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**A Study for Effectiveness
Enhancement of Women and
Family-Related Legislations(V) :
The Achievements and Challenges of
the 「Equal Employment Act」
over the Past 30 Years**

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A Study for Effectiveness Enhancement of Women and Family-Related Legislations(V): The Achievements and Challenges of the 「The Equal Employment Act」 over the Past 30 Years

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I . Introduction

1. Research Backgrounds and Purposes

「The Act on Equal Employment Between Men and Women」 (hereafter “the Act”) was enacted in 1987 in order to “guarantee, as clarified in the Constitution, the equal opportunities and treatment between men and women in employment, and contribute to enhancing women workers’ status and welfare by protecting maternity and developing job competence.” As the first substantive act that banned discrimination in employment, the Act has had tremendous impact on establishing legal and institutional infrastructure for women’s rights to work. With its 8th revision in 2007, the full name of the Act was changed to 「The Act

on Equal Employment between Men and Women and Support for Work-Family」, making clear the responsibilities of both the government and the business owners for supporting both men and women workers' family life, and stipulating a variety of systems for that. The Act prohibits gender discriminatory practices in every stage of employment, from recruiting to dismissal, and defines sexual harassment as a violation of the right to work. The Act also states that business owners are to take measures to prevent sexual harassment as well as to actively respond to sexual harassment that took place. Furthermore, the Act introduced 'affirmative action' to lessen gender discrimination in the labor market. Another huge development in the Act is the specification of maternity protection and the support for work-family balance, including provisions regarding paternity leave, shorter working-hours during child-rearing years, family care leave, etc. Provisions for parental leave have also been given a lot of changes in terms of qualifications and pay.

Despite these numerous changes and developments in 「the Act」, however, major indicators show persistence of gender-related employment structures, such as low rates of female employment, high rates of female irregular employment, concentration of women on low-paying jobs, huge gender pay gap and glass ceiling. All these demonstrate how strongly gender discrimination is still embedded in Korea's labor market and how difficult it is for women to fully enjoy their rights to work.

Focusing on 「The Act」 with 30 year history, this study examines the ways in which the Act has been applied, the changes of women's labor market, experts' opinions about the achievements and challenges of the Act and related legislations in other countries, and then makes suggestions for effectiveness enhancement of the Act.

2. Research Contents and Methods

This article is composed of 5 chapters. The 1st chapter describes the research backgrounds, purposes, contents, and methods.

Chapter II shows the changes in the situations of women's employment over the last three decades including employment rates of women, unemployment rates by gender, career break and gender division of jobs, employment forms of women, gender pay gap, and pay gap by employment forms.

Chapter III examines how the Act has been applied in terms of regulations regarding discrimination in employment, sexual harassment at work, affirmative action, maternity protection and support for work-family balance, and conflict solutions and remedy system.

Chapter IV is the analysis of the experts survey that was conducted in order to collect opinions of professionals on the achievements and limitations of the Act. The experts survey consisted of an on-line questionnaire and focus group interviews. The questionnaire was to collect the experts' evaluations on the achievements of the Act in specific areas, the reasons of their giving such evaluations, and their suggestions for improvement. The focus group interviews gave us more precise suggestions for further gender equality in the labor market.

Based on the discussions in the previous chapters, Chapter V suggests how the Act should be revised and what further policies are needed especially in regard to the issues of regulations against gender discrimination in employment, sexual harassment at work, affirmative action, maternity protection and support for work-family balance, and conflict solutions and remedy systems.

II . Changes in Women Workers' Conditions over the Past 30 Years

1. Changes in Employment Rates by Gender for the Past 30 Years

In order to examine the changes of employment rates of women for the last 30 years, we looked into the one-week and four-week employment rates respectively. The one-week employment rate steadily increased from 54.9% in 1986 to 60.2% in 2014. The rate was the lowest in 1998 and in 2008 when Korea was hit by severe economic crises. Although the rate increased a little bit thereafter, it has remained below 60.9%, the highest rate recorded in 1997. The overall four-week employment rate has continued to increase since the financial crisis in 2008. The overall rate was 60.0% in 2002, 58.6% in 2009, and 60.4% in 2016. The increase of overall employment rate for the last 30 years has been led by the increase of the number of women workers. The employment rate of men has been rather stable with 72.2% in 2002, 70.1% in 2008, and 71.4% in 2014, while that of women has increased from 42.2% in 1986 to 49.5% in 2014.

2. Gender Gap in Employment Rate and Changes in Career Break

Gender gap in the employment rate was the highest with 24.5%p in 2003, but has decreased to 20.9%p in 2016. Since 2004, the employment rate of women has overtaken that of men among young people. As of 2016, the gender gap among young people is -3.1%p, indicating that the employment rate of young women is higher than that of young men. As

for people aged 30 to 54, the gap is still around 24~25%p, showing little improvement. Although more women aged 40s and 50s re-enter the labor market, women aged 30s continue to show high level of career break due to childbirth and child-rearing, the most critical factor of the wide gender gap in employment rates. The gender gap in employment among people aged over 55 has rapidly decreased. The gap was the widest in 2003 with 34.8%p, but has been narrowed down to 27.9%p in 2016.

3. Changes in Women Workers' Employment Status and Forms

The number of women workers is 8,582,000 in 2016, more than twice the number in 1990. For the past 30 years, the number of women workers has increased faster than the number of male workers, even though women's employment has been more sensitive to business fluctuations than men's. The reason of this sensitivity is that women's employment is usually less stable than that of men. The gender differences in the rates of irregular workers show this very well. The number of male irregular workers increased from 2,286,000 in 2003 to 2,906,000 in 2016, while the number of female irregular workers increased from 2,320,000 to 3,538,000 during the same period. The number of female irregular workers started to be bigger than that of male irregular workers in 2009, which was a direct result of the 2008 financial crisis. As of 2016, the vast majority, 55.1%, of female irregular workers work as temporary workers, the most dominant form of irregular employment of women. Given that the majority of women start to work as irregular workers in their 30s, this tendency of female irregular employment seems to be highly related to women's career break due to childbirth and child-rearing.

4. Gender Division of Jobs and Glass Ceiling

One of the characteristics of women's labor market is that gender division of jobs usually goes with division of employment forms. The more women-concentrated a job is, the more irregular workers-concentrated the job is. Jobs in which more women and more irregular workers are found tend to pay lower wages as a combined result of gender pay gap and pay gap between regular and irregular employment. Therefore, without elimination of gender division of jobs, gender wage gap will keep widening even though more young women with higher education than before can get professional jobs now.

As of 2017, the average employment rate of women in the companies to which the affirmative action is applied is 37.8%, and the average rate of female managers in those companies is 20.4%. There is not much difference in the average female employment rate between the public (38.3%) and the private sectors (37.7%). However, the average rate of the female manager in the public sector is 16.5% as opposed to 21.2% in the private sector, showing that the percentage of the female manager in the public sector is much lower. The low percentage of female managers is related to the glass ceiling syndrome, the invisible barrier that blocks women's job promotion in the internal labor market.

5. Changes in Relative Pay by Gender and Employment Forms

Table 1 below shows the wage gaps (in terms of total pay and hourly pay) by gender and employment forms, using the two representative types of data.

〈Table 1〉 Monthly Pay Comparisons by Employment Forms Survey and Economic Activity Additional Survey(2016)

(1,000 won, %)

		Employment Forms Survey for Total Monthly Pay (A)	Economic Activity Additional Survey for 3 months (B) Average of Monthly Pay	B/A
All Workers	All	2,833	2,368	83.6
	Men	3,364	2,846	84.6
	Women	2,040	1,757	86.1
Regular Workers	All	3,283	2,794	85.1
	Men	3,768	3,200	84.9
	Women	2,448	2,148	87.7
Irregular Workers	All	1,445	1,494	103.4
	Men	1,770	1,860	105.1
	Women	1,128	1,194	105.9

Source: Reconstructed from Economically Active Population Survey, by National Statistics Office.

III. Development of the Equal Employment Act and Its Application

1. Regulations Against Gender Discrimination in Employment

「The Act of Equal Employment」 of 1987 specified prohibition of gender discrimination in various areas of employment and labor conditions. In 1999, the Act was revised so that indirect discriminatory practices could also be defined as discrimination. The definition of indirect discrimination has been further developed, and now it is regarded as a discriminatory practice “for a business owner to fail to justify his

or her employment policies by which workers of a particular gender (either male or female) can hardly satisfy the business owner-suggested employment conditions and therefore the number of the workers of that particular gender is markedly low although officially the overall employment and working conditions are equally applied to both genders.” Moreover, the Act extends the range of discriminatory practices so as to include discriminations based not only on gender but also on marital status, status in the family, and pregnancy and childbirth. The Act also prohibits gender discrimination in all areas of employment including recruitment, hiring, wage, non-monetary benefits, education, job allocation, promotion, retirement, and dismissal. The Act stipulates that the business owner gets criminally punished when he or she commits a violation of the Act. Provisions regarding penalties have been revised multiple times to strengthen punishment and to raise the amount of fine, leading to relieve the workers of the burden of proof in case conflicts occur.

2. Regulations Against Sexual Harassment at Work

Provisions regarding ‘sexual harassment at work’ were first introduced to the Act in 1999 (the 3rd revision). The Act defined that sexual harassers at work include business owners, superiors and co-workers, and stated that the company should provide sexual harassment prevention training courses. The 8th revision of the Act included customers as sexual harassers in order to help improve work environment of the employees working face-to-face with customers. The 2014 revision of the Act introduced provisions that business owners too should take sexual harassment prevention training courses, and that business owners cannot unfavorably treat victims of sexual harassment at work or workers who claim that they were sexually harassed at work. Emphasizing the

responsibilities of business owners, the Act strengthened criminal punishment of business owners. With the help of these legal measures, regulations against sexual harassment at work seem to be well established. This assessment can be supported by the fact that the number of sexual harassment complaints submitted to the National Human Rights Commission(NHRC) became stabilized between 201 and 240 (during the five-year period from 2011 to 2015). The same fact, however, can also be interpreted that quite a few women are still exposed to sexual harassment at work.

Analyses of the data from the NHRC show that in 91.8% of the sexual harassment cases the harassers are men, and that 67.6% are the cases where the harassers are superiors. 46.1% of the sexual harassment incidents take place at workplace and 20.5% take place at company dinner parties. 41.8% are verbal sexual harassment, and 30.6% are mixture of verbal and physical harassment.

3. Affirmative Action

The goal of the affirmative action for gender equality in employment is “to guide the companies that employ conspicuously less female workers or have conspicuously less female managers than other companies with similar number of employees in the same industrial sector to examine their human resources systems and establish more gender-equal measures.” The affirmative action is applied to private and public businesses with 500 or more full-time employees. The Action was first introduced in 2006. The number of businesses to which the Action is applied has increased from 546 in 2006 to 2,005 in 2017. The rate of female workers has increased from 30.7% in 2006 to 37.80% in 2017.

And the rate of female managers has also increased 10.2% in 2006 to 20.39% in 2017, although it is still quite low.

The rate of female board managers has increased from 2.5%(284 persons) in 2006 to 13.0%(6,095 persons) in 2017. The rate of female middle-level managers has increased from 6.2%(20,900) in 2006 to 15.1%(116,317) in 2017. The rate of female junior-level managers has increased from 35.1%(437,400) in 2006 to 43.3%(1,155,062) in 2017. Nonetheless, the vast majority of board members and high-level managers are still men, and women managers are concentrated in the lower levels of management. This tells us that, although the number and the rate of women workers have surely increased, the quality of their employment has not improved as much.

4. Maternity Protection and Support for Work–Family Balance

When the Act was first legislated, maternity protection and work-family balance were included only as a token declaration without any specific provisions. But the fourth revision in 2001 introduced some substantive provisions, and in 2007 the name of the Act was even changed to 「The Act on Equal Employment and Support for Work-Family」. The Act has been revised several times since.

Provisions for maternity protection included extension of maternity and paternity leaves. Maternity leave was in fact introduced as early as in 1953 when 「the Labor Standard Act」 was legislated, allowing a 60-day maternity leave. In 2001 the Labor Standard Act was revised to allow the leave for 90 days. In 2007, the Act introduced paternity leave to encourage male workers to participate in childbirth. At first it was a 3-day leave without pay, and later revised to be a 5-day leave with 3-day

pay.

Provisions regarding the support for work-family balance have been revised multiple times especially in terms of parental leave, shorter working hours during child-rearing, and family care leave. Unfortunately, however, these measures have not been as much used by workers as expected because of gender-biased corporate culture and the general instability of women's employment status. Pay for the period of maternity leave was provided to 22,711 workers in 2002, and to 89,834 in 2016 with a large increase in number. Among women workers who had taken maternity leave, only 17.2% later used parental leave in 2001. But the percentage has steadily increased to 59.2% in 2015. But only 78 male workers took parental leave(2% of the total number of the leave takers) in 2002, and 7,616 in 2016(8.5%). This tells us that the patriarchal idea that childcare is women's work still remains very firm.

5. Conflict Solutions and Remedy System

Non-government grievance management services include counselling by private organizations and honorary equal employment inspectors. There are other grievance management services by public organizations such as local labor administrative offices, labor relations committees, the NHRC, and dispute settlements by judicial authorities.

Currently, there are 15 equal employment counselling offices run by private organizations. The number of their counselling cases was 5,906 in 2005, and 7,611 in 2015. Most of the counselling is about sexual harassment at work, maternity protection, and gender discrimination in employment. The number of companies that have honorary equal employment inspectors was 63 in 2001 and has greatly increased to 4,530

in 2016. Accordingly, the number of inspectors has increased from 90 in 2001 to 4,982 in 2016. However, the percentage of women among the inspectors has decreased from 47.7% in 2001 to 24.9% in 2016. Considering that the majority of victims of discrimination at work are women, this decrease of women inspectors casts doubts on the reliability of the honorary equal employment inspector system.

IV. The Equal Employment Act Over the Past 30 Years: Achievements, Limitations, and Alternatives Suggested through Experts Survey

1. Outline of the Survey

A. Purpose and Content

The survey of experts' opinions was conducted in order to evaluate the Act and thereby provide basic data for its further revision. We divided the Act into five categories, selected 3 to 5 areas for each category, and asked the experts to give their opinions accordingly. Each category was to be evaluated on a five-point scale. Below are the categories and areas of the survey.

〈Table 2〉 The Survey Areas

Categories	Areas
Gender Discrimination in Employment	Elimination of Gender Discrimination in Recruitment and Hiring
	Elimination of Gender Discrimination in Wage, Benefits, and Welfare
	Elimination of Gender Discrimination in Training, Job Allocation, and Promotion
	Elimination of Gender Discrimination in Retirement Age, Retirement, and Dismissal
Sexual Harassment at Work	Prohibition of Sexual Harassment at Work, and Penalty against Sexual Harassers
	Protection of Victims of Sexual Harassment
	Education for Prevention of Sexual Harassment at Work
Increase of Women's Employment	Job Competence Improvement and Employment Increase for Women in General
	Job Competence Improvement and Employment Increase for Women with Career Break
	Improvement of Women's Employment Quality through Affirmative Action Measures
Maternity Protection and Support for Work-Family Balance	Guarantee of Maternity Leave
	Guarantee of Paternity Leave
	Guarantee of Parental Leave, Shorter Working Hours during Child-rearing, and other Support Measures for Child-rearing
	Establishment of Daycare Facilities at Work
	Guarantee of Family Care Leave
Conflict Prevention and Solutions	Counselling for Cases of Gender Discrimination, Sexual Harassment, Maternity Protection, and Work-Family Balance
	Guarantee of Gender Equality at Work with Honorary Equal Employment Inspectors
	Guarantee of Self-Regulating Conflict Solutions at Work

B. Survey Methods

The experts survey consisted of an on-line questionnaire and focus group interviews. The questionnaire was mainly on the achievements of the Act, the reasons of their particular assessment on individual areas, and their opinions on how to further improve the Act. The questionnaire was made after a preliminary survey was conducted with the help from the advisory committee and research on previous studies.

C. Survey Subjects

The survey was carried out on a group of 100 experts of issues of women workers, including researchers, NGO activists, labor union officers, professionals in law, and human resources managers. Each of these five expert groups consisted of the same number of people.

2. Achievements, Limitations, and Suggestions

According to the results of the survey, the area ‘guarantee of maternity leave’ of the category ‘maternity protection and support for work-family balance’ is the only one where the evaluation points(3.3) is higher than ‘average,’ and the points of all the other 17 areas are below ‘average,’ implying that these experts think that the Act has not achieved as much as expected. The ‘guarantee of gender equality at work with honorary equal employment inspector’ received the lowest points(2.2).

A. Gender Discrimination in Employment

The achievements include the improved awareness of the prohibition of gender discrimination in employment among both workers and

business owners, and the resultant formal increase of gender equality. Regarding limitations and suggestions, first, gendered recruitment and hiring is still widely practiced, meaning that business owners are still overtly or covertly reluctant to hire women due to their future childbirth and child-rearing. Suggestions regarding these limitations include reinforcement of supervision by the Ministry of Employment and Labor, prohibition of collection of information on the gender of the job applicants, and prohibition of asking questions related to marriage and family planning during job interviews. Second, as to the area of ‘wage, benefits and welfare,’ the gender pay gap is still conspicuous, and there is no reasonable standard for work of equal value. Suggestions regarding these limitations include more specific guidelines for equal pay for work of equal value, inclusion of similar jobs into work of equal value, and separation between equal/similar work and work of equal value. Third, as to training, job allocation and promotion, discrimination against women is still particularly strong in promotion. Suggestions include establishment of criteria of discrimination in job evaluation and promotion, and introduction of further supervisory measures for prevention of discrimination in promotion. Fourth, as to retirement age, retirement and dismissal, problems include forced retirement due to marriage, pregnancy, childbirth and child-rearing, and women-first layoff upon business restructuring. Suggestions include introduction of the concept of ‘statutory dismissal.’

B. Sexual Harassment at Work

Areas that received positive evaluations include education for prevention of sexual harassment, growth of awareness of sexual harassment on both sides of business owners and workers, grievance dealing procedures, and

penalty against sexual harassers. A lot of limitations are also pointed out, however. First, the range of affected persons is fairly narrow in the current definition of sexual harassment, and the requirements of job-relatedness are too limited. Suggestions are made to include non-standard workers (such as workers with “special forms of employment”) as victims, and also to include people working for client companies as harassers. Second, as to the area of prohibition of sexual harassment and penalty against harassers, limitations include too modest penalty against harassers, no specific rules to stop harassers when they are not business owners, and no specific regulations regarding grievance dealing procedures and agencies in charge. Suggestions include stronger penalty against the business owners who do not take any punitive actions against sexual harassers, regulations for restrictive control over sexual harassers, and mandatory procedures to deal with sexual harassment cases and to help victims. Third, as to the area of protection of victims of sexual harassment, experts pointed out unclearness of the protective measures, ambiguity of the ‘unfavorable measures’ that business owners are not supposed to use against the victims, lack of preventive measures against secondary victimization of the victims and their helpers, and lack of measures to make business owners liable for the sexual harassment by clients. Fourth, as to prevention of sexual harassment, limitations include superficiality of the preventive education in terms of methods, participation rates, contents, and instructors’ expertise. The ingrained idea that lectures are regarded as the only preventive action is also pointed out as highly problematic. Suggestions for improvement include expansion of face-to-face education, encouragement of high-level managers to participate in the education, and provision of preventive education for people about to start businesses.

C. Increase of Women's Employment

Business owners' raised awareness of women's rights to work, and increase of education and employment of women with career break are referred to as achievements. First, as to the area of job competence improvement and employment increase for women in general, it is pointed out that the related phrases in the Act are too abstract and superficial, lacking specific guidelines or regulations, and that job training services are provided mainly for the jobs that have been regarded as 'women's occupations' with poor labor conditions. Suggestions are made that all the job training services should be gender-sensitive. Second, as to the area of 'job competence improvement and employment increase for women with career break,' limitations include lack of measures to prevent career break itself, difficulties in defining 'women with career break,' women with career break facing worse working conditions and job instability when they get back to work, and little knowledge of support measures for women with career break. Third, as to the 'affirmative action,' limitations include difficulties in calculating the percentages of women workers and managers, ambiguity of the definition of manager, and affirmative action measures targeted only in terms of percentages. Suggestions include new definition of 'manager' by which certain percentage of workforce should be defined as managers, affirmative action measures taking into account business characteristics, and stronger penalties against unlawful forms of employment of women as managers.

D. Maternity Protection and Support for Work-Family Balance

Achievements include legal guarantee of maternity leave, paternity leave and parental leave, increased effectiveness of regulations, higher awareness of maternity leave and other related leaves, and increased childcare facilities at work that have alleviated much of childcare burden from women workers. Regarding the area of maternity leave, limitations include difficulties in actual use of maternity leave, pay mainly provided from unemployment insurance during the leave, and business owners' reluctance to pay their share. Suggestions include automatic start of the leave when the business owners refuses to allow the leave, and application for the leave to government agencies such as employment centers. Second, as to paternity leave, problems include difficulties in actual use of the leave, low awareness of the leave, and the short period of the leave with pay. Suggestions include loosening of the requirements to take the leave, and extension of the period of the leave with pay. Third, as to the area of parental leave, again, difficulties in actual use of the leave are pointed out as the major problem. Suggestions are made that automatic start of the leave be introduced in case the business owner denies the worker the leave, or that the worker should be able to apply for the leave to government agencies such as employment centers. Fourth, as to shorter working-hours during child-rearing period, limitations include difficulties in utilizing the system, and the disadvantages caused when taking shorter working-hours. Suggestions include mandatory use of shorter working-hours, introduction of less-than-two-hour working day, stronger prohibition of overtime work, prohibition of changing shifts of work during shorter working-hour period, and extension of the period of shorter working hour days. Fifth, as to the areas of childcare support, limitations include low establishment rate of childcare facilities at work,

and low awareness of the fact that business owners can use local childcare centers as commissioned care facilities. Suggestions include financial support for companies to build childcare facilities at work, stronger regulations, and increase of local public childcare facilities. Sixth, as to the guarantee of family-care leave, problems include low awareness of the leave itself, the short period of the leave, few companies practicing the leave, and no provisions in the Act regarding pay during the leave. Suggestions include extension of the period of the leave, encouragement for companies to introduce the leave, and making the leave paid on a gradual basis. Seventh, there were suggestions for separate legislations for maternity protection and for work-family balance.

E. Conflict Prevention and Solution

Achievements include the increase of counselling agencies, more support for employees from the counselling agencies, and more self-regulating conflict solutions at work. First, as to the area of support from counselling agencies, limitations include the concentration of counselling agencies in certain localities, shortage of budget, lack of publicity, and lack of relationship with workers. Suggestions include increase of budget for counselling agencies, establishment of more counselling offices in diverse localities, and stronger relationship with workers. Second, as to the area of honorary equal employment inspectors, limitations include problems with the non-mandatory provisions, low awareness and usage, no specified requirements for inspector qualifications, problematic ways of recommendation, limited jurisdiction of inspectors, and inspectors working only part-time with no pay. Third, as to the area of self-regulating conflict solutions, the major limitation is that the lack of stipulations for implementation makes self-regulating solutions very

difficult. Fourth, a lot of opinions were given especially with respect to discrimination rectification procedures and related organizations. Experts pointed out that elimination of discriminatory practices and remedies for the damages caused by those practices have not been able to be fulfilled satisfactorily because of the lack of implementation systems, and that there are still difficulties in specifying judgement criteria on discrimination through accumulation of related cases. Suggestions include larger and stronger roles of labor supervisors, and introduction of labor supervisors specialized in gender discrimination and sexual harassment, and of labor committees working exclusively on gender discrimination cases. Fifth, as to remedies and burden of proof, suggestions include that various measures for remedies should be implemented as early as in the initial judgement process of discrimination, and that the Act should be revised to provide much more specific criteria regarding burden of proof since the current criteria are nothing but nominal.

V. Suggestions for Revision and Effectiveness Enhancement of the Equal Employment Act

A. Regulations on Gender Discrimination in Employment

The term ‘business owners’ should be changed to ‘employers.’ That is, the Act should be revised to define employers as persons to fulfill the obligations, and the definition of the employer should include i) business owners, or persons who act for the business owners regarding matters of their employees, and ii) persons who have de facto authority of direction and supervision over matters such as labor conditions.

B. Prohibition and Prevention of Sexual Harassment at Work:

Expansion of the Range of Affected Persons

The range of affected persons of sexual harassment at work should be expanded. In the current Act, the affected persons should be employees, and therefore, non-employed workers such as care workers and insurance planners are not protected by the Act when they are sexually harassed while working since, according to the Act, only business owners, superiors, or co-workers can be defined as sexual harassers. The definition should be expanded to include people with whom the workers, regardless of their employment status, have job-related interactions.

C. Maternity Protection and Work-Family Balance

1) Maternity Leave with Full Pay from Unemployment Insurance

Under the Act, although the amount of pay during maternity leave should correspond to the ordinary wage, the upper and lower limits can be determined by the Presidential decree (「The Unemployment Insurance Act」 Article 76, Section 2). Currently, the upper limit is 4.5 million won (for 90 days), and the lower limit is the minimum wage. Owners of large businesses are to provide 60-day pay, and the Unemployment Insurance is to provide the rest 30-day pay. This has led the business owners to prefer hiring male workers since hiring women means more financial burden on the companies. As the ILO Convention³ and 10⁴ require, social insurances should provide the full pay for the 90-day maternity leave to workers of all companies, while business owners should provide the amount that exceeds the upper limit.

2) Longer Paternity Leave with Higher Pay

Paternity leave was introduced to encourage men to take more responsibilities for childbirth and childcare. In order to make the leave more effective, the period of the leave should be extended and the pay should be raised. The period should be extended to more than 2 weeks(the OECD average), and the entire period needs to be paid. Pay from the Unemployment Insurance may be another positive way to increase the number of leave takers. However, considering the increasing use of the maternity leave fund, it is recommendable that the Unemployment Insurance Act be revised so that the Insurance provides full pay to the workers of small companies, and half pay to the workers of large companies.

3) Expansion of the Range of Family Members for Family Care Leave

According to the Act, the family care leave can be taken only for the worker's parents, spouse, children, and the spouse's parents. In Japan, grandparents, grandchildren, and siblings are included, and in Germany, life partners, spouse's children, adopted children, siblings, sibling's spouses, and spouse's siblings are included. Considering these legislations in other countries and the current family-matters leave for public servants that have broader family member coverage, the Act needs to be revised to include, at least, siblings, grandparents, and grandchildren.

D. Conflict Solution and Remedy System

1) Introduction of Systems for Elimination of Gender Discrimination in Employment to the Labor Relations Committee

Rectification Systems should be introduced to provide effective help for victims of gender discrimination in employment. Agencies that take full charge of gender discrimination-related cases need to be established. The most proper agency for this can be the Labor Relations Committee. The Committee has already taken charge of cases of discriminatory practices against irregular workers in terms of working conditions such as wage. Thus, it would make great sense if the Committee could include gender discrimination cases within its jurisdiction.

2) Revision of the Burden of Proof Provision

The Act places the burden of proof on business owners(article 30). This provision was introduced in April 1984 to remedy the damages of gender discrimination in employment. Since the court has hardly required burden of proof from the business owners in actual legal proceedings, however, this provision has been a dead letter. Therefore, in order to make this provision actually help lessen the workers' burden of proof, stipulations providing more specific conditions are needed. Placing the burden of proof on the worker when she argues she is a victim of gender discrimination, and on the opposite party when she argues that the acts in question were not discriminatory but justifiable will be a reasonable direction.

E. Separate Legislation of the Act for Reinforcement of
Work·Family·Care Support and of Prohibition of Gender
Discrimination in Employment

Gender equality in employment and work-family balance need to be dealt with as involving two different areas of law, especially because work-family balance is an issue of all workers, not just of women workers. Therefore, it is desirable to make separate legal approaches to gender equality in employment and to work-family balance.



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