing children under 12 months old: When asked about giving priority to entering into new labor contracts with female employees who are pregnant or nursing children under 12 months old whose labor contracts expire, only 44.7% of employers preferred to enter into new employment contracts, while the remaining 55.3% responded no. The data shows that the reason may be that such employers believe that this female workforce can create work burdens, affect the quality of jobs and directly cause revenue problems of employers.*

2. Solutions to complete the law on employment of female employees

Firstly, complete regulations on female labor recruitment.

In order to complete the legal provisions on recruitment of female employees, it is necessary to amend and supplement some of the following provisions:

Firstly, amend and supplement Article 135 of the Labor Code 2019 on the State's policies related to female employees. Accordingly, Article 135 should be amended in the

direction of affirming that the State has policies to ensure the equal rights of female employees with male employees in all aspects in the field of labor, including employment. At the same time, in order to encourage employers to recruit more female employees, the State needs to add more preferential policies for employers employing many female employees. This requires synchronous amendment of other relevant legal provisions such as investment, land and banking. Specifically, it is proposed to amend and supplement Article 135 of the Labor Code 2019 as follows:

Article 135. State Policy

"1. To ensure the equal rights of female employees with male employees in all aspects of labor, take measures to ensure gender equality and prevent and combat sexual harassment at the workplace.

2. [...]

3. [...]

4. To adopt policies on tax reduction, reduction of land rent, land use levy, credit incentives and supports for employers employing many female employees in accordance with the provisions of tax law, land law and regulations of the State Bank of Vietnam.

5. [...]

6. The Government shall detail this Article."

Regarding sanctions, it is proposed to increase the level of administrative penalties for employers who violate the law in the process of recruiting female employees to ensure deterrence and ensure compliance with the law of employers. Accordingly, it is proposed to amend and supplement Clause 2, Article 8 and Clause 1, Article 28 of Decree No. 12/2022/ND-CP and Article 8 of Decree No. 125/2021/ND-CP, specifically as follows:

Article 8. Violations of labor recruitment and management

" [...]

2. A fine ranging from VND 50,000,000 to VND 100,000,000 shall be imposed on an employer who commits one of the following acts:

a) Discrimination in labor, except for discriminatory acts specified at Point d, Clause 1, Article 13, Clause 2, Article 23, Clause 1, Article 36 and Clause 2, Article 37 of this Decree;

b) Employing untrained or untrained employees who do not have national vocational skill certificates for occupations or jobs that employ trained employees or must have national vocational skill certificates;

c) Failing to report changes in labor as prescribed;

d) Failing to make a labor management book or making a labor management book on schedule or failing to ensure basic contents as prescribed by law.

[...]"

Article 28. Violating regulations on female labor and ensuring gender equality

"1. A fine ranging from VND 50,000,000 to VND 100,000,000 shall be imposed on an employer for one of the following acts:

- a) Failing to ensure the implementation of gender equality and measures to promote gender equality in one of the following cases: recruitment; lay; employment arrangements; train; working hours; rest time; salary; other modes;*
- b) Failing to consult female employees or their representatives when deciding issues related to the rights and interests of female employees.*

[...]"

Article 8. Administrative violations in the field of gender equality related to labor

"1. To impose warning penalties for acts of mobilizing or inciting others to choose jobs, workplaces or occupations according to gender stereotypes.

2. A fine of from VND 100,000,000 to VND 150,000,000 shall be imposed for one of the following acts:

- a) Gender discrimination in ensuring occupational safety and hygiene;*
- b) Forcing or strictly prohibiting others from choosing jobs, occupations or workplaces because of gender prejudice;*
- c) Gender discrimination in job assignments leading to income disparity;*
- d) Refusing to recruit or restricting employees of a certain gender.*

3. A fine ranging from VND 200,000,000 to VND 300,000,000 shall be imposed for the act of setting and implementing regulations and statutes containing gender discrimination.

4. Acts of violating specific regulations on female employees and ensuring gender equality shall be sanctioned according to the provisions of the Government's Decree stipulating penalties for administrative violations in the field of labor, social insurance and sending Vietnamese laborers to work abroad under contracts.

5. Remedies:

- a) Forcibly restore the aggrieved person's lawful rights for acts specified in Clause 2 of this Article;*
- b) Forcibly amend or abolish regulations and statutes of agencies, organizations and individuals that commit gender discrimination for acts specified in Clause 3 of this Article."*

Secondly, finalize regulations on the employment development of female employees.

In order to develop the employment of female employees, legal regulations on vocational education for female employees need to be developed and promulgated.

Currently, the Law on Vocational Education 2014 does not have any regulations associated with vocational training for female employees. Therefore, it is proposed to

amend and supplement Article 6 of the Law on Vocational Education 2014 on the State's policy on vocational education development as follows:

Article 6. State policies on vocational education development

"1. [...]

2. [...]

3. [...]

4. [...]

5. [...]

6. [...]

7. *Support beneficiaries of preferential treatment for people with meritorious contributions to the revolution, demobilized military personnel, ethnic minorities, people belonging to poor households, near-poor households, people with disabilities, orphans with no one to rely on, offshore fishermen, rural laborers who directly work in agricultural production households whose arable land has been confiscated, and other social policy beneficiaries in order to create opportunities for them to study to find jobs, create their own jobs, establish themselves and establish a career; implement gender equality in vocational education, encourage employers to provide vocational training for female employees to improve skills and incomes.*

8. ..."

Thirdly, complete regulations on employment protection of female employees.

The author proposes to amend and supplement Articles 136, 137, 138 and 140 of the Labor Code 2019 as follows:

Article 136. Responsibilities of the employer

"1. *Ensure the implementation of gender equality and measures to promote gender equality in recruitment, placement and arrangement of jobs, training, working time, rest time, salary and other regimes. The employer may not issue a recruitment notice but the content of the notice states that only male employees are recruited.*

2. *Consult with female employees or grassroots-level employee representative organizations when deciding issues related to the rights and interests of female employees.*

3. *Ensure the availability of adequate showers and toilets at the workplace.*

4. *Assist and support the construction of kindergartens or part of childcare and kindergarten expenses for employees."*

Article 137. Maternity protection

"1. *An employer may not employ female employees to work at night, work overtime and go on long business trips in the following cases:*

a) *The female employee is pregnant from the 7th month; female employees who are pregnant from the 6th month if they work in highland, deep-lying, remote, border or island areas;*

b) *The female employee is nursing a child under 36 months old, unless otherwise agreed by the employee.*

2. [...].

3. *An employer may not dismiss, **suspend the performance of a labor contract** or unilaterally terminate a labor contract for an employee for reasons of marriage, pregnancy, maternity leave, raising a child under 36 months old, unless the individual employer dies, declared by a court to have lost civil act capacity, missing or dead or the employer who is not an individual terminates its operation or is notified by the specialized business registration agency under the People's Committee of the province that there is no legal representative, the authorized person shall exercise the rights and perform the obligations of the legal representative.*

In case the labor contract expires while the female employee is pregnant or raising a child under 36 months old, the female employee is given priority to enter into a new labor contract.

4. *Female employees during menstruation are entitled to 30 minutes of break every day, while raising children under 12 months of age are entitled to 60 minutes of break every day during working time. Break time is still entitled to full salary according to the labor contract”.*

Article 138. The right to unilaterally terminate or suspend labor contracts of pregnant female employees

“1. If a pregnant female employee has a certification from a competent medical examination and treatment establishment that continuing to work will adversely affect the fetus, the female employee reserves the right to unilaterally terminate the labor contract or suspend the performance of the labor contract.

*In case a **pregnant female employee** unilaterally terminates the labor contract or suspends the performance of the labor contract, **the female employee** must notify the employer together with a certification from a competent medical examination and treatment establishment that continuing to work will adversely affect the fetus.*

2. [...].”

Article 140. Job security for employees on maternity leave

*“Female employees are guaranteed their same job positions when they return to work after their leave period expires as prescribed in Clauses 1, 3 and 5, Article 139 of this Code without any reduction by their **employers** in salary, rights and benefits compared to before taking maternity leave; In case the previous job position is no longer available, the employer must arrange alternative employment for **female employees** with salary, rights and benefits **not lower than the salary, rights and benefits before maternity leave”.***

Regarding sanctions, it is proposed to amend and supplement Clause 2, Article 28 of Decree No. 12/2022/ND-CP to increase deterrence and ensure that employers will comply with legal regulations to protect employment for female employees, specifically as follows:

Article 28. Violating regulations on female labor and ensuring gender equality
“[...]”

2. A fine ranging from VND 100,000,000 to VND 200,000,000 shall be imposed on an employer who commits one of the following acts:

- a) *Employing employees who are pregnant from the 7th month or from the 6th month if working in highland, deep-lying, remote, border or island areas to work overtime or work at night or go on long business trips;*
 - b) *Employing employees who are nursing children under 12 months old to work overtime or work at night or go on long business trips, unless otherwise agreed by the employee;*
 - c) *Failing to transfer jobs or reduce working hours for female employees doing heavy, hazardous, dangerous or especially heavy, hazardous or dangerous occupations or occupations or jobs that adversely affect reproductive function and child rearing during pregnancy that the employee has notified to the employer as prescribed in Clause 2 Article 137 of the Labor Code, unless otherwise agreed upon by two parties;*
 - d) *Failing to allow female employees to take break within 30 minutes every day during menstruation unless otherwise agreed upon by two parties;*
 - dd) *Failing to allow female employees while raising children under 12 months old to take break within 60 minutes every day unless otherwise agreed by two parties;*
 - e) *Failing to secure employment for employees as prescribed in Article 140 of the Labor Code;*
 - g) *Failing to give priority to entering into a new labor contract in case the labor contract expires while the female employee is pregnant or nursing a child under 12 months old;*
 - h) *Applying labor discipline sanctions for female employees who are pregnant or on maternity leave in accordance with the law on social insurance; Applying labor discipline sanctions for employees who are nursing children under 12 months old;*
 - i) [...];
 - k) [...];
 - l) *Failing to install breastfeeding rooms or milk storage facilities at workplaces when employing 1,000 or more female employees.*
- [...]”

In addition to completing legal provisions, in order to improve the enforcement of employment laws for female employees, a number of measures should be taken such as: Strengthening inspection and supervision of the application of regulations on protecting women's benefits at work; Developing training policies and programs, particularly in skills and expertise, to help women improve their qualifications and ability to participate more in the technical and technological professions; Raising awareness and educating the

whole society about the role of women in their careers and their contributions to the economy; Establishing a fair and conducive working environment for women by promoting gender equality in salary and welfare policy negotiations; Calling on organizations and businesses to carry out activities to encourage and facilitate women's participation in highly competitive professions.

Conflict of Interest Statement

The authors declare no conflicts of interest.

About the Author

Pham Van Anh is currently teaching at Soc Trang School of Politics, Vietnam. The issues she is researching are: female labor law, employment law.

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