

Practical challenges for maternity protection in the Cambodian garment industry



Introduction

Background: Maternity leave in Cambodia

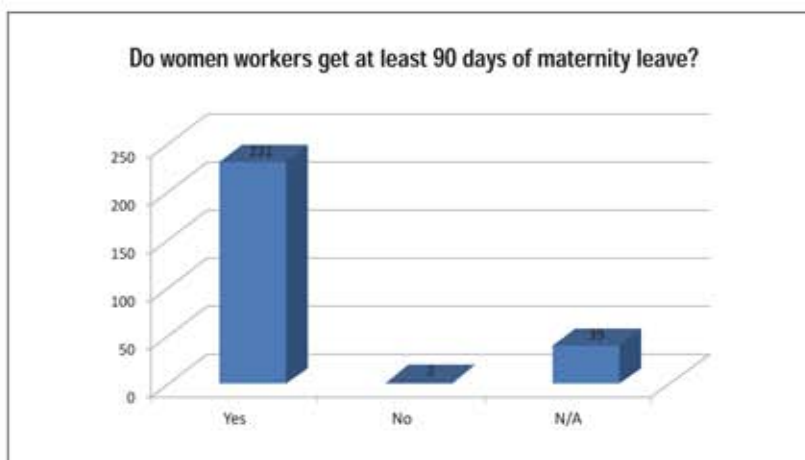
Since the 1990s, the garment industry has been one of the largest industries in Cambodia. Currently, there are 300 active garment export factories employing a total of 326,751 workers.¹ The vast majority of workers employed in garment factories are young women who have recently had or are planning to have children in the near future. For this reason the garment factories have been a particular focus of attention for stakeholders concerned with maternal and child welfare.

The United Nations (UN) Joint Programme for Children, Food Security and Nutrition in Cambodia has focused much of its child nutrition efforts on outreach to garment workers. The ILO Social Protection and Gender Project and Non-Governmental organizations (NGOs) such as Marie Stopes International have worked to increase factory efforts to meet workers' reproductive health needs.

The Cambodian Government recognized the importance of protecting working mothers by guaranteeing paid maternity leave and benefits for workers in the 1997 Labor Law: workers are entitled to 90 days leave with 50 per cent of their wages and benefits for this period. The law also requires employers to provide new mothers with one-hour breastfeeding breaks, to build nursing rooms and daycare centres at the workplace, and to ensure that workers do light work for two months upon their return from maternity leave.

Industry trends

The Better Factories Cambodia (BFC) Programme of the Kingdom of Cambodia and the International Labour Organization (ILO) has been monitoring factory compliance with maternity leave laws for a number of years. As the graphs below indicate, data from the 2011 synthesis reports² show that the vast majority of factories follow the law in giving women 90 days of maternity leave.



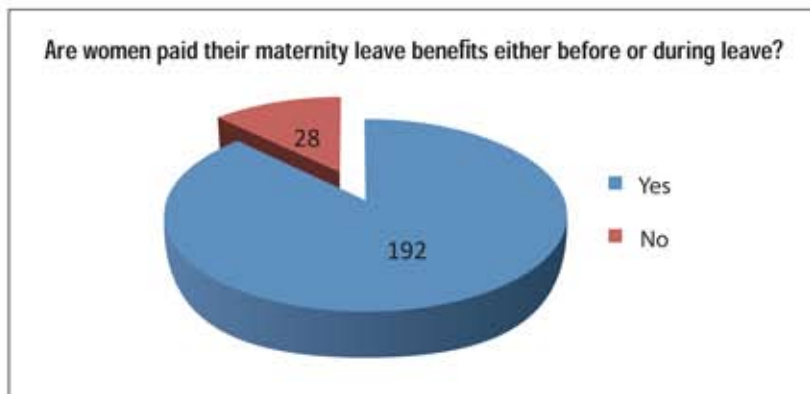
1 BFC: *28th Synthesis report on working conditions in Cambodia's garment sector*, (Phnom Penh, 20 June 2012), page 5.

2 BFC: *26th Synthesis report on working conditions in Cambodia's garment sector*, (Phnom Penh, August 2011).

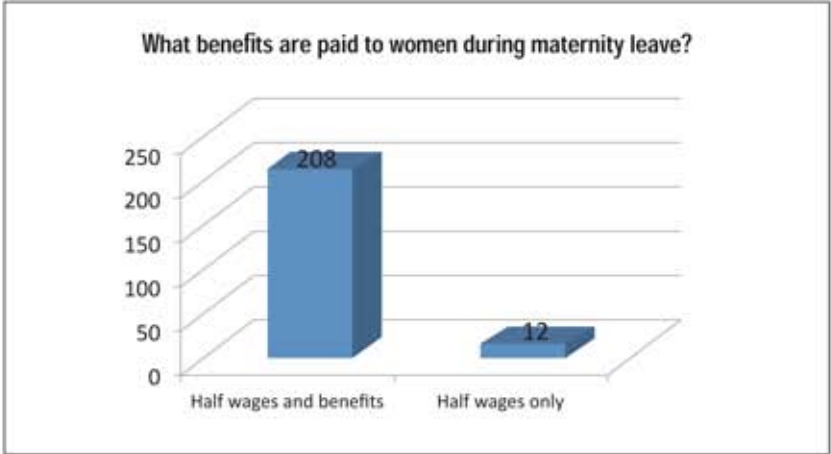
During each monitoring visit, monitors inquired as to whether workers were aware of their right to maternity leave. The numbers were uniformly positive across the industry:



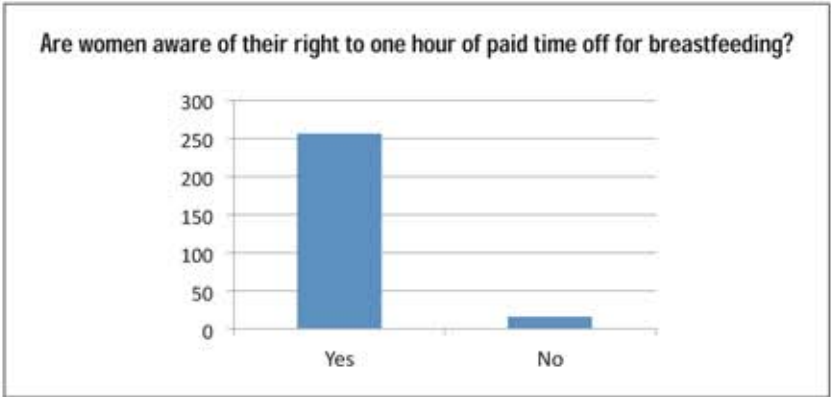
Factory compliance with the law regarding how maternity leave benefits are paid to workers is lower. According to the law, as interpreted by the Arbitration Council (AC), workers are entitled to receive a lump sum of all their maternity leave benefits before they take their leave (see AC awards: 49/04; 57/06; and 70/08). While the majority of employers follow the law on this issue, some still do not.



The BFC synthesis reports indicate that factory compliance with maternity leave payments is also high. Employers are required to pay workers 50 per cent of the workers' total wage and benefits over the course of their maternity leave. A small number of factories (about five per cent) continue to pay workers 50 per cent of only their basic wage, despite the fact that the Arbitration Council has indicated clearly that it is against the law to exclude benefits from leave payment calculations.

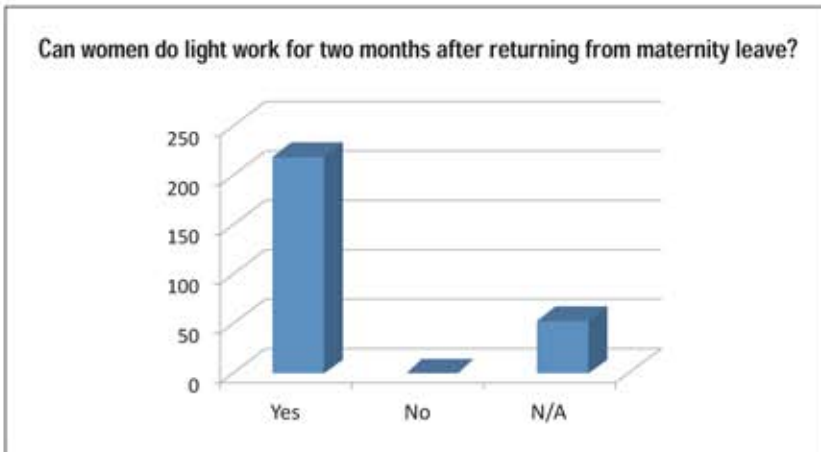


Upon returning to work, women are entitled to a daily hour-long break to breastfeed their baby. Workers have shown a high awareness of their right to a paid hour for breastfeeding.

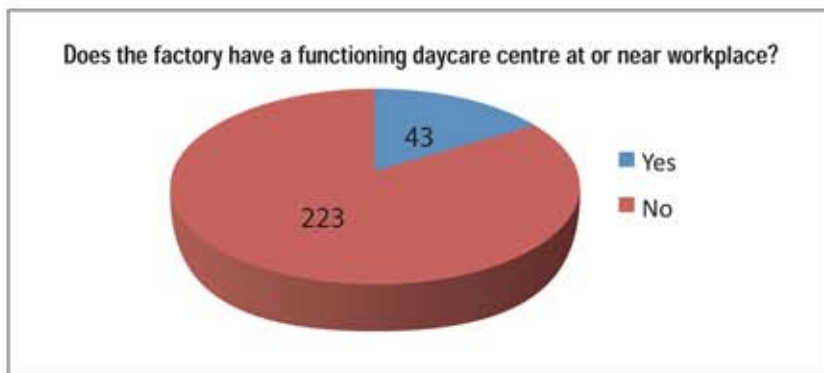


Factories show a high degree of compliance in providing women with the one-hour breastfeeding breaks and in ensuring that women are allowed to do light work upon returning to work.





One area in which factory compliance is overwhelmingly low is in building daycare centres for workers' children. The vast majority of factories monitored by BFC do not have a functioning daycare centre at or near the factory available to workers.



Purpose of this study

While the above graphs generally reflect factory compliance with the law with factories extending workers the protections that they are entitled to, there is very little information about the practical challenges and issues that factories and workers face in implementing the laws. The purpose of this study is to begin addressing this gap in information through an in-depth look at how eight factories apply the law in practice.

Specifically, this study aims to:

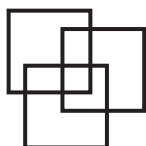
- Review legal frameworks, arbitration decisions, and factory policies relating to maternity protection.
- Based on eight case studies, provide insight into how the law is applied in factories.

ASIAN 2006
DECENT WORK
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International
Labour
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Practical challenges for maternity protection in the Cambodian garment industry



ILO Regional Office for Asia and the Pacific

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First published 2012

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Practical challenges for maternity protection in the Cambodian garment industry / ILO Regional Office for Asia and the Pacific = បញ្ហាប្រឈមជាក់ស្តែងចំពោះការគាំពារមាតុភាព ក្នុងឧស្សាហកម្មកាត់ដេរកម្ពុជា / ការិយាល័យអង្គការពលកម្មអន្តរជាតិប្រចាំតំបន់អាស៊ី និងប៉ាស៊ីហ្វិក - Phnom Penh: ILO, 2012
58 p.

ISBN: 9789220268438; 9789221268444 (web pdf)

ILO Regional Office for Asia and the Pacific

maternity protection / maternity benefit / working conditions / women workers / workers rights / maternity leave / child care facilities / clothing industry / shoe industry / labour legislation / comment / Cambodia

13.03.1

Also published in Cambodian: បញ្ហាប្រឈមជាក់ស្តែងចំពោះការគាំពារមាតុភាព ក្នុងឧស្សាហកម្មកាត់ដេរកម្ពុជា
ISBN 9789228268447 (web pdf), Phnom Penh, 2012

ILO Cataloguing in Publication Data

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Printed in Cambodia

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Executive summary

This report presents the results of research by the ILO on the practical challenges involved in ensuring maternity protection in the Cambodian garment industry. It is based on focus group interviews with workers employed in six garment factories and two footwear factories, and on one-on-one interviews with union representatives, factory managers and labour officials inspectors as well as a review of 49 relevant awards of Cambodia's Arbitration Council between 2003 and 2011.

The garment industry is one of the largest industries in Cambodia, employing over 300,000 workers most of whom are young women. Through its labour laws the Cambodian Government has recognized the importance of protecting working mothers. Laws guarantee paid maternity leave at half pay, breaks for breastfeeding, nursing rooms and daycare facilities, centers at the workplace, and two months of light work return from maternity leave.

The goals of this study of Cambodian garment workers' access to maternity leave are twofold: to review the legal framework, arbitration decisions, and factories' policies related to maternity protection, and to assess the efficacy of these laws for protecting mothers based on interviews with workers, union representatives and managers at six garment factories and two shoe factories. These factories are not a random sample and probably over-represent factories that comply with labour laws and regulations. This report also recommends some changes in labour law and factories' policies to improve maternity protection for Cambodian garment factory workers.

Monitoring by the ILO Better Factories Cambodia Programme indicates a high level of compliance with the maternity-protection laws. Almost all women get the 90 days leave to which the law entitles them as well as two months of lighter duties when they return to work. Approximately seven out of eight women who take a maternity leave receive wages and benefits at 50 per cent of their regular wages and benefits, and are given an hour a day paid time off for breastfeeding. However, only about one woman in six works at a factory with a daycare centre at their workplace or nearby. Almost all women know that they are legally entitled to maternity leave and to one hour a day paid time off for breastfeeding.

Cambodia has enacted laws and signed on to international conventions that establish workers' rights to maternity protection. Its labour laws and Constitution establish rights to maternity protection. However, it has not ratified the ILO's most recent Maternity Protection Convention, 2000 (No. 183) and its current laws do not meet that Convention's standards. Its national laws have been subject to interpretation by the Cambodian Arbitration Council. Factories are also required to establish and post internal regulations which have been approved by the Ministry of Labour and Vocational Training which uphold their legal obligations with respect to maternity protection. Some factories have additional policies related to maternity protection, sometimes as part of a collective bargaining agreement.

All female workers are entitled to maternity leave, and a year's uninterrupted employment at a factory further entitles them to maternity leave benefits. Workers on fixed-duration contracts for less than a year lose this entitlement if there is a pause between the expiration of one contract and their re-employment under a new one. Workers are not entitled to benefits if they

have handed in their resignation. No standard process exists for workers to apply for maternity leave, although workers described the process as straightforward. The eight factories that were studied provide maternity leave to pregnant workers, regardless of their length of service, in accordance with the law. And most provide legally mandated maternity leave benefits to workers with at least one year of continuous service. Fixed-duration contracts and, more generally, calculating service time are barriers for women's access to the maternity benefits to which they are entitled.

Workers are not legally entitled to time off for antenatal care or to time off if they have morning sickness, and factories' practices vary considerably. Workers perceive discrimination in hiring and dismissal because of pregnancy, but such discrimination is difficult to prove for workers. The report recommends to strengthen legal prohibitions of discrimination of women on the grounds of pregnancy at all stages of employment, and shift the burden of proof onto employers in such discrimination cases as advised in the ILOs Maternity Protection Convention of 2000.

The Arbitration Council has defined the 90-day leave period under the law as 90 calendar days rather than 90 work days. Most factories allow workers to extend maternity leave for one to three months, but without pay. Because many factories do not publicize their policies regarding extending leave, workers often do not realize that this option exists. This leads some new mothers to resign. In some factories the right to and length of an extension are up to the discretion of a line supervisor which can lead to unequal or unfair treatment. The requirement by some factories that women apply in person to extend their leave prevents some from being able to obtain an extension. Factories allow men up to seven days of unpaid special leave when their wives give birth.

Women who meet the one-year service requirement are entitled to three months leave benefits at 50 per cent of their average monthly earning as well as their full living allowance. Nevertheless some factories vary in how they calculate leave benefits. Some workers do not understand how their benefits should be calculated. Factories are supposed to pay all of a worker's maternity leave benefits the day before they begin their leave, but some of those in this study did not do so, exposing their employees on maternity leave to serious economic vulnerability.

Although the law does not specify any procedure for women returning to work, the factories required only that they inform their line supervisor that they are back. Returning workers did not encounter changes in their contracts when they returned. The most common reason for not returning to work was lack of childcare options. The report recommends collective efforts to create childcare facilities. Factories with more than 100 women are required to provide nursing rooms, but compliance is low and workers tend not to use facilities that exist because it is difficult to bring their infants to work. Alternatives are suggested, including further investments in educating new mothers on expressing and storing breast milk and subsidizing breast pumps, for example.

Managers do not see maternity leaves, including replacing absent workers and re-absorbing returning workers, as problematic. They believe they have done a better job of informing workers of their maternity protection rights than they have, according to interviews with workers. Although implementing and exercising maternity protection rights require first and foremost workers' knowledge of these rights, neither line supervisors nor workers were fully informed of laws and workplace policies. Thus, education and communication campaigns are necessary.

Methodology

A total of 49 relevant Arbitration Council awards were reviewed. Field research was conducted in six garment factories and two footwear factories. Four factories were around Phnom Penh; two were in Svay Rieng; and two were in Kampong Speu. The first four factories were chosen from the list of factories working with the ILO Social Protection and Gender Project. The latter were involved in the ILO component of the United Nations (UN) Joint Programme for Children, Food Security and Nutrition in Cambodia work in Svay Rieng and Kampong Speu.

The fieldwork for this study involved visits to factories and interviews with union workers, management and administrative staff, and garment workers. Around 70 workers were interviewed in eight-to-ten person focus groups which included workers who were currently pregnant and those who had recently returned from maternity leave. Three workers were also interviewed in their homes while on maternity leave. Interviews with factory managers and union representatives included one or two people at a time. Interviews were also conducted with labour officials from Kampong Speu and Svay Rieng.³

The methodology of the field research has affected the study results. The sample of factories was limited to eight. As a result, the findings are not representative of and do not demonstrate industry trends. They are useful primarily for identifying both some of the good practices and the challenges in providing maternity protection in the factories.

Other factors that will have influenced the findings were as follows. The factories cooperated with ILO and UN projects so they are more likely than other factories to comply with the laws. As a result, the findings likely suggest a more positive picture of factory conditions than exists in general. Secondly, factory management organized the interviews with workers. In one factory, the researcher tried to approach workers around the cafeteria during their lunch, but the workers were shy and hesitated to participate in interviews. Having the factory organize meetings helped identify those workers with recent experience of pregnancy and maternity leave, but may have allowed management to selectively select some workers.

Thirdly, workers may have been hesitant to speak candidly in a focus group discussion. While such discussions allow for more workers to be interviewed and may reduce anxiety by providing a more conversational social environment, they can also create social pressure. Workers may have felt uncomfortable, for instance, to reveal to colleagues how much they were paid during their maternity leave, because payments are tied to previous wages and vary from worker to worker. Finally, due to time constraints, the survey tool was not pilot tested.

The study was conducted under the ILO component of the UN Joint Programme for Children, Food Security and Nutrition and the ILO Social Protection and Gender Project in cooperation with the Better Factories Cambodia Programme. The field research was carried out and the draft report with the research findings prepared by Alice Tsier, Chea Sophal and Sokunthea Pen, with support from Undraa Suren and Pheary Nou in Cambodia. A peer review was undertaken and the report was finalized by Naomi Cassirer, Nelien Haspels and Barbara Ruskin under the ILO Decent Work Technical Support Team for East and South-East Asia and the Pacific of the Regional Office for Asia and the Pacific, Bangkok.

³ The interviews in the factories were conducted in the understanding that the names of the factories and the individual interviewees would be kept confidential, so no names are mentioned in the field research findings.

Chapter 1. Legal framework

Chapter summary:

- Cambodia is party to international conventions that establish workers' rights to maternity protection.
- The Cambodian Constitution and labour law also establish maternity protection rights.
- Factories are required to establish and post internal regulations that are approved by the Ministry of Labour and Vocational Training which uphold legal obligations.

International and national legal frameworks establish the rights to maternity protection in Cambodia. Internationally, Cambodia is party to the United Nations Convention on the Elimination of Discrimination of All Women (CEDAW) and has ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Domestically, maternity protection rights are established in the Constitution, in the labour law, adopted on 10 January 1997, and through the awards of the Arbitration Council.

International conventions

Below is an overview of the relevant provisions on maternity protection in international conventions

United Nations Convention on the Elimination of Discrimination of All Women (CEDAW)

Cambodia is party to CEDAW which sets out maternity protection as follows:

Article 2:

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.

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Cambodia ratified ILO Convention No. 111 in 1999. Convention No. 111 promotes equality and prohibits **discrimination** in employment and occupation. It defines discrimination as *“any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”*. (Art. 1(1a)). Discrimination occurs when a differential and less favourable treatment is adopted based on any of the above mentioned grounds at any stage of the employment cycle, from education and training for work, job search, recruitment, on the job and after leaving the labour market.

Convention No. 111 does not directly prohibit discrimination on the grounds of pregnancy and maternity. However, given that only women become pregnant, discrimination on these grounds can be considered to amount to discrimination based on sex.

ILO Maternity Protection Convention, 2000 (No. 183)

The latest Maternity Protection Convention (No. 183) and Recommendation (No. 191) adopted in 2000 form the most comprehensive protective framework for maternity protection for workers. They provide for:

- 14 weeks of maternity leave, including six weeks of compulsory postnatal leave;
- cash benefits at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living;
- access to free medical care, including prenatal, childbirth and postnatal care, as well as hospitalization when necessary;
- health protection: the right of pregnant or nursing women not to perform work prejudicial to their health or to that of their child;
- breastfeeding: a minimum of a one-hour daily break, with pay;
- employment protection and non-discrimination.

Cambodia has not ratified Convention No. 183. However, international labour standards do provide important guidance for establishing and assessing maternity protection for workers.

The Cambodian Constitution

The Cambodian Constitution guarantees the right of women to maternity leave:

“A woman shall not lose her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits”. (Article 46).

The same article states more broadly:

“The State and society shall provide opportunities to women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, and send their children to school, and to have decent living conditions”.

The labour law

The Cambodian labour law was adopted in January 1997. Garment factories fall within the scope of the legislation. Several articles deal directly with discrimination or maternity protection:

Article 12: Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract. Distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.

Article 169: Included in the period for which the employee is entitled paid leave each year is: weekly time off, paid holidays, sick leave, maternity leave, annual leave and notice period, special leave granted up to a maximum of seven days during any event directly affecting the worker's immediate family.

Article 182: In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days. After the maternity leave and during the first two months after returning to work, they are only expected to perform light work. The employer is prohibited from laying off women in labour during their maternity leave or at a date when the end of the notice period would fall during the maternity leave.

Article 183: During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer. Women fully reserve their rights to other benefits in kind, if any. Any collective agreement to the contrary shall be null and void. However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.

Article 184: For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift.

Article 185: Breaks for breast-feeding are separate from and shall not be deducted from normal breaks provided for in the labour law, in internal regulations of the establishment, in collective labour agreements, or in local custom for which other workers in the same category enjoy them.

Article 186: Managers of enterprises employing a minimum of one hundred women or girls shall set up within their establishments or nearby, a nursing room and a crèche (day-care center). If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer.

Arbitration Council awards

The Arbitration Council is a national body, established in 2003, to provide a forum for the resolution of labour disputes. Although the Arbitration Council is not a court, it has legal decision-making authority. Its awards may be binding or non-binding. Binding awards are enforceable immediately and the Labour Inspectorate assists in their implementation.⁴ Non-binding awards become binding in eight days, unless one of the parties files an opposition. If one party files an opposition, the award becomes unenforceable. In that case, the other party can ask a court to enforce the award. The court can only refuse to enforce the award in the case of procedural irregularities in the decision-making process or if the Arbitration Council exceeded the power given to it by law in determining the award. In all other cases, the court is obliged to enforce the award.

Factory regulations

Each factory is also required to have a set of internal regulations approved by the Ministry of Labour and Vocational Training and posted in the factory. Factories are required to abide by their internal regulations. A sample document from the Ministry of Labour and Vocational Training illustrates internal regulations regarding maternity protection:

“Female workers are eligible to have maternity leave (90 days) before and after baby is delivered. Company will provide a half month salary (50 per cent) that includes all subsidies for one who has worked for company of one year. All salary of subsidies will be paid at the first month of the maternity leave. Women reserve their right to get rewards if any. Within one year from the date of delivery women are allowed to break one hour daily in order to look after and feed the baby”.⁵

Additional workplace policies

Aside from the internal regulations that are in compliance with the law, many factories also have additional workplace policies dealing with maternity protection. In some factories, this might take the form of a collective bargaining agreement with the factory's union. It could also be a verbal agreement between the factory and the workers, or a practice that the factory follows consistently—factories that go beyond the requirements of the law sometimes prefer to keep such practices informal and flexible. For example, one factory indicated that they preferred to keep some policies off paper in order to avoid pressure from other factories who did not want to compete in providing these policies.

4 D. Adler et. al.: *The Arbitration Council and the process for labour dispute resolution in Cambodia*, (Phnom Penh, Arbitration Council Foundation, 2007), page 31.

5 Yung Wah Industrial (Cambodia) Co. Ltd.: *Internal Regulations*, Article 4, Section D.

Chapter 2. Who is eligible for maternity leave and benefits?

Chapter summary:

- All women workers are entitled to take maternity leave.
- Workers become entitled to maternity leave benefits during their leave only if they have worked for an uninterrupted year at the factory.
- Workers on fixed duration contracts may have to wait two years before they have access to maternity benefits.
- Workers who have handed in their resignation are not entitled to collect maternity leave benefits.

Cambodian labour law provides for maternity leave for every woman worker in enterprises covered by the law (Article 182). Entitlements for maternity cash benefits during leave are available to workers who have worked in the factory with no interruptions for at least one year (Article 183). This chapter discusses eligibility requirements for maternity leave benefits for four groups of workers: those employed in the factory for a minimum of one year; those employed in the factory for less than one year; those who recently resigned; and those employed under fixed duration contracts. Each of the four sections will review the law, how factories apply the law, and resulting challenges in the interpretation and application of the law.

Workers employed at the factory for a minimum of one year

According to the Cambodian labour law, workers who have worked at a factory for a minimum of one year are entitled to maternity leave and benefits. According to Convention No. 183, conditions for qualifying for cash benefits are acceptable (although conditions for qualifying for leave are not).⁶ However, the Convention also requires that conditions for eligibility can be met by a large majority of women workers and that women who do not qualify for cash benefits can access benefits through social assistance funds.

In recent years, the Government of Cambodia has started to establish a social protection floor but benefits and coverage are still limited. Women have no access to maternity benefits from social assistance funds, putting the burden of providing maternity benefits entirely on individual employers. In relation hereto, the ILO generally cautions against employer liability systems which are inconsistent with the principles of solidarity and raise the risk of discrimination against women.⁷

In Cambodian law, periods of leave do not count as interruptions to the contract and are not detracted from the calculation of the time of service. There has been some confusion, however, about when the clock starts running for the one-year period of service. One factory visited for

⁶ See ILO: *Maternity at work: A review of national legislation* (Geneva, 2010).

⁷ Ibid.

this study only counted the period of service starting after the workers' two-month probation period was over. We found at least one case where a woman who had been working at the factory for a full year did not receive any of her benefits when she took her maternity leave because the factory did not include her probation period in calculating her time of employment.

When does the year start? One woman's story

How much do you get paid during maternity leave?

"Nothing, because I have worked for less than one year".

When did you start to work at the company?

"I became a regular worker in July 2010. Before that for two months I was a probationary worker".

The company does not include those two months when it is calculating how long you have worked at the factory?

"No. They only take the time from when I became a regular worker".

Article 183 of the labour law states that the benefits apply to workers who have had one year of continuous employment at the company, without specifying what kind of contract they were under at any point during the year. There is no reason to exclude the probationary period from the length of employment. The change in status of a worker does not constitute an interruption of her contract; it is more akin to a promotion from one position to another. This ambiguity between law and practice may need to be clarified.

Workers employed for less than one year

While workers who have been employed at the factory for less than one year are entitled to take maternity leave, factories have no legal obligations to provide them with maternity benefits. The Arbitration Council has upheld this provision.⁸

All of the factories visited followed legal provisions for allowing workers who have worked for less than one year to take a maternity leave. Three factories went beyond the legal minimum, providing remuneration to workers who had not accumulated a year in service, although the remuneration was less than the amount received by workers with a year or more of service.

One factory had a policy of providing all workers with US\$25 for their fourth month of maternity leave. Although workers who had worked for less than one year did not receive pay for the first three months of their maternity leave, they received the extra US\$25 for the fourth month. Another factory had a collective bargaining agreement with the main union whereby workers who had worked for six months received full maternity benefits (50 per cent of the average wage, a US\$6 living allowance and annual seniority wages). Workers who have been working for less than six months could receive 70 per cent of the wages for one month as well as a US\$6 per month living allowance.

⁸ For example, in AC award 19/08, the Council rejected a worker demand for maternity leave benefits on the basis that "the labour law does not entitle female workers who have worked for less than one year [to a maternity leave payment] equivalent to half wages, benefit including prerequisites. There is nothing in the [company's] Internal Work Rules or any agreement between the workers and the employer which states anything about this issue either. Therefore, the Arbitration Council considers that the demand of workers is an interest dispute (beyond legal entitlements)."

In a third factory, workers did not receive their seniority bonus, but they did receive 50 per cent of their other wages. Interviews with workers confirmed this policy. When asked if the women knew someone who had worked at the factory for less than one year and had gone on maternity leave the workers answered:

“Yes we know. She also got paid, but less”.

A group leader at the factory said that his wife worked for less than one year at the factory and was currently on maternity leave:

“The first month she got US\$67 because she worked for 10 days that month, and for the second month I don’t know yet. I expect she will get paid but I do not know how much”.

While some factories go beyond their legal obligations and provide maternity leave benefits even when workers have less than a full year of service, at other factories there are concerns that management deliberately uses fixed term contracts to limit the duration of workers’ contract and avoid paying them benefits to which longer-term workers are entitled.

According to the labour law, employers may hire workers on fixed duration contracts (FDCs) of various lengths for a maximum of two years. Employers value FDCs because they offer a measure of flexibility in their workforce that corresponds to the needs of their buyers. However, a number of workers concerned that their employer had abused these contracts have brought cases before the Arbitration Council (AC). In AC case 123/07 the union asked the factory to convert the workers’ FDCs to undetermined duration contracts (UDCs) arguing that the fixed duration contracts deprived the workers of benefits such as job security, paid maternity leave, seniority bonus, and breastfeeding time. The Arbitration Council rejected the union’s request. The panelists reasoned that a “labour contract can be renewed one or more times, as long as the renewals do not surpass a maximum duration of two years. If the total duration of the labour relation surpasses two years, the labour contract shall become an undetermined duration contract. (See also AC awards 10/03, Issue 1; 02/04; and 36/06, Issue 2.)” In case 123/07, however, it was acknowledged that none of the workers’ contracts surpassed the two-year period. Therefore, the contract could not be considered an undetermined duration contract (AC award 123/07, see also awards 94/07 and 92/07).

In AC case 92/07 the workers’ request for one-year fixed-duration contracts was also worded with specific reference to maternity leave and other benefits not available to new or temporary workers: “The workers who were in the hearing and the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU) demanded that the company sign the next fixed duration labour contract for a period of one year because the current fixed duration contracts are only for six months and are too short, making it difficult for workers to ask for annual leave and workers who take maternity leave do not receive payment for this leave. ... After the six-month fixed duration contract expired, the company paid the workers a termination payment and asked workers to rest for a few days then sign another six-month fixed duration contract. All workers who have fixed duration contracts and who are working at the Company have not worked for two years. Because of this practice, all workers remain new workers”. Workers who had completed two fixed-duration contracts technically did not have a full year of uninterrupted service and hence were not entitled to maternity benefits. Union leaders said that the factory often does not renew FDCs of pregnant workers.

It is interesting to note that in both of the above-mentioned cases the Arbitration Council did not dispute the workers' claims about the impacts of FDCs on workers' benefits. However, the Council ruled in favor of the factories because the use of FDCs can be justified and is provided for in the law. However, the current practice at Better Factories Cambodia is to label factories as non-compliant when employers use FDCs as rotating short-term contracts, because FDCs can negatively affect workers' benefits.

From an employers' perspective, FDCs allow factories to cope with fluctuating demand for products from buyers. Intense pressure from buyers to provide inexpensive products in a timely way means that there are times when factories need larger numbers of workers. After the rush is finished, paying those workers and continuing to employ them when they are not necessary would be too great of a burden on the factory. However, it becomes problematic if employers use a tool that is meant to provide them with flexibility to circumvent other provisions in the law. While it is true that buyer demand fluctuates, it typically does not drop at the end of a worker's contract and pick up significantly a week later. There is a difference between a genuine change in buyer demand, and the use of this pretext to deny benefits to workers.

The Government should consider solutions to address this issue. A middle-ground solution would be to specifically require that two FDC contracts with a short break in between should be counted as a period of continuous employment. If the company wants to terminate a six-month contract it may do so. But if it rehires workers after a short break, then the two FDCs should count cumulatively towards eligibility for maternity leave. This compromise may suit both workers and employers: workers would retain the security and benefits that they are entitled to after a year, while employers would retain the flexibility that comes with FDCs.

Another alternative would be to issue a directive to employers directing them not to use rotating FDCs to avoid paying long-term benefits to workers. Technically FDCs are not mutually exclusive with long-term benefits for workers. The law specifies the absolute amount of time the worker needs to have worked at the factory continuously, but does not specify the sort of contract that the worker has to have been under. The problem for workers is not the practice of hiring under 6-month contracts and renewing those contracts several times. The problem occurs when the employer uses the termination of the contract to force a break between contracts and deny workers who have worked for one year at the company their benefits.

A Government directive would have the benefit of allowing the Arbitration Council to delve deeper into factory behaviour. If the employer truly has less demand, this can be shown quite easily by bringing buyer order records before the Arbitration Council. What an employer would not be able to do under this type of scrutiny is use the flexibility granted to it by the law to evade Government attempts to protect workers. It should be noted that the burden of proof should be placed on the factory and not on the worker to prove that breaks between contracts were justified by production needs and not to avoid paying benefits.

Issuing such a directive would allow the Arbitration Council to take a more nuanced approach to interpreting Article 67. Currently the Council does not dispute that FDCs can be used to deprive workers of important benefits, but the Council finds itself bound by the letter of the law which allows employers to use FDCs for up to two years. An explicit directive from the Government would give the Arbitration Council the authority to take a more contextual approach to employer use of FDCs. It would also allow the Arbitration Council to balance the competing interests of workers and employers more effectively.

Collective bargaining agreements can also balance employers' needs for flexibility with workers' concerns about remuneration and entitlements. In one of the workplace disagreements discussed above, the union negotiated a collective agreement with the factory, which stated:

"For all female workers with a pregnancy certificate, the Company provides two hours per month for the physical (prenatal) examination without impact on the monthly salary and incentive bonus. In addition, she will receive three months maternity leave and 50 per cent of the salary. The Company will keep the position open for her. She can receive three month salary before taking the maternity leave". (Section 89D) Agreement between a factory and CCAWD of 23 May 2011).

However, it should be noted that not every factory has a union that is capable of negotiating strongly for workers' protection.

Workers who have resigned

The law does not specifically address the situation of workers who work in a factory for a minimum of a year but who submit their resignations immediately before submitting their maternity leave applications. However, the Arbitration Council has ruled that maternity benefits are not available to workers who have handed in their resignations.

In AC case 42/10, one of the issues at hand was whether four workers who had handed in their resignations were entitled to maternity leave payments. All four workers had worked at the factory for several years and had been told by one of the unions that even if they resigned they would be entitled to maternity benefits. As a result, the workers submitted their resignations to the factory several days before they submitted their maternity leave applications. The Arbitration Council reasoned that the obligations between an employer and an employee arise in the context of an employment contract. Once that contract expires for whatever reason, so do the obligations. As a result the workers were not entitled to their maternity leave payments.

Although workers who have handed in their resignations are not entitled to maternity benefits, some factories allow workers who resign to claim maternity leave benefits. In one factory, the union leaders said that there was an unwritten workplace policy whereby workers who have worked for more than one year and were seven months pregnant were permitted to resign and claim their maternity leave benefits.

Factories may wish to reconsider their policies on payment of maternity benefits for resigning workers in light of its own planning and staffing needs. Since a factory has no way of preventing women from resigning at the end of their leave, management may benefit from knowing ahead of time if a woman is planning to resign. Some factories employ "floating" workers to temporarily replace women who are on leave. However, the floating worker has less opportunity to become efficient in the duties of the worker whom she is replacing. If the factory knows ahead of time that a worker will not be returning to work, management can hire a new worker immediately and minimize the inefficiency associated with using temporary workers.

If however, there are no written policies on workers' entitlements in the case of resignation, unions and workers should be aware that workers are not entitled to maternity benefit payments if they resign before their leave. Given the arbitration on this issue, there is a need for more information and education to inform workers of their rights.

Conclusions and recommendations

In general, the factories that were studied follow the law in providing pregnant workers with their maternity leave, regardless of their length of service. For the most part, factories also provide legally mandated maternity leave benefits to workers with at least one year of service (and sometimes extend benefits to workers with less than a year of service).

A key concern with respect to eligibility for maternity leave benefits is how factories calculate service time. Firstly, the law is not explicit regarding whether probationary work should count toward time in service. Secondly, factories are not legally obliged to provide benefits when there has been a break in between FDCs, however short that break may have been. The law should be clarified and strengthened to ensure that employers retain needed flexibility, while workers receive the protections the law intended.

Chapter 3. Pregnancy to maternity leave

Chapter summary:

- Pregnancy at the factory:
 - o Factories are not legally required to give workers time off for antenatal care; some factories do give workers time off for this every month.
 - o Factories do not maintain policies for accommodating workers with morning sickness; this depends on the discretion of line supervisors.
 - o Workers perceive discrimination on the basis of pregnancy in hiring, contract renewal and dismissal. Efforts to press discrimination charges have not succeeded because the Arbitration Council has placed the burden of proving discrimination on workers rather than the burden of disproving discrimination on employers as international standards require.
- Process for taking maternity leave:
 - o The law does not specify the process by which women apply for maternity leave.
 - o Some factories require workers to have a pregnancy certificate from an external clinic, while others do not.
 - o Workers and union leaders described the process for taking maternity leave as simple and straightforward.
 - o Men are allowed to take up to seven days of special leave when their wives give birth.

Pregnant workers and factories

Pregnant workers face a range of issues in balancing the needs of their pregnancy with their job requirements and working conditions. This section looks at just a few of the issues that pregnant workers might face: the ability to take time off for antenatal care, their experiences in coping with morning sickness at work, and their concerns regarding job security during pregnancy. These issues were selected because they are frequently raised as concerns; in general, maternity protection at the workplace covers a much wider range of measures to protect the health and economic well-being of mothers and their infants.⁹

Antenatal care

The law does not require employers to provide time off for workers' antenatal care visit, and as the chart below shows, few of those studied do so. According to one labour official, this is one of the biggest challenges pregnant workers face. ILO Recommendation No. 191 provides that a woman should be allowed to leave the workplace with notification to the employer for the purpose of undergoing medical examinations related to the pregnancy (Article 6(6)).

⁹ See ILO Convention No. 183 and Recommendation No. 191.

Factory policies on antenatal care

| Factory | Antenatal care policy |
|---------|---|
| 1. | Workers are allowed two hours off every month for care without deductions in pay or bonus (hospital 1.5 km from factory). |
| 2. | No provisions for antenatal care. |
| 3. | No provisions for antenatal care. |
| 4. | Workers are allowed two hours off a month for antenatal care. |
| 5. | No provisions for antenatal care. |
| 6. | No provisions for antenatal care. |
| 7. | No provisions for antenatal care. |
| 8. | Workers are allowed one full day off every month for antenatal care without deduction in wages. |

Morning sickness

None of the factories had a policy relating to the accommodation of workers experiencing morning sickness. In each case, individual line supervisors decided how to deal with a pregnant worker who felt ill. Although most workers reported that they were permitted to rest or to take leave when they experienced morning sickness, leaving this up to their supervisor means that some workers receive no relief. Below are some of the workers' experiences with morning sickness:

"It was difficult, supervisors complained and said I did not work well when I had morning sickness".

"Line supervisors are no problem. We can go see the factory doctor and don't have to take leave for that".

"I could take a couple of hours of leave a month for morning sickness, but could not take too many".

"It is OK, if I have morning sickness I can tell line supervisor and sit down and take a rest".

"If you have morning sickness you can take leave from one week to one month. But women usually work even if they have morning sickness".

Hiring and retention during pregnancy

The labour law prohibits firing or giving notice to women who are on maternity leave (Article 182). The Cambodian Constitution explicitly prohibits employers from firing workers due to pregnancy (Article 46), but it does not address pregnancy based discrimination in hiring or the failure to renew a pregnant worker's contract.

The labour law prohibits discrimination on the grounds of sex, but does not explicitly mention the grounds of pregnancy (Article 12). Convention No. 111 also does not explicitly mention pregnancy as a prohibited ground. However, considering that only women can become pregnant,

discrimination based on pregnancy is a form of discrimination against women.¹⁰ In recognition hereof, Convention No. 183 sets a higher standard, prohibiting the termination of employment of a woman during her pregnancy or on leave, or during a period after returning to work, unless the termination is unrelated to the pregnancy (which is upon the employer to prove (Art 8)). Convention No. 183 also sets out prohibitions for discrimination in recruitment and hiring, for example, prohibiting the use of pregnancy testing (Art.9). Cambodia has not yet ratified Convention No. 183, however, these provisions serve as guidance in considering how laws might be improved for protecting the employment of women during maternity.

The Arbitration Council has done little to protect pregnant workers from dismissal or non-renewal, and it has placed the burden of proof on workers claiming discrimination, rather than on employers as Convention No. 183 calls for. In case 115/08, the panel considered the issue of termination during pregnancy. The Council first considered the labour law's Article 182, but noted: "it means that the Law prohibits the employer from terminating women workers during their maternity leave or when they take leave to deliver their babies but it does not prevent or prohibit the employer from using this as an excuse for not hiring or for terminating an employment contract during the pregnancy period". The Council found that the law does not deal explicitly with discrimination against pregnant workers and does not prohibit the employer from discontinuing, or failing to renew the employment of women who are pregnant after their fixed-duration contract expires.

The Council then turned to Article 11(2) of CEDAW which prohibits the dismissal of women due to discrimination on the grounds of pregnancy". However, the Council pointed out that "generally the Arbitration Council determined that the worker party has the burden of proof to allege that the employer has discriminated against pregnant workers to the Arbitration Council to support the accusation". Thus, the Council concluded that the union lacked clear evidence that the employer discriminated in award 115/08.

In AC award 92/07, the Arbitration Council also found that the workers could not provide sufficient proof to support a claim of discrimination. It concluded that although the workers said that the employer terminated the labour contracts of most pregnant workers without giving them maternity leave and without paying their maternity leave, it did not provide evidence to support this claim".

Although the law and the decisions of the Arbitration Council do not provide strong bases for defending against discriminatory practices in hiring and retaining pregnant workers, workers do perceive discrimination on the ground of pregnancy. In one focus group in the field research, workers reported that their factory does not hire workers if they are visibly pregnant:

"If they notice they do not hire".

Some workers also worry that employers will discriminate against them if they are married and could become pregnant. One worker explained:

"the company told us when they hired us that if we lie about being single, they will not pay for our maternity leave. But I was afraid that they will not hire me if they know I have a husband and maybe have a baby later, so I lied and said I was single. Now I do not know if I can have maternity leave".

¹⁰ ILO: *Equality and non-discrimination at work in East and South-East Asia: Guide* (Bangkok, 2011).

Workers also perceive pregnancy as a liability when it comes to contract renewals. A union worker described the treatment pregnant workers receive from their line supervisors:

“If a woman asks for leave from her line supervisor because she has morning sickness, the supervisors complain that they can’t work well and have problems. They don’t fire workers but they pressure them to quit. They say, ‘you have to stop working; if you can’t work you should stop.’ So the workers decide to stop”.

However, at the same factory a union leader said:

“the factory follows the law on maternity leave. In my group, a woman – when her contract finished in December – was seven months pregnant but the factory renewed her contract and paid for her maternity leave”.

Although workers perceive that they are more likely to be let go when they are pregnant, it is very difficult to prove that pregnancy was the cause. As one union leader explained during the field research:

“Companies should continue the contract for pregnant workers. Sometimes contracts continue, sometimes they don’t. When a contract gets terminated we do not know if it is because they are not working well or because they are pregnant”.

In case 115/08, the Arbitration Council commented that: “the union does not provide any clear evidence to support its claim to prove that the employer discriminated against pregnant women by not renewing fixed duration contracts when they expired; or how many new workers were recruited by the employer to replace them when the company still has work for all those pregnant workers to perform”. Because turnover is high, it would be nearly impossible for a worker or union to directly connect the hiring of one worker with the firing of another, let alone to attribute it to pregnancy.

Process for taking maternity leave

The law does not stipulate the process for workers to apply for maternity leave, nor is there any arbitration around this issue. As can be seen below factory practices differ to some extent.

Factory policies on taking maternity leave

| Factory | Medical check | Process details |
|---------|---------------|---|
| 1. | Yes. | The worker gets a pregnancy certificate from an outside clinic with a recommended maternity leave date; the factory doctor approves certificate; the worker fills out the application and brings the application and certificate to the line supervisor who gives the documents to a manager to sign and then brings them to the compliance officer for review; finally the documents are submitted to the accounting section which processes the worker’s leave. |
| 2. | No. | The worker has to fill out an application and have it signed by the line supervisor, and then submit it to the administrative department. |

| | | |
|----|------|---|
| 3. | No. | The Worker goes to the administrative department to fill out the maternity leave form and then brings the form to the line supervisor. Workers usually take leave a week or two before delivery. |
| 4. | Yes. | The worker brings in an external doctor's certificate; fills out the application form for the leave and brings the form and the certificate to the line supervisor for approval; the line supervisor submits the form to the production manager for approval and then submits the approved form to the administrative department. |
| 5. | Yes. | The worker gets an external pregnancy certificate; fills out an application form for the leave; the worker then receives a signature from the line supervisor, who sends the application to the human resources department; the human resource department then passes the form to the accounting department which processes the application. |
| 6. | Yes. | The worker must inform the factory at least a week ahead of time. The worker gets a pregnancy certificate from an outside clinic and brings it to the factory nurse for certification; the worker then brings the certificate and the filled out application form to the administrative department; the worker then gets approval from both the Chinese and Khmer line supervisors; finally, the worker brings the documents back to the administrative department for processing. |
| 7. | No. | The worker fills out a form which she gives to the line supervisor for approval; the line supervisor passes the application form on to the human resources manager. There is no set time for the leave; the worker can take her leave whenever she wants. |
| 8. | No. | For every two assembly work lines there is a secretary who is responsible for the workers on these lines; the worker has to inform the secretary of her pregnancy; the secretary helps the worker fill out an application form; the worker then brings the form to the Khmer line supervisor and the Chinese line supervisor for approval; the worker then brings the form to the factory manager for approval; finally the worker submits the approved form to the human resources department. |

Workers' experiences

During the field research one labour official expressed concern that some workers do not submit a request to take maternity leave, but simply leave to deliver: Layouter indent as the other quotes

"If they're absent for no reason it's like they quit – after delivering they can't make contact so it looks like they quit – when they don't call after six days they're crossed out from the roster so when they want to continue work they lose their seniority bonus".

However, at the factories visited in this study, the union and the administrative office had procedures in place to deal with this situation. If a worker went into labour at the factory before she completed her paperwork, most factories allowed her to fill out her paperwork after delivery. At some factories, union workers would help organize a car for her to be taken to the hospital and would communicate to management about her leave. In interviews, several workers said that they had gone into labour before filling out their maternity leave requests and that this had not created any serious problems for them.

In every factory, the workers and union leaders were asked if workers encountered any challenges during the process of taking maternity leave. As a rule, both workers and union leaders found the process of applying for leave to be smooth. When workers could not fill out the application form for themselves, either the administrative staff or the line supervisor helped them to fill it out. In those factories where the workers had to get an external pregnancy certificate, workers indicated that the external clinic was near the factory and that the process was not expensive.

One worker noted that her factory had improved the process of taking leave over time. When she was taking leave for her first child, she had to specify the exact dates of her leave (a process that was difficult for her because she could not predict exactly how she would feel in the last months of her pregnancy). For her current maternity leave, she only had to indicate the number of months that she intended to take for her leave.

Leave for men

Factories commonly allow men to take three to seven days of special leave to take care of their wives upon giving birth. This time is deducted from their annual leave. Factories are not legally obliged to give men special leave with pay, however. The labour law states:

“... employees may ask for up to seven days special leave for personal reasons that affect their immediate family. If the worker has not yet taken his annual leave, the employer can deduct the special leave from the worker’s annual leave. If the worker has taken all his annual leave, the employer cannot deduct the special leave from the worker’s annual leave for the next year”.

In one factory, men could apply to take up to seven days of special leave without any wage or annual leave deduction, according to union leaders and workers. However, workers at the same factory complained that it was difficult to take the full seven days of leave; the line supervisor usually would allow only three days of special leave. In another factory, men could take leave for one week to take care of their wives. Their wages were deducted, but their attendance bonus and their annual leave were not. At this factory, the union leaders suggested that it would be better if men could use their annual leave to take care of their wives without losing their wages.

Although men technically have the right to use their special leave to take care of their wives, they sometimes encounter difficulties. The husband of a worker who was interviewed in her home during her maternity leave explained that he had quit his job at a nearby paper factory because, although he was technically permitted to take leave, his line supervisor would not approve his application. In order to help take care of his wife, he left his job and would return to it or look for a new one when his wife was stronger.

Cultural habits can be a barrier to men making use of their leave to take care of their wives and new babies. In several factories, when managers were asked if men were entitled to take any kind of leave or receive any benefits when their wives gave birth, managers replied that these were Western ideas and that Cambodian men did not expect to take care of their babies.

Under Article 167 of the labour law and as confirmed in Arbitration Council award 27/04,¹¹ employers must allow employees to take their annual leave when requested after one year of

11 Better Factories Cambodia: *Guide to Cambodian Labour Law for the garment industry* (Phnom Penh, 2005), p.20.

service, unless there are urgent reasons an employee cannot take leave at that time. Thus, when line supervisors refuse to allow men to take leave to take care of their wives without urgent reasons for refusing, they open up their factories to arbitration claims.

Conclusions and recommendations

The interviews suggest that the application process for maternity leave is relatively seamless, but that pregnancy, including antenatal care and morning sickness, can be challenging for workers. Women may also encounter issues regarding hiring and retention. Men are entitled to a few days to help care for their wives and babies, but not to paid leave.

Neither applying for maternity leave nor issues associated with working while pregnant is meaningfully regulated by the law. Although the former does not appear to be a problem, it would be prudent to focus on improving the situation of pregnant workers.

Greater clarity is needed regarding workers' right to paid time off for antenatal checkups. Antenatal care can reduce pregnancy- and maternity-related complications. Entitlement to antenatal checkups would both improve the health of mothers and their babies and would benefit factories by speeding the postnatal return to work of healthier mothers. The Government should issue a directive requiring companies to provide workers with two paid hours off each month for antenatal care.

A clear prohibition of pregnancy discrimination and the shift of the burden of proof to employers, in accordance with the ILO Convention No. 183 would better protect workers. Employers who terminate a pregnant worker should have to demonstrate that the worker's pregnancy was not a factor in the decision by documenting specific complaints against the worker and showing that the worker had been warned that she must address these complaints. Such documentation could support a factory's claim that a decision was non-discriminatory.

Chapter 4. Duration of maternity leave

Chapter summary:

- 90 days of maternity leave is defined as 90 calendar days, rather than 90 work days.
- Most factories allow workers to extend maternity leave for one, two or three months without pay.
- Some factories do not publicize the possibility of extending leave or make it too difficult to extend leave, causing some workers to resign.

This chapter reviews arbitration around the meaning of 90 days of maternity leave and discusses the extension of maternity leave, including the relationship between maternity leave and other types of leave. It addresses problems that workers frequently encounter regarding extending a leave: not knowing that they can extend their maternity leave, cumbersome procedures to extend a leave, and line supervisors' discretion over whether to allow an extension.

Duration of maternity leave

According to Article 182 of the labour law, women are entitled to 90 days of maternity leave. The main conflict around the duration of maternity leave has centered on whether 90 days refers to 90 working days (excluding Sundays and holidays) or 90 calendar days. The Arbitration Council has ruled that 90 days of maternity leave refers to 90 calendar days, including Sundays and holidays (see AC awards 25/08, 23/08, 08/07). This is somewhat shorter than the 14 weeks of leave set out by Convention No. 183.

Case 152/08 also dealt with this issue: The workers and the union at Wilson factory argued that 90 days includes only working days. The factory disagreed, claiming that 90 days simply meant three months which would include Sundays and holidays. The Arbitration Council sided with the factory, ruling:

“... that the purpose of the labour law in providing 90 days of maternity leave is ... to provide sufficient time for the women to take care of both their own health and that of the newborn baby and the duration of 90 days, inclusive of holidays and Sundays is sufficiently appropriate” .

Factory policies

Most factories did not have policies relating to the duration of maternity leave. The one that did had an unwritten policy (confirmed by workers and union heads) of giving all workers who took maternity leave an extra month paid leave at a fixed sum of US\$25.

Extending maternity leave

Although the purpose of the maternity leave law is to provide sufficient time for women to recover from childbirth and for mothers to care for their newborns, many women find that

three months is not enough. Some have to begin their leave a month before childbirth because getting to the factory becomes too difficult in the late stage of pregnancy, leaving them with only two months of leave after the birth of the child. Others find that they are still too weak to work after three months or that the baby is too small to be left with a caretaker. According to Article 71 of the labour law, the labour contract shall be suspended due to the leave granted to a female worker during pregnancy and delivery, as well as for any postnatal illness. There is no arbitration on this subject.

Although each of the factories visited allowed workers to extend their maternity leave without pay, the procedures for extension varied across factories. The chart below details the different policies for extending leave in the factories visited.

Factory policies for maternity leave extension

| Factory | Extension | Process | Remarks |
|---------|----------------------------------|--|--|
| 1. | Up to five months. | Worker comes in for each additional month to extend. | N/a. |
| 2. | Up to five months. | Worker herself comes in for each additional month to extend. | Family members cannot come in and ask for an extension for the worker. |
| 3. | Up to four months. | Worker can ask for four months automatically. | The fourth month of leave is paid (US\$25 when the worker returns from leave). |
| 4. | Up to four months. | Worker can come in to ask for one-month extension. | N/a. |
| 5. | Up to five months. | Worker has to come in, call, or send someone to extend the leave. | It is possible to extend the leave to six months if the line supervisor agrees. |
| 6. | Up to five months, not over six. | Worker can come by herself or send her husband if he works at the factory. | Most interviewed workers knew that they could extend by one month but did not know they could extend by more; most took only three months. |
| 7. | Up to five months | Worker has to come in and ask for an extension. | Workers said that getting an extension depends on the situation of the worker. She can extend as long as necessary if she feels very weak and there is evidence of need. |
| 8. | Up to four months | Worker has to come in and ask for an extension. | Manager said that there was only a one-month extension because most workers extend their leave because they have nobody to take care of the baby, not because they are weak. |

In all the factories visited, maternity leave was treated separately from other types of leave, and workers could extend their maternity leave with (usually) unpaid leave by permission of the employer. Workers could choose to use other types of leave if they wanted to extend their maternity leave longer than the extension permitted by the factory. For example, one factory allowed workers to extend their maternity leave for one month without pay, but if after that a worker still felt too weak to work, she would have to be examined by a doctor and then take sick leave.

Problems with extending leave

Knowledge gaps

Workers lack knowledge about factory policies on extending leave. In several of the factories, although the management and the union heads knew that workers could extend their maternity leave by two months, workers thought that they were allowed to extend for only up to one month. In a factory in which both management and union workers confirmed that workers were permitted to call for extending their maternity leave. However, several workers said that they wished that they could take five months automatically or could call to extend their maternity leave, so they did not know about the factory's policy.

One worker on maternity leave from another factory who was interviewed in her home had taken six months leave with her first child. She stated that it was possible, but difficult. Another worker from this factory who planned to ask for an additional two months (totaling five months of leave) did not know that a sixth month was possible.

Supervisor discretion

A second challenge that workers encounter is line supervisors' broad discretion to approve or deny extension applications. Discretion is problematic because access to benefits to which factory policy entitles them becomes dependent on the preferences of individual line supervisors. For example, when the above-mentioned worker was informed that she could ask for another month of maternity leave, she doubted it would be possible for her:

"Maybe her supervisor is flexible; ... my supervisor is not flexible so I do not think it is possible".

A third challenge workers encounter in exchanging their maternity leave is the requirement that they have to come to the factory in person to request an extension. As noted in the chart above, five of the eight factories visited required that workers come in person to request an extension of one month. If they needed to extend their maternity leave for another month, they had to come back to request another extension. This can be difficult for workers, especially if they live far from the factory or if the rainy season has washed-out the roads.

In one factory, workers were automatically permitted to extend for one month with pay, without a formal request for the extension. In another factory, workers could call in or send a family member to extend their leave for them. In a third factory, although the management and union heads stated that workers could call to extend their leave, the workers did not know about this possibility. In a fourth factory union workers and their leaders explained that these rules for extending maternity leave often meant that workers simply did not come back to work:

"When a worker wants to extend her maternity leave she cannot call or send family – she has to come in. So sometime a worker is too weak to come, or she cannot travel well during the rainy season by motorbike so she just does not come in to work. Then after six days of absence her name is taken off the company work list. When she comes back after maternity leave she can work again but she is a new worker – she has lost all her benefits".

For some workers it was no trouble for them to come in. In one factory a worker knew that she could call, but she chose to come in to extend her maternity leave so she could chat with her friends at the factory.

In almost every factory, when workers were asked if they had any recommendations for change they asked for longer maternity leave:

"It would be good if, instead of four months, we could extend to five months even if it is not paid".

"Six months maternity leave would be good for workers".

"Six months would be good so that the woman can breastfeed the baby".

On the other hand, workers in one factory did not want to extend their maternity leave because of financial difficulties:

"If we extend maternity leave to six months, this is not good because we have no salary".

Conclusions and recommendations

All women employed in enterprises that are within the scope of the labour law are entitled to 90 days of maternity leave, interpreted as 90 calendar days rather than 90 working days.

The factories studied consistently gave women 90 calendar days of maternity leave with an option to extend the leave from one to three months without pay. None of the factories required workers to use other types of leave in order to extend their maternity leave. However, workers often did not know that they could extend their leave or were unable to arrange for an extension if their factories required them to apply for the extension in person. And some factories left an extension to the discretion of the worker's line supervisor.

In order for these factory policies to be truly available to workers, factories must better communicate their policies, limit supervisors' discretion, and allow workers to call in to request an extension. Implementing these changes would not be difficult. Factories could require the administrative staff who accept workers' maternity leave applications to inform them as to how long they can extend their maternity leave. They should also inform line supervisors of the limits of their discretion and implement a complaint mechanism through which workers could inform management of perceived abuses of line supervisors' discretion.

Chapter 5. Calculating maternity benefits

Chapter summary:

- Women are entitled to three months of maternity leave benefits at 50 per cent of their average monthly wage (calculated over the course of 12 months), as well as their full living allowance:
 - **Average monthly wage** = (basic wage + seniority bonus + attendance bonus + any other perquisites over the last 12 months) divided by 12.
- Paying half of the minimum wage only is unlawful.
- Annual leave is not included as part of the wage calculation.
- Workers are aware that they are entitled to maternity leave benefits but are less informed about how these benefits should be calculated.

The Cambodian labour law guarantees a maternity leave benefit of 50 per cent of monthly wages for three months to all women who have worked at a factory for a minimum of one uninterrupted year. This is below the standards set out by Convention No. 183 which calls for cash benefits at a level which ensures that the woman can maintain herself and her child in proper conditions of health and at a suitable standard of living and which, if based on previous earnings, should not be less than two-thirds of previous earnings (Articles 6(2) and 6(3)).

Within Cambodia, there has been much disagreement between parties about the practical meaning of the law for calculating maternity leave benefits. Typically, employers have wanted to pay workers 50 per cent of their basic wage, without including benefits such as the attendance bonus, overtime pay or the seniority bonus. Workers and unions, on the other hand, have argued that these bonuses are encompassed by the term “wage” and should therefore be included in the calculation of maternity leave benefits. There has also been some confusion as to the period of time that should be used to calculate the average monthly wage. Some employers have calculated maternity benefits on the basis of the worker’s earnings in the last month before her leave. Workers have pointed out that this method is problematic in that it bases the woman’s payment on her work in her least productive month – the last month of her pregnancy. Workers have consistently lobbied for the monthly average to be based on wages over the last twelve months of work.

The Arbitration Council has ruled that paying 50 per cent of the minimum (rather than the actual) wage is unlawful. (see AC awards 75/08, 18/06). The worker’s average wages are to be calculated over the last 12 months of a woman’s work at the factory, and the term ‘wage’ includes the basic wage, the seniority bonus, the attendance bonus, and any other perquisites. The Council also decided that the worker’s living allowance is not included in the term wage and as a result, the worker is entitled to the full living allowance over her 90 days of leave, rather than 50 per cent. Finally, the Council has held that annual leave is not included in the maternity leave payment, and workers are to continue to accumulate 1.5 days of annual leave per month during their three months of maternity leave.

Maternity benefit calculations

Wage

Two articles in the labour law are relevant to the calculation of maternity leave payments. Article 183 states that: “during the maternity leave...women are entitled to half of their wage, including their perquisites, paid by the employer. Women fully reserve their benefits in kind, if any”. Article 103 clarifies the meaning of the term wage:

“Wage includes, in particular: actual wage or remuneration; overtime payments; commissions; bonuses and indemnities; profit sharing; gratuities; the value of benefits in kind; family allowance in excess of the legally prescribed amount; holiday pay or compensatory holiday pay; amount of money paid by the employer to the workers during disability and maternity leave”.

The wage does not include: health care; legal family allowance; travel expenses; benefits granted exclusively to help the worker do his or her job”.

The Arbitration Council has ruled that the term wage, for the purposes of maternity leave calculations, includes the seniority bonus, overtime, and attendance bonus (as well as any other perquisites specific to the factory). This section will review some of these decisions in more detail, in order to demonstrate the Council’s approach to the question of wage calculation.

Seniority bonus

The seniority bonus is to be included as part of the wage calculation at the rate of 50 per cent. Award 49/04 ruled on the issue of whether or not the attendance bonus and the seniority bonus are to be included in the payment of maternity leave. The workers in that case demanded 50 per cent of their wages, 100 per cent of the seniority bonus and 100 per cent of the US\$5 attendance bonus. The Council decided that the attendance bonus and the seniority bonus both counted as benefits under the labour law, and thus ought to be included in the worker’s wages. As such, since the workers were only entitled to 50 per cent of the wage, the Council refused to award 100 per cent of the seniority bonus and the attendance bonus.

The Council has also held that full payment of the seniority bonus cannot replace other parts of the wage in the maternity leave calculation. In case 24/06, the factory had wanted to pay employees on maternity leave 50 per cent of the base (rather than actual) wage and 100 per cent of the seniority bonus. The Arbitration Council rejected this alternative and held that the factory must pay 50 per cent of the 12 month average wage.

Overtime

According to Article 103 of the labour law, overtime is included in the term wage. The Arbitration Council affirmed this in award 06/08 when it stated, “Article 103 of the labour law clearly states that overtime payment is [part of the] wage. Thus, female workers who take three months maternity leave are entitled to half [of their] wages and overtime payments should be included in the calculation”.

Thus, different workers at the same factory will receive different sums of money for their maternity leave payment, based on the amount of overtime that they worked over the course of the last year.

Attendance bonus

The attendance bonus is also included in the term wage although workers and employers have different views on how it should be calculated. Employers have pointed out that it would be unfair for a worker who is absent from work every month for antenatal care to receive the attendance bonus during her maternity leave. At the same time, workers who typically receive the attendance bonus argued that it is unfair to lose a part of their usual wage at a time when their expenses are unusually high.

The Arbitration Council found a balance between these competing interests by ruling that any attendance bonuses the workers received over the last 12 months of their time at the company are to be included in the calculation of the average wage. If the worker did not receive attendance bonus payments throughout the year, she would not receive them during her maternity leave. On the other hand, if the worker received the full attendance bonus each month, that would be reflected in her payment. In case AC 66/06, for example, the Council found that "workers are not automatically entitled to the US\$5 bonus but their average wage would be calculated based on all of their wages over the past 12 months (including the attendance bonus if they received it)".

Annual leave

According to the law, workers accrue 1.5 days of paid annual leave per month. That leave may only be calculated as a monetary payment at the end of a contract. Workers going on maternity leave are not entitled to receive the monetary equivalent of 4.5 days of leave in their maternity leave payment.

In case 96/06, the workers requested that the factory calculate the value of annual leave in the maternity leave payment. The Arbitration Council reasoned that annual leave can only be calculated as a monetary payment prior to contract termination or expiration. "Maternity leave is not prior to a contract termination or expiration, but a contract suspension (Article 71). Therefore, during maternity leave, annual leave cannot be calculated as money, even if there is an agreement or collective bargaining agreement; the agreement or collective bargaining agreement shall be null and void". Instead, workers continue to accrue annual leave during their maternity leave. According to case 62/08, the accrual is neither suspended during the 90 days, nor paid out to the worker, but workers accrue 4.5 days of paid leave during their leave.

Living allowance

In several cases, the Arbitration Council has held that workers are entitled to their full living allowance during their maternity leave. The living allowance is not to be included in the general wage calculation for the purposes of maternity leave.

In case 139/08, the factory argued that since workers were entitled to half-pay, they were only entitled to half of their living allowance. The Arbitration Council referred to Point 1 of Notification 032/08 KB/SJN, dated 17 April 2008, which states: "An additional living allowance is provided to support workers, apprentices, casual or floating workers, probationary workers and full-right workers who are working in the garment and shoe making factory, enterprise, or establishment in the amount of US\$6 per month. This allowance is not included as a part of the net wage (basic wage)". The Arbitration Council also referred to its own decision in AC award 119/08 (issue 3) and sided with the interpretation of the workers, ruling that the allowance should not be included in the calculation of the women's wage and that workers were entitled to the full US\$6 per month. The company was ordered to reimburse all women who had taken maternity leave since April 2008.

Factory policies

Although the arbitration decisions around the content of maternity leave payments are consistent and clear, the factories varied in their payment calculations and some were not in accordance with Arbitration Council rulings. The payment policies at the different factories were as follows:

| Factory | Payment policy |
|---------|--|
| 1. | Payment for three months based on minimum wage (50 per cent minimum wage and 50 per cent seniority bonus). |
| 2. | 50 per cent based on the average of the last three months, including production bonuses; US\$25 for the fourth month. |
| 3. | 50 per cent of minimum wage and full seniority and attendance bonus (US\$4, US\$7 respectively). |
| 4. | 50 per cent of total twelve-month average. |
| 5. | 50 per cent of the wage (basic wage, attendance bonus, living allowance and seniority bonus). |
| 6. | 50 per cent of the whole year average (basic wage, US\$5 attendance bonus and US\$5 meal incentive and US\$5 housing allowance for workers who have full attendance, seniority bonus). |
| 7. | 50 per cent of the basic wage, seniority bonus, attendance bonus. |
| 8. | 50 per cent of the six month average for workers who have worked for six months or more (12 month average for workers who have worked for a year or more), and US\$6 living allowance. Workers who have worked for less than six months can get a one-time payment that includes 70 per cent of one month wage and US\$6 living allowance. |

Workers' understanding of maternity leave payment

Most women interviewed were aware of their right to maternity leave benefits. Most factory managers are also confident that workers are aware of their rights to maternity leave and their right to be paid. Workers are, however, less informed about how the benefit is or should be calculated, and knew only the amount that they received, not what it was based on:

"Three months 50 per cent pay – monthly average with all bonuses".

"Do not know what pay is based on. Maybe sometimes based on minimum wage and sometimes not".

"We don't know. We just got a sum of money but we do not know how it is calculated".

"US\$150 for three months, don't know what the calculations are – just know that we received US\$150".

"Do not know what the pay is based on but it is different every month. One month I get US\$53 dollars but the other months different".

"50 per cent of the one year average – it includes the attendance bonus, seniority and living allowance".

"50 per cent of the wage but not sure what the calculation is based on".

"50 per cent of our wage and also 50 per cent of the attendance bonus and seniority (though not sure if you get half of that or in full)".

In the company providing US\$25 for the fourth month, workers were not aware that they were entitled to this bonus even if they had worked for less than one year. This was because some workers had not returned from their maternity leave and therefore, had not received that payment.

Three workers were interviewed in their home villages:

Worker 1:

How much did you get paid for your maternity leave?

"I got US\$170 for three months. It is 50 per cent of the 12 month average".

Do you know what's included?

"Not sure because some women get US\$200 so there must be different benefits".

You did not get a pay slip from the factory?

"I got one but my daughter played with it and threw it out".

Worker 2:

How much did you get paid for maternity leave?

"Nothing, because I worked at the factory for less than one year."

Worker 3:

How much did you get paid during maternity leave?

"US\$100".

Do you know what that includes?

"No".

Did the factory give you a pay slip that explains your pay?

"Maybe they did but I don't have it anymore".

Conclusions and recommendations

While the Arbitration Council has clarified how maternity leave benefits are to be calculated, in practice, factories continue to vary how they calculate maternity leave benefits. In part, this problem is exacerbated because women may not be informed about what exactly ought to be included in their benefits calculations and do not complain about incorrect benefits.

Should workers in any of these factories bring the problem before the Arbitration Council, the factory would most probably lose. There is not a single decision in which the Arbitration Council has strayed from its position that the women are entitled to 50 per cent of their average monthly wage, as well as their full living allowance, and that average monthly wage should be calculated by taking the 12 month average of the worker's basic wage, overtime, seniority bonus, attendance bonus, and any other perquisites, dividing that sum by half, and then multiplying by three months. Better Factories Cambodia should work together with factories and workers to ensure that all are aware of legal requirements for calculating maternity leave benefits and payments are calculated in accordance with the law.

Chapter 6. The timing of maternity benefits payments

Chapter summary:

- Factories are obliged to pay workers their maternity leave benefits in a lump sum on the day before they go on maternity leave.
- It is unlawful for factories to make maternity leave payments monthly, or to pay workers a lump sum when they return from maternity leave.
- Because it is stressful for workers to cope with childbirth and infant care without income, it is important to improve factories' awareness on the need to comply with the law.

Neither Cambodian labour law nor current international labour standards (Convention No. 183 and Recommendation No. 191) on maternity protection provide guidance on the timing of maternity leave payments. In Cambodia, factory workers and employers have been in consistent disagreement over the question of timing in paying out maternity leave benefits. Workers typically wish to receive a lump sum payment before they go on leave, whereas employers prefer to make monthly payments, or give workers a lump sum at the end of their leave. In the early years of the Arbitration Council's work, there were many cases around the question of when payments are to be made. Although the Council has ruled in every case since its establishment that employers must make lump sum payments before women go on leave, factories continue to make monthly payments, or pay workers at the end of their leave. The Council still receives cases on this issue today.

Arbitration Council decisions

The law does not explicitly state when employers have to pay maternity leave benefits to their workers. However, the Arbitration Council has consistently ruled that factories must make a lump sum payment before the worker takes her maternity leave (see AC awards 50/11, 58/11, 56/11 AC 12/11 AC 115/10, 124/09, AC 70/07, 60/07 53/07, 37/07, 97/06, 57/06).

The Council has been guided by Article 155 of the labour law, stating that: "According to Article 115, the ... payment of wages shall not be made on a day that is a day-off for workers. Thus, if it falls on a day-off, including during maternity leave, the employer should make the payment a day earlier". (award 130/07). The Council held that it is not acceptable for the employer to pay out 50 per cent of two months before the worker leaves and 50 per cent of the last month when she returns to work. The company has to pay out all three months before the worker leaves.

The Arbitration Council's proceedings highlight the key concerns of workers and employers respectively. For workers, two main concerns emerged. Firstly, the costs associated with maternity leave tend to be concentrated at the beginning of the leave. One of the major costs

for women is the cost of giving birth in a clinic. Those who cannot afford a clinic still often pay a midwife to come to their homes. In case 57/08, the workers focused on their need to cover medical fees as the basis for their request that the company give a lump-sum payment before maternity leave.

Secondly, workers sometimes do not receive their maternity leave payments because their friends or relatives who go to collect the payment end up keeping the money and spending it instead. Workers who have just given birth are often too weak to make their way to the factory to pick up their pay. This is especially a problem if a worker lives far away from her factory (as many do) and her leave dates happen to fall in the rainy season when the roads are particularly bad. As a result, the companies allow the payment to be picked up by relatives or friends instead of the worker, and sometimes the money does not reach the worker. For example, in case AC 114/08, workers sought a ruling that the factory pay out a lump sum of the maternity leave benefits before the worker went on leave. At the time, the company paid maternity leave benefits monthly. If the worker could not come in person to receive the money, the company allowed their colleagues or relatives to collect it on their behalf, if they had an authorization letter and two witnesses. The workers pointed out that sometimes the colleagues or relatives did not give the money to them, but spent it instead.

Employers have expressed two major reasons for their reluctance to make lump sum maternity leave payments before workers go on leave. One reason is accounting convenience. During the arbitration process, a number of factories indicated that their accounting practices make it inconvenient for them to make lump-sum payments to workers, and that they instead prefer to make monthly payments to workers.

The second concern is that workers may not return to work after receiving their lump sum payments. In case AC 20/06, the company recognized that, "the workers do encounter difficulties, but the company cannot pay in advance as requested by the workers because when the company has done this in the past, on the day the female workers are due to return to work, the workers have resigned [instead of returning to work] which means that the company loses experienced or skilled workers and it is difficult to recruit new workers to replace them".

Similar concerns were expressed by the factory in case 77/08: "Members of KYTU in Xing Tai Garment Company demand that the Company pay 50 per cent of wages and perquisites for 90 days to women workers who take maternity leave before the leave starts because it is difficult for them to travel back and forth and transportation fare is costly. The Company party states that it cannot pay as requested because it is afraid that they will not come back to work".

When resolving these cases, the Council did not deny the validity of the employers' concerns, but noted that workers demand their maternity leave payment in advance because they have to spend more money than normal as they have to pay for medical fees and treatment, and while workers do sometimes resign at the end of their maternity leave, this is not illegal (see awards 55/07 and 57/08). The law entitles a woman who has worked at a company for a year to 90 days of maternity leave with benefits, regardless of whether she returns or resigns at the end of her leave.

Factory policies

Although the Arbitration Council has been clear and consistent about the fact that companies must make a lump sum payment to workers before they go on leave, some of the factories studied paid workers monthly or after they returned. The chart below summarizes the policies of these factories.

| Factory | Lump sum payment before leave | Monthly payment | Lump sum payment after leave | Alternative arrangements |
|---------|-------------------------------|-----------------|------------------------------|--|
| 1. | Yes. | N/a. | No. | Someone else can pick up the money. |
| 2. | Yes. | N/a. | No. | Someone else can pick up the money. |
| 3. | Yes. | N/a. | No. | Someone else can pick up the money. |
| 4. | Yes. | N/a. | No. | None. |
| 5. | Yes. | N/a. | No. | Payment for fourth month after return. |
| 6. | No. | No. | Yes. | N/a. |
| 7. | No. | Yes. | No. | Family member can pick up the payment |
| 8. | Yes. | Yes. | Yes. | No. |

Out of the eight factories visited, six gave workers a lump sum payment before they went on leave. Three factories allowed the worker to authorize someone else to pick up their money, as long as the worker gave birth before filling out her application. A fourth factory allowed only the worker to pick up the payment after previous problems in which a husband had collected the money without permission from the wife and spent it.

One factory gave workers a lump sum payment for three months before they went on leave, and US\$25 for the fourth month when they returned. A manager explained that the purpose of the policy was to make sure the workers stay home for an extra month and become stronger. If the workers received all of their money in a lump sum at the beginning of the leave many would not stay home for the fourth month. They would simply come back after three months and work for their full salary.

One factory gave their workers a lump sum when the worker returned from leave. When questioned, the administrative staff insisted that many factories do this and it is within the law. One factory paid workers monthly, at the end of each month and allowed a family member or a colleague to pick it up if authorized by the worker.

In the final factory, workers could choose when to receive their money. They could either get it before or after their leave in a lump sum, or they could receive it monthly. Most women at this factory chose to collect it all before they went on leave.

Impacts on workers

As noted above, two out of the eight factories did not comply with the law to pay maternity leave benefits before the start of the leave. In those two factories, none of workers reported

any difficulties. In the factory that made a lump sum payment at the end of maternity leave, workers said that they had been saving with their husbands in preparation for delivery, and had managed to put away a substantial amount of money (one worker had saved US\$500). However, this cannot be treated as representative of any pattern. Workers may not have been completely open during the focus group discussion and may have felt uncomfortable criticizing a company policy in front of co-workers. The pattern documented throughout arbitration cases around maternity leave payments is that workers consistently express their difficulties managing for several months without an income.

Conclusions and recommendations

The fact that arbitration still occurs about the timing of the maternity leave payment indicates both that some factories are not paying maternity leave benefits up front as required by law and that this issue is important for workers. The Arbitration Council has consistently ruled that employers are legally obliged to give workers a lump sum payment at the beginning of their maternity leave.

Two of the factories in the field research were not complying with the law and made the payment either monthly or upon the worker's return. Given the challenges for workers in coping with several months of leave without an income or having to find ways to collect payments while recovering from birth and caring for an infant, this may be an important area for improvement.

Chapter 7. Coming back to work

Chapter summary:

- Returning to work:
 - o The law does not specify any procedure for women returning to work.
 - o The factories visited had simple processes in which workers simply had to return after leave and inform their line supervisors that they are back.
 - o The workers at the factories in the field research experienced no changes in their contracts upon returning to work.
 - o The most common reason for not returning to work was lack of options to care for their child while they were working.
- Entitlements upon returning to work:
 - o Women are expected to perform only light work for the first two months after maternity leave.
 - o Factories that employ more than 100 women are obliged to create nursing rooms and daycare centres. However, compliance is low and workers do not use these facilities because of the difficulty of transporting their children to the factories.
 - o Alternative solutions to promoting continued breastfeeding and addressing workers' childcare needs are suggested, such as information, education and communication campaigns and subsidies to promote breastmilk expression and storage and building partnerships for quality childcare in residential areas.

Cambodian labour law and current international labour standards (Convention No. 183 and Recommendation No. 191) are silent on procedures or requirements for returning to work after maternity leave, but they do provide guidance on workplace provisions protecting the health and employment of nursing women upon return to work. This chapter looks at women's experiences in returning to work and their access to lighter work, breastfeeding breaks and to nursing rooms and daycares upon return in law and in practice.

Process for returning to work

During the interviews in the factories, most workers and managers described a process for coming back to work that was simple and flexible. Typically, a worker had to return to the factory after the end of her maternity leave and inform either her line supervisor or the administrative department that she was back. The paperwork would be processed for her. Below is a chart detailing the return procedures for the eight factories.

| Factory | Process for returning to work |
|---------|--|
| 1. | The worker is required to bring in the last completed maternity leave form (received prior to taking leave) upon returning to work; some do not bring in the paper – they are permitted to come in and work, must inform the line supervisor and bring the paper later. |
| 2. | The worker is required to present her child's birth certificate to the factory doctor; the factory doctor certifies the authenticity of the birth certificate, then the worker brings the certificate to the compliance officer; the compliance officer passes the certificate to the human resources department; the human resources department processes the worker's return and issues her a card for breastfeeding breaks. |
| 3. | No information on process for return, only that women returning to work from maternity leave are required to bring their delivery book in order to receive permission for the breastfeeding breaks. |
| 4. | Women must come back on the specified date and inform their line supervisors as well as the administrative office. |
| 5. | Workers return to the administrative department and register; they are required to bring in the birth certificate in order to receive the child allowance and to process the one hour breastfeeding break per day. |
| 6. | The worker must inform her line supervisor, who arranges the paperwork with the administrative office, so that she can receive her child allowance and her breastfeeding breaks. |
| 7. | <p>Management interview: The worker comes to the human resources department and informs them that she is ready to work.</p> <p>Worker Interview: The worker must inform the line supervisor, who will fill out the required paperwork and give it to the administrative department. The administrative department then gives the worker her breastfeeding card.</p> |
| 8. | There is one secretary per every two lines who is responsible for the workers of those lines. The worker has to inform the secretary that she is ready to work, the secretary fills out all the paperwork and submits it to the human resources department. The human resources department prepares a card entitling the worker to her one hour breastfeeding breaks. |

In each factory, workers and union leaders were asked if they encountered any challenges during the process of returning to work. All workers and union leaders replied that the process was smooth and that the workers did not experience any trouble returning. One worker who was interviewed in her home was asked if she thought she would have any difficulties coming back. She replied:

"No, I just have to tell the admin officials. My last child was at this factory as well and I had no problems coming back".

In each factory visited, workers, managers and union leaders were also asked if there had been any changes in the workers' contracts upon their return from maternity leave. At every factory, the answer was negative.

Women who do not return

At every factory, workers, managers and union leaders were asked if some women chose not to return to work after taking maternity leave. Workers and union leaders confirmed that most women return to work. The only women who did not return to work, were those who did not have anyone to take care of their newborn. Often, those women stayed home until their children were a bit older, and then returned to work at the factory. In those cases, by the time they returned to work, they had lost all of their accrued seniority bonuses as well as the benefits accrued from working at the factory for more than a year.

The women who did return to work at the factories all had a close family member who could take care of their baby:

“My husband takes care of my baby because he does not have work now and I can work at the factory”

“My mother takes care of my baby when I am at work, but maybe if I did not have my mother I would stay at home with my baby”.

“My mother takes care of my baby. My husband does not know how to take care of a baby”.

“My mother-in-law takes care of my baby because I live with my husband’s family. My mother lives in my home village”.

In an interview with labour officials, one Government factory monitor explained that not having someone to take care of the baby was the greatest barrier for women returning to work:

“When there is nobody to take care of the baby – generally they’re farmers so other members of the family are busy farming – women have to wait with working until the baby grows up a little. They end up quitting and coming back six months later”.

Entitlements after returning to work

There are several legal measures in place in Cambodia that require factories to make it possible for women to return to work after childbirth, to protect her employment and her health and to enable her to continue breastfeeding.

Light work

According to Article 182 of the labour law, “after the maternity leave and during the first two months after returning to work, they [women] are only expected to perform light work”. Convention No. 183 provides more specific guidance, calling for measures to ensure that pregnant or breastfeeding women do not have to perform work that can harm her health or that of her child (Article 3). ILO Recommendation No. 191 further recommends workplace risk assessments to determine health risks associated with arduous work, physical strain, and exposure to biological, chemical, or physical agents (Article 6).

There is no arbitration on this question and the application of the law in the factories visited during the field research was inconsistent. In one factory, workers and management confirmed that workers automatically come back to lighter work. In another factory, management said that workers were not moved to lighter work because they took the approach instead to extend their maternity leave for five months. In the other six factories, workers returned to the same

position that they had been in before they left, but their work was modified to exclude difficult tasks (such as carrying heavy objects). In addition, they were also permitted to request lighter work. At one factory most workers came back to the same work, but one said that she used to work in the packing section before she went on leave. This was too difficult when she came back. As a result, she asked her line supervisor and was permitted to switch to lighter work. At another factory a worker explained that she chose to come back to the same work while other workers came back to lighter work.

Workers, managers and union leaders gave several reasons for the variation in how the law is applied. One manager pointed out that while workers are legally entitled to 90 days of maternity leave, most extend their leave to five months. Thus, by the time they return they are recovered enough so that they are able to take on the work that they did prior to their leave. A worker at another factory explained that she did not want to switch to easier work because the work that she did before maternity leave (piece-rate work) was better compensated. A worker at a different factory said that she did not wish to switch jobs because she was already skilled at her job, and that it would be difficult for her to learn a new job.

There was no indication from any workers or union leaders that workers were pushed to do work that they could not do upon their return from maternity leave.

Time for breastfeeding

Article 184 of the labour law provides that “for one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children”. This is consistent with Article 10 of Convention No. 183 which calls for one or more daily breaks or reductions in working hours (without loss of pay) for breastfeeding, with the number, duration and procedures for breaks to be set out by national law and practice.

There has been some arbitration around the question of what constitutes a suitable replacement for the one-hour breastfeeding break. The Arbitration Council has been reluctant to accept alternatives to breastfeeding breaks (regardless of whether it is the company that asks for them or the workers) because it has interpreted the purpose of these breaks as a Government measure to encourage women to breastfeed their children longer in order to improve the children’s health.

For example, in AC case 55/08, the workers wanted their factory to provide them with two cans of infant formula per month. The Arbitration Council rejected their request, reasoning that: “labour law and other labour regulations do not state anything about the provision of formula milk during maternity leave. Moreover, the workers did not provide any evidence to support their demand for two cans of formula milk per month. Furthermore, Government policy encourages mothers to breastfeed rather than use milk formula; previous Arbitral Awards also encourage breastfeeding. (awards 83/04, Issue 1 and 24/06, Issue 3). Therefore, the Arbitration Council considers that this demand is not consistent with Government policy and previous Arbitral Awards”.

In seven of the eight factories visited in this study, workers were permitted to take their one-hour break. Only one factory had workers complain about not receiving a breastfeeding break. One worker said:

“It is difficult because the company does not authorize one hour for breastfeeding. The request was submitted for a long time but it is still not allowed”.

Factories varied in whether and how they provided alternatives to the breastfeeding break. While most did not provide alternatives to breastfeeding breaks, three did. In one factory, workers were allowed to leave one hour early instead of taking their break during the day. In two other factories, workers who did not take their one hour break could count that hour as overtime and receive a Riel 1000 meal allowance.

It is unclear if the policy of counting the one hour break as overtime would stand if the case were brought to the Arbitration Council. Arguably, it creates a financial incentive for women not to take their breastfeeding break. Indeed, in one of the factories that followed this policy, a union leader explained:

“Most workers do not take the breastfeeding break because they want the pay for overtime and the meal allowance”.

On the other hand, it can also be argued that the policy is a practical response to the reality that most workers simply do not use their breastfeeding break to feed their baby because they live too far away from the factory to be able to go home during the break to feed their child. Many of them use shared transport to go to and from the factory, and as a result they do not have access to their mode of transportation during their break. Workers are also unwilling to bring their children to the factory daycare centres in order to breastfeed them during the day. As a result workers do not use their breastfeeding breaks to feed their children.

In an interview, a Government labour official confirmed that workers do not breastfeed their children during breaks because they live far away. This was also the main reason that workers gave in focus group discussions:

“We do not use the hour breastfeeding break because of transport and we live far”.
“I do not take my break because I cannot bring my baby to work. So I want overtime payment instead”.

The ILO-BFC 2010 study on maternal health received similar responses from workers:

*“The factory gave me one hour of paid time off for breastfeeding, I never did it because my house was far away. So I just went out of the factory to relax (...). It is three to four km away, not so far, but I need to cross the river so I just go to the market or sometimes stay at my sister’s or brother’s house”.*¹²

It appears that workers do not use the breastfeeding breaks to express their milk. One approach to improve child nutrition would be to increase worker education on breastmilk expression. Workers who are unable to bring their children to work and are unable to stay home with them could continue to breastfeed the baby for longer if they express their breastmilk and store it for the day.¹³ While this kind of education has been provided on a pilot basis in some factories with ILO support, more resources and attention should be devoted to this strategy in order to make sure that all workers understand the benefits and methods of expressing and storing breastmilk.

As supplementary solution, it may also be worthwhile to invest in making a high-quality baby formula available to women at a low cost. While it is healthier for the children to be breastfed, there will always be mothers who for a variety of reasons cannot breastfeed their children. Workers in interviews have consistently expressed the concern that infant formula is expensive, and that cheaper brands are bad for the baby. As a result, workers sometimes dilute the formula

12 J. Skau: *Women working in factories and maternal health – Focus on the nutrition component* (Phnom Penh, 2010), p. 12.

13 Breastmilk can be stored at room temperature for several hours; how long depends on the ambient temperature. Refrigeration for storing and transport extends the storage life of breastmilk. Even if it is not possible to store the milk for use later in the day, expressing milk is beneficial for maintaining milk supply.

with water to make it last longer, reducing its nutritional value. Investing in making a quality formula available to women while emphasizing the importance of continued breastfeeding is a multi-pronged approach to make sure that each child receives the best possible nutrition, one that acknowledges the different contexts in which mothers operate.

Nursing rooms and daycare centres

According to Article 186 of the labour law, “managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care center). If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer”. The Ministry of Labour and Vocational Training has further clarified in a letter that workers can place a child in daycare at the factory or receive daycare costs from the time the child is aged 18 months to the time it is three years old.

The Arbitration Council has not been willing to compromise on the question of having a nursing room. The Arbitration Council has consistently ruled that factories cannot give cans of milk formula to workers instead of building a nursing room even when the demand for it came from the workers. (AC award 63/04).

There have been a number of arbitration cases on the question of whether factories must build daycares or if they can provide workers with compensation instead. In AC award 109/09 the panel rejected the workers’ request that the factory provide them with three cans of formula and an amount of US\$20 instead of building a daycare centre. The arbitration panel ordered the company to establish a daycare centre in or near the factory where women workers can bring their children. The Arbitration Council clarified that only women who have children aged 18 months to three years have the option of placing their children in a daycare centre outside of the factory, in which case the employer is responsible for paying the fee once the woman provides the employer with the receipts.

In AC award 115/08, the Arbitration Council also did not allow the factory to offer the workers money instead of building a daycare centre. The Council explained: “the reason the labour law requires the company to build a daycare centre is in order for the mother and child to be close to each other to provide loving care and natural breastfeeding to the baby without the use of milk formula during the period of the first six months, which is in accordance with the policy of the Cambodian Government, and to maintain the safety of the children while their mothers are working. (See also awards Arbitral Awards 63/04, issue 2; 68/04, issue 1; 79/07, issue 8; 77/08, issue 3; and 103/08, issue 2). Hence, the Arbitration Council considers that although the company and the workers had an agreement about the provision of money instead of building a daycare centre, according to the intent of the labour law, the acceptance of money is not sufficient to release the employer, and the provision of payment in lieu of building a daycare centre does not mean that the employer is released from the obligation to build a daycare centre in accordance with the labour law”.

On the other hand, in AC award 48/07, the Council recognized that the company was unable to create a daycare centre and ordered it to pay US\$15 a month for childcare costs instead: “the employer cannot perform choice a) for the company has no place to build a day care center. So the employer only has choice b) for consideration. But the labour law has not specified how much employer should pay to the workers; so the Arbitration Council finds that this will be based on the actual cost of taking care of children as charged in the external day care”. In AC award

96/06, the Arbitration Council ordered: “the company to provide an allowance of US\$15 per month to all women workers whose children are over 18 months in case that company is not able to build a daycare centre for children aged above 18 months. The workers provided evidence of four workers who claim that they had paid from 60.000 Riels to 80.000 Riels per month for day care services... So on this ground made by the workers, the Arbitration Council decides that the employer, instead of building a daycare centre must pay US\$15 per month as a daycare fee to the workers” .

It is important to note that employers generally should reimburse the actual costs that workers have to pay for childcare, in case they cannot provide for the daycare centre. In AC award 24/06, the Council ordered the company to build a nursing room and a daycare centre for children, except if the company agrees to pay the female workers instead of the daycare centre at the actual amount spent on external babysitting as prescribed in receipts. It also ordered the company to build a nursing room and to provide female workers with one hour's worth of breaks per day in order to breastfeed their babies.

The Council reaffirmed the importance of providing women with the actual cost of childcare in AC award 108/09. Here the Council ordered the employer to build a daycare centre and a nursing room for the workers. The panel stressed that: “if the employer is unable to set up the daycare centre inside its premises for children aged over 18 month-old, women workers can choose to place their children in an external daycare and the employer needs to pay for the fee according to the actual invoice” .

However, this does not preclude the company and the workers from entering in to an agreement whereby the factory provides workers with less than US\$15 for childcare costs. In award AC 79/07, the Council held that an agreement providing workers with US\$5 a month for childcare costs is not in contravention of the labour law. The Council reasoned that the law does not specify how much workers ought to receive for childcare costs, while the agreement clarified the issue. Thus, it seems that if there is an agreement to childcare costs, the Arbitration Council will follow the agreement. On the other hand, if there is no agreement, the Council will find the costs to be US\$15 (subject to rising costs of living).

It is questionable whether legislation providing for daycares on the basis of the number of women workers in companies is promoting equality in the labour market. The ILO Committee of Experts on the Application of Conventions and Recommendations, in reviewing legislation related to the Workers with Family Responsibilities Convention, has cautioned that “measures designed to promote harmonization of work and family responsibilities, such as childcare services, should not be specific to women” .¹⁴ The Committee has also observed that such provisions reinforce gender stereotypes that women, not men, are responsible for their children's care. It also increases the possibility of discrimination against women by employers seeking to avoid legal obligations linked to the numbers of female workers they employ.¹⁵

14 ILO: *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report V(2), International Labour Conference, 87th Session, Geneva, 1999 (Geneva), paragraph 3.

15 ILO: *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report IV(2A), International Labour Conference, 88th Session, Geneva, 2000 (Geneva), paragraph 3.

Factory practices

| Factory | Nursing room | Daycare centre | Child allowance | Remarks |
|---------|--------------|----------------|--|---|
| 1. | Yes. | No. | Yes, US\$7 per month for 18 months. | |
| 2. | Yes. | Yes. | No. | While there was technically a daycare room, workers complained that the company did not hire a babysitter for the room and did not let workers register their children there. |
| 3. | Yes. | No. | Yes, US\$8 per month. | Workers who had children under the age of three before being employed at the factory did not receive childcare costs. |
| 4. | Yes. | No. | Yes – US\$5 per month for workers who have children between the ages of 18 months and three years. | Child allowance confirmed in factory documents. |
| 5. | Yes. | No. | No. | |
| 6. | Yes. | No | Yes. | Factory also did not pay the workers during their breastfeeding break. |

Workers' experience: Empty daycares and nursing rooms

In every factory visited by the research team, workers reported not using the daycare centres or the nursing rooms in their factories. In factories where there was no daycare centre, workers said that even if the factory were to build one, they would not bring their children there. Those women who could not leave their children at home with relatives usually chose to resign rather than bring their babies to work.

The main reason expressed by workers for this reluctance, was the difficulty of transporting children to the factory. Most women live far away from the factory and the commutes involve long rides on unpaved roads in crowded open-air trucks without places to sit, let alone seatbelts. Transporting a child, let alone an infant, under these conditions is not feasible for the child or the mother. It is unlikely that workers will bring their children to the factory to make use of the daycare centres and nursing rooms unless their commuting distances and conditions were improved.

Even if such practical problems were solved, workers might still be unlikely to entrust their children to the care of strangers in daycare centres. One woman explained that her mother had raised her, and so she would trust her mother to raise her child, because, according to her, a grandmother loves her grandchild and can give better care than a stranger. Women consistently reported that they wanted their family members to raise their children and, if that was not possible, they would probably resign.

Conclusions and recommendations

The Cambodian Government has demonstrated a commitment to addressing the needs of workers by enacting measures to help them balance paid employment with maternity and childcare responsibilities and to promote child health and nutrition in workplaces. While some of these policies have fallen short because of practical constraints, they provide insight into how policies can be improved and adapted. With regards to breastfeeding, this might entail new efforts to inform and educate women workers about expressing and storing breastmilk, and making available facilities and devices to do so, such as subsidized or free breast pumps and storage containers. With regards to daycare facilities, this might involve redirecting efforts to increase daycares and schools in workers' living compounds, providing childcare vouchers or subsidies directly to workers (mothers and fathers alike), focusing on standards and quality of care, and undertaking information, education and communication campaigns on the value of quality childcare and preschools for child development. Such efforts might be subsidized by a small payroll tax on factories, which would no longer be expected to bear the full burden of laying out funds for building factory daycare centres. Importantly, such efforts should rely on principles of solidarity and gender equality with employers' share of contributions spread across all employers according to total workforce size/payroll, rather than on the basis of the number of only female employees.

Promoting partnerships among stakeholders for such efforts is critical. Addressing the childcare and child health needs of workers will best be accomplished through collective inputs of diverse stakeholders, including the Ministry of Labour and Vocational Training, Ministry of Women's Affairs, Ministry of Health, Ministry of Education, Ministry of Finance and Planning, municipal authorities, community based organizations and NGOs working on gender equality, women's rights and empowerment, child development, child nutrition or breastfeeding.

Chapter 8. Managers' and workers' perceptions of maternity protection

Chapter summary:

- Managers do not perceive maternity leave to be problematic; covering for absent workers and re-absorbing returning workers poses little challenge.
- Managers and unions believe they have done a better job informing workers of their maternity protection rights than they actually have.
- Implementing and exercising maternity protection rights requires first and foremost awareness of those rights; however, neither line supervisors nor workers were fully informed of laws and workplace policies.

This final chapter looks at how factory managers and workers perceive maternity protection, particularly, maternity leave. For managers, the focus is on their perceptions of the impact of workers taking maternity leave, while for workers, the focus is on workers' knowledge about policies and procedures for taking maternity leave as awareness of rights is the most important determinant for exercising them.

Managers' perspectives

Managers at all factories were asked about the impact of workers' absence on maternity leave. Some managers found the impact to be significant and mentioned that replacing experienced workers is difficult. One manager described it like:

"Losing a right arm, if the worker is skillful".

Other managers found the impact to be minimal. "We have high turnover always, so this is just part of the turnover". Another explained:

"Not many workers are on maternity leave at the same time, so there are not many problems".

As mentioned, managers have found several ways of dealing with the challenge of losing workers temporarily. Several factories had teams of floating workers who would be assigned to fill gaps. Other factories found this method to be ineffective because the floating workers did not have time to become efficient at any one task. Those factories simply hired new workers. When asked about what happened to the new workers when the old ones came back from maternity leave, the factories said (and the workers confirmed) that both sets of workers are kept on the job:

"We hire workers and recruit workers every day – turnover is high. Thus, keeping the new worker and bringing the old worker back is no problem. As well, the old worker sometimes finds the old job too hard and has to move to a new position".

Factory managers were also asked if workers had trouble integrating into the company after they returned to work. On the whole, managers found that workers did not have re-integration problems. One manager said:

“Yes, maybe for the first month because the worker is not as fast and she gets tired more easily, but after she adjusts and everything is the same”.

Another found that:

“At first the worker has trouble because she is in a new situation, but then she learns and she has no more trouble like before”.

There was no indication from any of the interviews that managers were concerned about the way in which workers performed upon returning to the workplace.

Workers’ perceptions and knowledge of rights

In each factory, management, union heads, and workers all reported that workers were aware of their rights regarding maternity leave. Nevertheless, workers’ knowledge about the details of their maternity leave was very limited.

In addition, there was often a gap between what managers and union heads know, what they believe workers know, and what workers actually know. For instance, one factory had a union that was particularly active and negotiated a strong collective agreement that protected workers who had worked at the company for less than one year. In an interview, the union heads indicated that one of their main jobs was to keep workers informed about their rights and the benefits to which they were entitled (including maternity leave). However, the workers at that factory were the least aware of their rights out of all eight factories, and none of them indicated that they received their information from the union.

At each factory, workers, management, union heads and shop stewards reported four main sources where workers obtain information about maternity leave: factory announcements, union representatives, line supervisors and friends. Line supervisors were the most common source of information for workers. In almost every company, management said that workers found out about maternity leave from announcements, whereas workers never mentioned announcements as a source of information. Importantly, in one factory, the union head pointed out that workers often cannot read the announcements (and indeed, during the field research interviews a large proportion of the women could not read or write).

Below is a chart detailing the answers that union heads, management and workers gave about workers’ source of information on their rights.

Source of information on workers' entitlements

| Factory | Nursing room | Daycare centre | Child allowance |
|---------|---|---|--|
| 1. | Some women are not aware of their rights; e.g. some women think that because they are temporary workers they are not entitled to maternity leave whereas by the terms of the agreement they are. When they don't know the union tells them. | Yes – from factory announcements (three or four times a year) and line supervisors. | Yes, US\$7 per month for 18 months. |
| 2. | | Found out about the process from admin staff and line supervisor. | No. |
| 3. | N/a. | Yes. Factory informs women – internal regulations are posted on the notice board. They also find out from their friends. | There is an assistant who helps fill in the form. |
| 4. | Yes, they find out from union and from the factory at the time of hire. | Yes – it is announced to them by loudspeaker. | No information available. |
| 5. | Yes; when they don't know they come and ask the union. | Yes – they find out during the orientation. | Found out from the line supervisor and found out about the full day check-up from human resources. |
| 6. | Yes they are aware because in every group there is one union activist who gives updates to workers about the collective agreement. | Yes – they find out from company announcements. | From friends, from line supervisors, also the union. |
| 7. | Some women come to ask the union about the benefits. The factory also posts announcements but most workers cannot read them. | Yes – they find out from the orientation, announcements, posted regulations and the factory nurse. | Asked admin staff and line supervisors. |
| 8. | Yes – the admin gives them an orientation at the beginning. There are also announcements and yearly meetings. | Workers get information from the training center when they start work, from the annual training meeting, announcements, postings, and meetings with worker representatives. | Line supervisor. |

An important finding from the interviews was the lack of awareness of both workers and line supervisors of the details of maternity leave rights and payments. In many interviews, workers were not aware that they were allowed to extend their maternity leave and that they were permitted to call in to do so. As well, many workers did not have a clear understanding of how their maternity leave benefits were calculated or how it should be calculated. Many had thrown away their maternity leave pay slips that detailed their payments.

Similarly, in many factories, line supervisors and shop stewards were equally unaware of how to calculate maternity leave benefits. In one factory, when line supervisors were asked if workers who had worked for less than one year were entitled to any payment, they did not know the answer. At the same time, these line supervisors had indicated that they were the ones responsible for informing workers of their rights. When asked what they would do if a worker who had worked for less than one year came to them with this question, they replied that they would go and ask the administrative staff who process the leave. In another factory, the manager and the union heads were unsure of whether or not workers received their entire seniority and attendance bonuses during their maternity leave, or 50 per cent thereof.

The lack of knowledge among both the workers and the people responsible for informing the workers is problematic. Workers cannot request their entitlements if they don't know about them. If they do find out that they have not claimed some of their rights after the fact, it is difficult to provide the information and proof to claim restitution. By way of example, one of the main enforcement mechanisms of maternity rights has been the Arbitration Council. However, in order for a case to be brought successfully before the Arbitration Council, the workers and their representatives have to be aware of which entitlements they did not receive and provide proof. If workers are not aware of what exactly they are entitled to in their maternity leave payments, it is difficult for them to identify violations. For example, a factory may be withholding their seniority bonus from their maternity leave sums, but workers may not be aware of their entitlement or may not notice it has been withheld. If workers do not notice and do not file complaints to their union leaders, the union may also be unaware that there is a problem and may not begin arbitration.

Even if the union does bring a case before the Arbitration Council, it may not be successful because the Council typically requires proof of the violations. If workers do not retain their maternity leave pay slips, it is difficult for the union to prove that the factory violated the law, in which case the claim will be dismissed.

In AC award 23/08, the Arbitration Council decided: "to order the employer to make back payments to the 17 workers for the amount of wages lost during their maternity leave. However, none of the women workers provided detailed information regarding the amount of money they had lost, for example, how many days or months during the 90 days of the maternity leave each worker was suspended, the amount of money each female worker lost, and the reason for the loss, etc. In principle, the claimant workers have an obligation to provide specific evidence to the Arbitration Council if they demand damages. But in this case, the Arbitration Council does not have detailed information to use as a basis for judgment. Therefore, the Arbitration Council decides to reject the demand for back payment of maternity leave payments as demanded by the workers..." Even though the Council had found that, in principle, the factory had not behaved legally, the workers had no remedy because they had not kept the pay slips by which they could have demonstrated exactly how much money they were paid (and by extension, how much money they were owed).¹⁶

16 The Arbitration Council placed the burden of proof on the workers. Given that the Council determined the factory's behaviour to be illegal, it is not clear why it did not choose to place the burden of proof on the employer as the factory would have payroll records in their possession that could determine how much the back payments should have been.

To give another example, a worker who has worked for less than a year may not know that she is entitled to maternity leave. Her line supervisor may have broadly informed workers of the law, but may not have known about or informed the workers about the rules that apply to those workers who have worked for less than one year. This worker, thinking that the supervisor has given all relevant information to her, may simply resign when she becomes pregnant instead of inquiring about her maternity leave. In one factory, union leaders described this exact problem when they said that some temporary workers at the factory thought that they had no right to maternity leave, even though that right had been negotiated in the CBA. Thus, a lack of knowledge on the part of those responsible for informing the workers – including factory management, line supervisors and unions – could result in workers self-selecting out of their rights and out of their job.

Conclusions and recommendations

In general, managers face little problem covering absences due to maternity leaves or absorbing returning workers. A greater concern is the lack of knowledge on the part of workers and sometimes supervisors and managers about maternity protection laws and policies.

There has been progress: workers are, on the whole, aware that they are entitled to ninety days of maternity leave. They are less aware of the specific requirements for calculating their benefits, and some are not aware of eligibility requirements for such benefits. It is important to continue to information, education and communication campaigns to improve workers', union heads', line supervisors', and management's understanding and knowledge of maternity protection laws and policies.

Chapter 9. Conclusions and recommendations

This study has reviewed Cambodian law and arbitration around specific maternity protection provisions, particularly maternity leave and cash payments, with some attention to other elements of maternity protection such as breastfeeding breaks and work accommodations during pregnancy. It has explored how factories apply the laws and what challenges factories and workers face in enacting and claiming legal provisions and rights. This study is not a comprehensive comparison of maternity protection in Cambodia and international standards, nor is it a comprehensive analysis of industry practices. Rather, it sought to supplement the existing data collected in Better Factories Cambodia synthesis and other reports.

The first chapter provided an overview of the international and national legal context surrounding maternity protection in Cambodia. Cambodia is a party to CEDAW, and the Arbitration Council takes Cambodia's obligations under CEDAW into account when arbitrating labour disputes. The second is the ILO Maternity Protection Convention No. 183 (2000). Cambodia has not ratified this Convention; however, Convention No. 183 and its corresponding Recommendation No. 191 provide comprehensive guidance for establishing and improving upon minimum standards for maternity protection in Cambodia. This chapter then lists the most important articles of the Cambodian labour law, passed in 1997 and concludes with a brief discussion of the Arbitration Council and its role in interpreting and upholding the labour law.

The second chapter examined who is entitled to take maternity leave, and of those workers, who is entitled to collect maternity leave benefits. Broadly, all women workers in enterprises covered by the labour law have the right to take maternity leave. Cash benefits are extended to those workers who have worked at the factory for an uninterrupted year. Workers who have handed in their resignation are not entitled to receive maternity leave benefits even if they had worked at the factory for a year. This leads workers who are planning to resign at the end of their leave to hide this from their managers.

Workers on fixed duration contracts (FDCs), who have worked at the factory for a year or longer, are entitled to the same benefits as workers on unspecified duration contracts (UDCs). Unfortunately, some factories force workers on FDCs to take short breaks between successive contracts, thus preventing the worker from accumulating a full year of uninterrupted service. Better Factories Cambodia combats this by labeling factories that engage in this practice as non-compliant. It would be beneficial if the Government also provided guidance on how to count probationary periods and short breaks between FDCs in determining a worker's eligibility for cash benefits.

The third chapter addressed policies and workers' experiences during pregnancy but before maternity leave. The law does not supply guidance for addressing the needs of pregnant workers. Factories are not required by law to give workers time off for antenatal care, although some factories do so, regardless. The eight factories visited during the field research also did not maintain policies for accommodating workers with morning sickness, leaving this task to individual line supervisors. Workers' experiences ranged from very positive to very negative. The law provides protection against dismissal during maternity leave and the Constitution prohibits the firing of pregnant workers. However, the law is silent on other forms of discrimination, such as discrimination in hiring or failing to renew the contracts of pregnant workers.

Moreover, when workers do claim discrimination, the Arbitration Council has required workers to demonstrate proof. Because workers rarely have the same means to demonstrate proof of a claim that an employer does, the ILO Maternity Protection Convention calls for member States to ensure that: “the burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer” (Article 8). Although Cambodia is not a party to Convention No. 183, following the Convention on this point would allow for more protection to pregnant workers.

Applying for maternity leave is unproblematic according to workers. Men were also permitted to take up to seven days of special leave upon their wives giving birth, although men reported that line supervisors were, at times, unwilling to give more than three days off.

The fourth chapter focused on the duration of maternity leave. By law, women are entitled to 90 days of maternity leave, and the Arbitration Council has ruled that this means 90 calendar days rather than 90 business days. Most factories allow workers to extend their maternity leave for up to three months without pay. However, in some cases, the possibility of extending leave is not publicized and the process of extending leave is too difficult. As a result, some workers resign instead of simply extending their leave. Several simple measures could resolve this problem. Factories could require administrative personnel who accept a worker’s maternity leave application to inform the worker about the number of months by which she can extend her leave. Factories could have clear policies, communicated to supervisors, about the limits of supervisor discretion, as well as a complaint mechanism by which workers could inform management when line supervisors are abusing their discretion. Finally, factories could allow workers to call the factory to extend their maternity leave.

The fifth chapter looked at the calculation of cash benefits workers are entitled to receive in their maternity leave payment. According to Article 183 of the labour law, women are entitled to 50 per cent of their average monthly wage, calculated over the course of 12 months, as well as 100 per cent of their living allowance. The wage includes the basic wage, the seniority bonus, the attendance bonus and any other perquisites. The wage excludes the living allowance (and as such, women are entitled to 100 per cent of this allowance rather than 50 per cent), as well as money instead of annual leave. Instead, workers continue to accumulate annual leave over the course of their maternity leave. Although the Arbitration Council has been very clear about the components of maternity leave payments, the majority of factories in this study deviated from the requirements in some way. Therefore, further efforts to increase compliance may be necessary.

The sixth chapter discussed the issues surrounding the timing of maternity leave payments. Factories are required to make a lump payment to workers the day before they go on maternity leave. It is unlawful for factories to make monthly maternity leave payments or to pay workers a lump sum when they return from maternity leave. However, several factories, visited for the purposes of this study, either paid workers monthly, or at the end of their leave. Not all workers viewed this as a problem. However, ensuring that workers receive their payments prior to leave is important for enabling mothers to support themselves and their newborns while on leave.

Chapter seven addressed women’s return to work after maternity leave. The first part of the chapter focused on women’s experiences upon returning to work. In the factories visited, workers were required to come to the factory in person and inform their line supervisors that they had returned. There were no changes to their contracts upon their return to work. Concerns

about discrimination upon return were not borne out in this study: most of the women who did not return indicated that they could not find care providers for their children.

For those that did return, the chapter looked at workers' entitlements to lighter work for two months, to breastfeeding breaks and to daycare facilities. Workers reported some variation in being able to transfer temporarily to lighter work. Many women did not use their breastfeeding breaks for breastfeeding, and they did not (and would not) bring their children to the factory daycare centres. The chapter discussed the need for information and education campaigns on options for expressing and storing breastmilk since many women worked far from home and their newborns and did not seem to view this as an option. The chapter also recommended exploring partnerships to identify childcare solutions closer to workers' living compounds, rather than at factories which workers view as impractical.

The eighth and final chapter features a brief discussion of management, union and worker perceptions on the maternity leave and benefit process. The chapter focuses on the general lack of knowledge of workers, line supervisors and managers, as well as the shortcomings of management and unions in informing workers of their rights. Without improving the knowledge of line supervisors and the awareness of workers, it will remain difficult for workers to claim their rights.

The study's findings point to the following recommendations:

The Government should:

- Provide clear directives on how to count probationary periods and FDC employment with brief breaks in calculating eligibility for maternity cash benefits.
- Issue a directive requiring companies to provide workers with two paid hours off each month for antenatal care.
- Explicitly prohibit discrimination against pregnant workers at all stages of employment and during leave and should shift the burden of proof onto employers in discrimination cases, in accordance with ILO Convention No. 183.

Factories should:

- Allow workers who are leaving for maternity leave to submit their resignations if they wish to resign, without effect on any cash benefit entitlements. This will enable factories to proceed in hiring replacements, increasing efficiency.
- Require the administrative staff member who accepts a worker's maternity leave application to inform the worker about the number of months by which she can extend her leave.
- Allow workers to extend their maternity leave by calling in to the factory rather than forcing them to come in to ask for an extension.
- Communicate policies clearly to supervisors, limit individual discretion in applying those policies, and establish a complaints mechanism through which workers could inform management when line supervisors are abusing their discretion.
- Factories should ensure that the employees who are responsible for informing workers about maternity leave are thoroughly educated in the details of the factory's policies.

BFC advisers and monitors should:

- Work together with factories to ensure that factories calculate maternity leave payments in accordance with the law.

- Work with factories to bring them in line with Arbitration Council directives to make lump sum payments to workers at the beginning of their leave.

Government, factories, unions and NGOs should:

- All parties, should undertake worker information and education campaigns on maternity protection rights, and factories and unions have a special role to play in ensuring that managers and workers know about the maternity protection entitlements for all employees.
- Work together to increase worker education on breastmilk expression and storage, to compensate for poor use of breastfeeding breaks where nursing is viewed as the only (and for many, impractical) option.
- Work together to make quality infant formula available and affordable to workers who for practical or physiological reasons cannot breastfeed.
- Study possibilities and partnerships for directing efforts at providing daycare to workers' living compounds (rather than factories), focusing on standards and quality of care, and undertaking information, education and communication campaigns on the value of quality childcare and preschools for child development.

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Practical challenges for maternity protection in the Cambodian garment industry

This study reviews Cambodian law and arbitration on maternity protection in Cambodia's garment industry. It explores how companies apply the laws and what challenges factories and workers face in enacting and claiming legal provisions and rights. Insights are provided on the application of legal provisions and workplace policies and practices related to maternity leave and benefits, breastfeeding and childcare arrangements in the workplace. Guidance from the international labour standards on maternity protection is provided and a series of practical measures are proposed to government, employers' and workers' organizations to ensure the protection of pregnant women, mothers and small infants in garment and footwear factories.

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ISBN: 9789220268438