


A Global Analysis of Menstruation-Friendly Working Practices Through an Evaluation of International Examples

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Abstract: Gender equality is a key issue and an important element of basic human rights, especially when it comes to the workplace. Labor laws often fail to address the specific challenges women face, like menstruation and menopause. This study focuses on how menstruation is treated in labor law, with a spotlight on international practices around menstrual leave. It looks at the purpose behind these national legislation-policies, how legal frameworks differ, and how the literature evaluates the function of these institutions. The aim of the paper is to provide useful insights for future lawmakers, social partners, drawing lessons from Spain – the only EU country with such a policy – Japan, Indonesia, Taiwan and other national examples, showing how menstrual leave can support women's well-being at work. The research focuses only on the legal aspects of these menstrual leave policies, which is a very rare aspect in the literature.

1. Introduction: Developments in Labor Law Practice Concerning Women

The basic principles of labor law, especially in the area of physical aspects of work, are based on the male body, since the mass participation of women in the labor market began with the First World War. Hence, labor

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legislation, health and safety requirements and the tools for their implementation have organically focused primarily on men's health and physical parameters. The situation of women in the workplace is extremely disadvantaged, a problematic situation exacerbated by the fact that research into women's reproductive health, particularly in relation to its links with health and safety at work, is in its infancy. Moreover, only recently have policies in Europe begun to pay renewed attention to the full spectrum of the critical triangle of women's work, all three elements of the term MMM (menstruation, motherhood, menopause). This growing, but still infant, development points to a striking lack of in-depth study of MMM in occupational health and labor law research. The present research aims to address menstruation in more depth among the three Ms. Menstruation is currently not assessed from the perspective of most of the European countries' labor laws in general, although some other countries (mainly Asian countries) and a few employers are already trying to address the issue by establishing the legal institution of menstrual leave. In the following lines, we will try to present them on the basis of the available foreign literature, which will help to clarify the dimension of the development of national and even EU labor law in this direction, together with its challenges and opportunities.

2. The Menstrual Leave, as an Old-New Regulation Supporting the Reproductive Health

The latest development in global labor law in the context of menstruation is the introduction of menstrual leave at international level. Menstrual leave is defined in the international literature as a leave that allows menstruating individuals to take time off work if they are unable to go to work due to their menstruation; it is a policy that can affect menstruating individuals in a number of ways,¹ including their employment status.² International interdisciplinary research on menstruation is linked to the concept of menstrual health. This also provides a broad context for labor rights thinking, as it is

¹ Levitt and Barnack-Tavlaris argue that this influence can take many forms, including negative ones, as discrimination against women can promote discrimination in employment, promotion (Rachel B. Levitt and Jessica L. Barnack-Tavlaris, "Addressing Menstruation in the Workplace: The Menstrual Leave Debate," in *The Palgrave Handbook of Critical Menstruation Studies*, eds. Chris Bobel et al. [Singapore: Palgrave Macmillan, 2020], 561).

² Ibid.

intertwined with sustainability goals, gender equality and fundamental human rights.³ In this way, it sets not only the direction of research but also the policy requirements.⁴

In the following lines, global examples of menstrual freedom will be presented, but the first efforts should be mentioned before the current examples, for chronological reasons. The first generation of menstrual freedom policies appeared at the beginning of the 20th century, with the Soviet Union introducing regulation in 1922, Japan in 1947 and Indonesia in 1948. The rationale for the introduction of menstrual leave in each country reflected the specific socio-economic and institutional context of the time.⁵

As mentioned in the list, in the Soviet Union this legal institution was introduced in 1922, but it is no longer part of the legal system, so we are not talking about active regulation in this case. The Bolshevik menstruation policy was aimed at women in factory jobs, and gave them two to three days of fully paid leave a month for menstruation. The rationale for this innovation was to protect women's fertility and to support their role as mothers.⁶ This was abolished after only five years in 1927, as women workers felt that menstrual leave increased discrimination in the workplace,⁷ which shows that almost a hundred years ago, gender discrimination was a barrier to the evaluation of menstruation in labor law. Menstrual leave reappeared in the Russian political debate in 2013, but the somewhat paternalistic proposal – which focused on the treatment of the “overburdened”

³ Julie Hennegan et al., “Women's and Girls' Experiences of Menstruation in Low- And Middle-Income Countries: A Systematic Review and Qualitative Metasynthesis,” *PLoS Medicine* 16, no. 5 (2019): 31, <https://doi.org/10.1371/journal.pmed.1002803>.

⁴ Ibid., 31.

⁵ Marian Baird, Elizabeth Hill, and Sydney Colussi, “Mapping Menstrual Leave Legislation and Policy Historically and Globally: A Labor Entitlement to Reinforce, Remedy, or Revolutionize Gender Equality at Work?,” *Comparative Labor Law & Policy Journal* 42, no. 1 (2021): 197.

⁶ Natalie Huet, “Spain's Menstrual Leave: The Countries That Have Already Tried and Tested Days off for Period Pain,” *Euronews*, May 13, 2022, accessed January 31, 2025, <https://www.euronews.com/next/2022/05/13/spain-s-menstrual-leave-the-countries-that-have-already-tried-and-tested-days-off-for-peri>.

⁷ Sally King, “Menstrual Leave: Good Intention, Poor Solution,” in *Aligning Perspectives in Gender Mainstreaming*, eds. Juliet Hassard and Luis D. Torres (Cham: Springer, 2020), 153, https://doi.org/10.1007/978-3-030-53269-7_9.

female body and psyche – was not successful and even outraged feminists and human rights activists.⁸

Following the Soviet example, the other countries mentioned still maintain the legal institution of menstrual leave, so we are not talking about the past. If we want to summarize the countries that currently have a general menstrual labor rights policy in force, we can list Japan, Indonesia, South Korea, Taiwan, Zambia, provinces in China, Mexico, Taiwan and one Argentine province (Federación).

In the following rows, we will try to highlight and examine as broadly as possible the variations of menstrual leave in these countries. It should be noted, however, that other countries have of course also tried to introduce this legal institution, without much success, so that the existing examples are even more noteworthy. One concrete example of a failed attempt is the Philippines, where a draft bill for a separate law was proposed by a senator in 2004. The Menstrual Leave Act would have provided that all female workers would be entitled to one day of leave per month in both the public and private sectors, with 50% of the daily rate of pay. In addition, enforcement of the special allowance by employers would have been guaranteed by fines and imprisonment. At the same time, the text of the law included stereotypical remarks that portrayed women as emotionally insecure workers. In light of this, it is therefore important to see how successfully countries have been able to capture the idea of menstrual leave.

2.1. Menstrual Leave in Japan

Japan was the second country in global history to introduce menstrual leave in 1947. The legislation is based on grassroots organization. In 1928, female conductors of the Tokyo Municipal Bus Company were denied access to toilets all day. As a result, the changing of sanitary towels was not possible. Because of this, these female workers felt it was physically impossible to do their jobs. As a result, women union lobbyists fought for legislation on paid menstrual leave. It should therefore be stressed that this legislation was the result of a grassroots initiative, thanks to the efforts of women workers.⁹

⁸ Huet, “Spain’s Menstrual Leave.”

⁹ Baird, Hill and Colussi, “Mapping Menstrual Leave,” 196.

Thus, in Japan, since 1947, menstruating women have been protected by law (labor law) under the provisions of the Japanese Labour Standards Act.¹⁰ According to the provision of Article 68 of the law, women who suffer from painful menstruation or who perform work that aggravates menstrual pain have the possibility to claim “seirikyuka” (literally “physiological leave”). This leave is a natural or biological entitlement and the employer must take into account the menstrual period.¹¹

The law does not specify the number of days off that can be taken, and employers have discretion to grant leave on a calendar day, half-day or even an hour, in accordance with the Japanese legal system.¹² Employers have a wide discretion in this matter, as the wording of the legislation implies that no pay is payable for this period, as it is up to the employer to decide whether or not to treat the days of menstrual leave as paid leave. Due to the historical nature of the Japanese legislation, an impact assessment has already been carried out on this legal instrument, but unfortunately it is disappointing. Indeed, according to data from the Japanese Ministry of Labour for 2020, 30% of companies voluntarily provide full or partial pay for employees who take menstrual leave. A startling result of the survey is that only 0.9% of the women workers concerned take advantage of menstrual leave.¹³ This may be due to a social environment that may stigmatize the menstrual process and the women involved. This circumstance and result draws attention to the importance of assessing the social impact of legal instruments. Unfortunately, women who have taken menstrual leave have faced negative consequences in the workplace, such as discrimination and harassment by employers.¹⁴ There have been

¹⁰ Labour Standards Act, Act No. 49 from 1947; Beatrix Asboth, “Menstruációs szabadság – példák a nagyvilágból,” Euronews, May 26, 2022, accessed January 31, 2025, <https://hu.euronews.com/2022/05/26/menstruacios-szabadsag-peldak-a-nagyvilagbol>.

¹¹ The legislation is the following: “When a woman for whom work during menstrual periods would be especially difficult has requested to leave, the Employer shall not have said women work on days of said menstrual period” (Baird, Hill and Colussi, “Mapping Menstrual Leave,” 195).

¹² Ibid., 196.

¹³ Asboth, “Menstruációs szabadság.”

¹⁴ Baird, Hill and Colussi, “Mapping Menstrual Leave,” 196; Hilary H. Price, “Periodic Leave: An Analysis of Menstrual Leave as a Legal Workplace Benefit,” *Oklahoma Law Review* 74, no. 2 (2022): 189.

numerous lawsuits over the fact that the female workers concerned have not received the benefits they were entitled to for continuous attendance in view of the fact that they had legally taken menstrual leave under the mentioned law.¹⁵

Given the decades-old history of this legal institution, some of the scarce international literature on the subject relates to the Japanese system. Dan draws attention to the criticisms of the Japanese system by the social partners. Japanese trade unions, despite the above, have stressed that menstrual leave should be granted not only in the case of painful menstruation but also when menstruation is asymptomatic, since the purpose of menstrual leave is to protect women's fertility.¹⁶ In the face of numerous criticisms and practical difficulties, the Japanese Ministry of Labour has made efforts to abolish the regulation, according to Honda-Howard and Homma, in response to increasing gender discrimination in the workplace.¹⁷ Despite these efforts, Japanese menstrual leave remains a living legal institution in force to this day.

2.2. The Emergence of Menstrual Leave in Indonesia, South Korea and Taiwan

Indonesia is the third country to have legal menstrual freedom in the first half of the 20th century.¹⁸ The original provision dates back to 1948 and was re-regulated in 2003. This reform was a “weakening” of the regulation, as it removed the compulsory nature and made menstrual leave collectively negotiable, and removed the previously compulsory paid nature of the menstrual leave.¹⁹ Under the 2003 regulation,²⁰ Indonesian law allows

¹⁵ Baird, Hill and Colussi, “Mapping Menstrual Leave,” 196.

¹⁶ Alice J. Dan, “The Law and Women's Bodies: The Case of Menstruation Leave in Japan,” *Healthcare for Women International*, no. 1–2 (1986): 13.

¹⁷ Baird, Hill and Colussi, “Mapping Menstrual Leave,” 196; Dan “The Law and Women's Bodies,” 9–11.

¹⁸ In Indonesia, there are many public holidays, and breastfeeding can also be a reason for taking time off. Sayed Qudrat Hashimy, “The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan,” *Journal of Disease and Global Health* 16, no. 1 (2023): 18.

¹⁹ Baird, Hill and Colussi, “Mapping Menstrual Leave,” 196.

²⁰ Article 81(1) of the Labour Law No. 13 of 2003 states that female workers who feel pain during their menstruation and who report it [to the employer] are not obliged to go to work on the first and second day of menstruation (ibid.).

a maximum of two days paid leave per month, specifically for the first two days of menstruation,²¹ but further details are left to the parties. The employee is also subject to a prior notification obligation in relation to the use of days off. Indonesia's policy on menstrual leave may appear effective on paper, but in practice it is not, as large companies based there, which may thus be obliged to grant menstrual leave, often require menstruating workers to provide evidence of their use of leave, which is an affront to human dignity.²² This situation, which is a serious violation of women, their human dignity and fundamental rights, is further compounded by Baird, Hill and Colussi's assertion that menstrual leave has become a means of differentiating between white and blue collar workers, thereby weakening solidarity between workers. Women in the white-collar sector perceive the use of this leave as an embarrassment, a reference to women's different physicality from men, and, in their view, as an obstacle to women's emancipation. On the other hand, women who do hard physical work, such as those in mining or industrial work, support and take advantage of this opportunity.²³

South Korea is another country with a long history of menstrual leave legislation. In 1953, the Labor Standard Act (LSA) came into force, providing protection for working adult women. The Act included a provision protecting mothers, which gave women one day of paid menstrual leave per month. The motive behind the South Korean legislation was therefore to protect motherhood. The 2007 revision²⁴ of the LSA, however, changed menstrual leave from paid to unpaid, and made prior application by the woman concerned a necessary condition for receiving the benefit.²⁵ This means that in South Korea they have one day of unpaid menstrual leave per month under the LSA 2007. In contrast to the above regulation, employers in this country are obliged to grant this leave, with fines of thousands of euros for breaches of this obligation,²⁶ and

²¹ Price, "Periodic Leave," 193.

²² Ibid., 194.

²³ Baird, Hill and Colussi, "Mapping Menstrual Leave," 198.

²⁴ In another source 2001 (Ibid., 200).

²⁵ Price, "Periodic Leave," 190.

²⁶ Despite the threat of fines for employers, only a fifth of female workers in South Korea took advantage of this leave, according to a 2018 survey (Asboth, "Menstruációs szabadság").

may even face criminal prosecution.²⁷ However, unfortunately, as in Indonesia, South Korean practice shows that employers here do not apply menstrual leave properly, for example by often demanding evidence from female applicants that is in violation of human dignity.²⁸ This problematic employer practice exists in the present, for example in April 2021, former Asian Airlines CEO Kim Soo-cheon was fined two million won for rejecting 138 requests for menstrual leave from 15 flight attendants between 2014 and 2015. The employer argued that the workers who applied did not present proof of menstruation, making them ineligible for menstrual leave.²⁹

Unlike the examples above, the formulation of Taiwan's menstrual leave policy is closely linked to the provision of sick leave.³⁰ Taiwan sets a tight limit on the amount of menstrual leave it grants menstruating women, with one day off per month and three days off per year, according to legislation drafted on January 16, 2022 under the Gender Equality in the Workplace Act. Article 14 of the law provides, in an unusual way, that female workers who experience difficulties³¹ in their work during their menstrual period, are entitled to one day of menstrual leave per month. However, if the total number of days of leave taken under the menstrual leave scheme does not exceed three days in a year, these days cannot be treated as sick leave and counted according to the rules for sick leave. Any additional days of leave taken as menstrual leave shall be counted as sick leave.³² Sick leave is 30 days per year. In total, women workers are therefore entitled to a total of 33 days of leave linked to their health situation.³³ Of this, three days of menstrual leave is a differential, a discount, compared to workers who are not entitled to menstrual leave. The financial aspect of this special calculation method should also be examined. Menstrual leave is paid at 50% of

²⁷ Baird, Hill and Colussi, "Mapping Menstrual Leave," 201.

²⁸ Price, "Periodic Leave," 190.

²⁹ Baird, Hill and Colussi, "Mapping Menstrual Leave," 201.

³⁰ Ibid.

³¹ I must briefly draw attention to the progressive approach to regulation. Here, freedom of menstruation is not only linked to painful menstruation according to the text of the legislation, but can be justified by any symptom of it.

³² Asboth, "Menstruációs szabadság."

³³ Baird, Hill and Colussi, "Mapping Menstrual Leave," 202.

the daily rate of pay, in line with the rules for sick leave.³⁴ In the literature, this Taiwanese menstrual leave is presented as a measure to support national birth rates. However, one study found that Taiwanese women rarely take menstrual leave due to a lack of flexibility, the need for medical certification and inadequate information on how to apply.³⁵

2.3. Other Examples of Menstrual Leave Abroad

Vietnam has a specific legal and socio-political environment. In terms of gender rights, Vietnam has one of the most comprehensive and developed labor codes in the Southeast Asia and Pacific region. Accordingly, Vietnam enacted menstrual leave into the national labor code in November 2015 (Decree No. 85/2015). The menstrual leave provisions guarantee menstruating women workers an extra thirty minutes per day during menstruation days and at least three days per month.³⁶ However, as in Japan and Indonesia,³⁷ eligibility is subject to employer-employee negotiations, and the details are subject to individual negotiation.³⁸

In Africa, Zambia introduced a menstrual leave scheme in 2015, which allows for one day per month, without the need for a doctor's certificate or prior notification by the worker.³⁹ The policy behind the legislation sees it as a "Mother's Day," which emphasizes the opportunity for women to become mothers.⁴⁰ This employment policy consideration in Zambia thus derives the need for labor law regulation of menstruation from maternity. However, this objective is nuanced by the fact that Zambian culture is

³⁴ Asboth, "Menstruációs szabadság."

³⁵ Baird, Hill and Colussi, "Mapping Menstrual Leave," 2025.

³⁶ Rizichi Kashero-Ondego and Njeri Wagacha, "The Concept of Menstrual Leave," Cliffe Dekker Hofmeyr, May 2, 2023, accessed January 31, 2025, <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-2-may-2023-the-concept-of-menstrual-leave.html>.

³⁷ For more on menstrual freedom in Kuwait, the United Arab Emirates and Afghanistan, see: Hashimy, "The Legal Paradigm of Menstrual Leaves Policy."

³⁸ Baird, Hill and Colussi, "Mapping Menstrual Leave," 2025.

³⁹ Unfortunately, practice suggests that employers expect prior notice before requesting time off, even though the legislation does not require it (Asboth, "Menstruációs szabadság").

⁴⁰ Will Worley, "The Country Where All Women Get a Day Off Because of Their Period," *Independent*, January 4, 2017, accessed January 31, 2025, <https://www.independent.co.uk/news/world/africa/zambia-period-day-off-women-menstruation-law-gender-womens-rights-a7509061.html>.

generally patriarchal and the policy promotes the notion that the activity of childbearing and childrearing is exclusively an element and role of femininity and womanhood.⁴¹

In Mexico, the existence of painful menstruation (dysmenorrhea) is considered a compelling circumstance in labor law, which guarantees leave for public sector workers from 2023.⁴² In this case, they emphasize the need for the women workers concerned to be physically and psychologically fit in order to exercise their labor rights.⁴³ However, this physiological freedom precisely defines the three main groups of beneficiaries of this freedom: middle-aged women suffering from severe dysmenorrhea; middle-aged women with menopause and menopausal symptoms; middle-aged men with andropause symptoms. Therefore, the Mexican concept covers a much wider range of people, covering not only menstruation but also menopause, extending to its symptoms, so that even in the absence of a diagnosis of disease, only the presence of symptoms provides an opportunity for rest. A specific feature of the policy is the assessment of the situation of men. The range of labor market actors concerned and benefiting from the legislation is therefore very wide.

In addition to the country-wide regulation, regional regulation of menstruation policies can also be examined. One of Argentina's provinces, Federación, is worth highlighting, as since 2014 it has guaranteed female public sector workers the right to request paid time off if they are assessed as unable to work due to menstruation ("women's day").⁴⁴ Another example is India, where there is no law regulating menstrual leave and no

⁴¹ Price, "Periodic Leave," 191.

⁴² Jorge de Presno and David Puente, "The Congress Of Mexico City Approves The Proposal For 'Menstrual Leave,'" Basham, March 6, 2023, accessed January 31, 2025, <https://basham.com.mx/congress-of-the-cdmx-approves-the-proposal-for-menstrual-leave>; María Nayeli Ortega Villegas, "Menstrual Leave in Mexico: Implications of the Initiative Proposed by Mexico City Congress," Medscape, March 28, 2023, accessed January 31, 2025, <https://www.medscape.com/viewarticle/990188?form=fpf>.

⁴³ Official Gazette, Government Gazette, vol. 203, no. 119, accessed January 31, 2025, <https://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/gct/2017/jun291.pdf>.

⁴⁴ Lidia de la Iglesia Aza and Bernadett Solymosi-Szekeres, "La menstruación en el entorno laboral," *Lan Harremanak – Revista De Relaciones Laborales* 51, (2024): 70, <https://doi.org/10.1387/lan-harremanak.26149>.

central provision for paid menstrual leave, but we cannot forget the Indian states of Bihar and Kerala. These states have introduced a policy on menstrual leave for women. Bihar has been providing two days paid menstrual leave per month to women workers since 1992. Kerala has also allowed menstrual leave for female students in all universities and educational institutions in 2023, along with a number of other measures to support women and mothers.⁴⁵ Continuing the series of regional social policies, in October 1992, the national government of China passed the Law of the People's Republic of China on the Protection of Women's Rights and Interests, which requires employers to take into account women's physical fitness, while providing special protection for menstruation. Article 26 of the law states that all work units shall protect the safety and health of women during work and physical labor, taking into account the specific characteristics of women and in accordance with the law, and shall not entrust them with work and physical labor that is not suitable for women. Women shall have special protection during menstruation, pregnancy, maternity and breastfeeding. Although this legislation does not specifically provide for menstrual leave, it does consider menstruation to be an important circumstance in the context of health and safety at work.⁴⁶ This entitles women in certain provinces in China, on a regional basis, to one or two days of paid menstrual leave per month – provided they have a medical certificate. Such provinces are Hainan and Hubei. Hainan issued a non-binding soft regulation in 1993, while Hubei issued a binding policy in 2009. These examples inspired regulatory moves in Anhui and Ningxia provinces later in 2016.⁴⁷ In Anhui, menstrual leave provides one or two days of paid leave on presentation of a medical certificate. Similarly, in Ningxia, the provincial government policy provides for two days of mandatory leave per month to improve women's working conditions, although it is not clear whether the leave is paid or whether it requires a medical

⁴⁵ “Issue of Menstrual Leave for Women,” Drishti, July 11, 2024, accessed January 31, 2025, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/issue-of-menstrual-leave-for-women>.

⁴⁶ Baird, Hill and Colussi, “Mapping Menstrual Leave,” 200.

⁴⁷ King, “Menstrual Leave: Good Intention, Poor Solution,” 153; Baird, Hill and Colussi, “Mapping Menstrual Leave,” 200.

certificate.⁴⁸ The non-binding nature of Hainan's policy has meant that it has not been implemented effectively. Furthermore, as in other countries, this provision is controversial in these provinces. Opponents cite various problems with the policy, including additional costs due to the absence of female workers. Another common counter-argument, according to Chinese opponents, is that it is not clear whether the worker is actually sick or just abusing the female status advantage.⁴⁹ The issue is also being pursued in Hong Kong, where in 2016 an organization, the ADPL (Hong Kong Association for Democracy and People's Livelihood), petitioned the government to introduce menstrual leave. The proposed policy would introduce one day of leave per month, specifically highlighting its extension to civil servants as a first step. It is proposed that medical certification would not be required, as this would further exacerbate the burden on women in the workplace. The proposal also seeks to revolutionize gender relations in the workplace and explicitly challenges androcentric notions of the worker.⁵⁰

2.4. Spanish Regulation

Until the manuscript is closed, Spain is the only EU country⁵¹ that has taken action and enacted menstrual leave into law in 2023. It should be added, however, that in March 2017, Italy had already proposed legislation on paid menstrual leave, which ultimately failed.⁵²

In Spain, prior to the 2023 amendment, women's health risks were, in the absence of any particular doctrinal reflection, managed by social security, without any specific norm, through the legal institution of sick leave and sick pay. Accordingly, in the event of incapacity for work due to sickness, the rate of remuneration could be determined on the basis of four criteria, based on complex calculation rules, the details of which are

⁴⁸ Ibid., 206.

⁴⁹ Price, "Periodic Leave," 194.

⁵⁰ Baird, Hill and Colussi, "Mapping Menstrual Leave," 207.

⁵¹ de la Iglesia Aza and Solymosi-Szekeres, "La menstruación en el entorno laboral," 58–89.

⁵² Price, "Periodic Leave," 187; Anna Momigliano, "Giving Italian Women 'Menstrual Leave' May Backfire on Their Job Prospects," *Washington Post*, March 24, 2017, accessed January 31, 2025, <https://www.washingtonpost.com/news/worldviews/wp/2017/03/24/giving-italian-women-menstrual-leave-may-backfire-on-their-job-prospects/>.

as follows. According to the Spanish rules, the employer is not obliged to pay for the first three days of sick leave during the period of incapacity. Between the fourth and the fifteenth day, the employee is entitled to an absence allowance equal to 60% of the calculation base (average salary), paid by the employer. Between the 16th and 20th day, the employee also receives a 60% benefit, but this is now covered by social security, so the literature still refers to this period as sick leave, which is more correctly regarded as sick pay. From the 21st day onwards, the benefit is 75% of the calculation basis, paid by social security (the reasoning behind this is that if someone has a health problem over such a long period of time, which prevents them from working, they need increased provision for subsistence).⁵³

The regulation of menstrual leave in Spain is contained in Law No. 1/2023 of 28 February 2023 (“Organic Law”), which amends Law No. 10/2010 of 3 March on Sexual and Reproductive Health and Voluntary Termination of Pregnancy, and which entered into force on June 1, 2023. During the process of drafting the law, it has already been strongly criticized by various political parties for its innovative and ambitious nature. Undoubtedly, this is a law that creates new rights for women in the field of social security, which can be dogmatically described as the right to work without pain, and which therefore has a strong fundamental rights dimension. The legislation is extremely ambitious in nature and aims, among other things, to break with the outdated systems that still exist in Spanish law on the biological status of women. This issue has so far been ignored by the Spanish legislator, and the new possibilities created by the legislation therefore extend the range of events protected by social security. Indeed, the explanatory memorandum to the legislation explains that the risk events linked to specific situations of temporary incapacity for

⁵³ Daniel Perez Del Prado, “Women’s Health and Labour Law,” September 2024, accessed January 31, 2025, <https://www.roudou-kk.co.jp/wp-content/uploads/2024/09/%E5%AD%A3%E5%88%8A%E5%8A%B4%E5%83%8D%E6%B3%95286%E6%8E%B2%E8%BC%89%E3%80%8C%E5%A5%B3%E6%80%A7%E3%81%AE%E5%81%A5%E5%BA%B7%E3%81%A8%E5%8A%B4%E5%83%8D%E6%B3%95%E3%80%8D%E3%83%80%E3%83%8B%E3%82%A8%E3%83%AB%E3%83%BB%E3%83%9A%E3%83%AC%E3%82%BA%E3%83%BB%E3%83%87%E3%83%AB%E3%83%BB%E3%83%97%E3%83%A9%E3%83%89%E6%B0%8F%E5%8E%9F%E6%96%87%E5%8E%9F%E7%A8%BF.pdf>.

work include (secondary) dysmenorrhea associated with menstruation,⁵⁴ or menstruation causing secondary incapacity. In such a case, a woman with secondary dysmenorrhea, i.e. other gynecological problems such as endometriosis, fibroids or pelvic inflammatory disease, is entitled to sick leave, adenomyosis, endometrial polyps, polycystic ovaries, or any type of difficulty in menstrual blood flow, which may be associated with symptoms such as dyspareunia, dysuria, infertility or heavier than normal bleeding. In practice, this legislation aims to eliminate any negative prejudice in the workplace against these pathological situations and proven gynecological conditions. But this is not the only reference in the law to menstrual health, as it includes the use of free menstrual management products in educational centers, as well as in prisons and social centers, so that vulnerable women can have access to them.⁵⁵

The regulation on menstrual leave is thus placed in the General Social Security Act, in Articles 169–176, as amended by the above-mentioned Act. A new section has been added to the previous legislation on sick leave, stating that temporary incapacity for work during which a woman suffers from menstruation causing secondary incapacity for work, provided that she is receiving health care under the health insurance scheme, is to be considered a special type of sick leave or sickness benefit.⁵⁶ It should be noted that the placement of the regulation is somewhat ill-considered in certain respects, as the General Social Security Act nowhere defines what is meant by “secondary incapacity for work,” so that the explanatory memorandum of Act No. 1/2023 must be consulted to understand the concept. This shows that the conceptual set of the Social Security Act is not complete in this respect.⁵⁷

Under the new legislation, the use of menstrual leave therefore requires a temporary loss of capacity to work, a medical provision for health care, and certain provisions imply that the specific medical condition must be diagnosed by a gynecologist. This differs from the rules on ordinary sick

⁵⁴ Mariagiulia Bernardi et al., “Dysmenorrhea and Related Disorders,” *F1000Research*, no. 6 (2017): 1645, <https://doi.org/10.12688/f1000research.11682.1>.

⁵⁵ de la Iglesia Aza and Solymosi-Szekeres, “La menstruación en el entorno laboral.”

⁵⁶ Ibid.

⁵⁷ Ibid.

leave and sick pay, under which a certificate from a general practitioner is sufficient.⁵⁸ In addition, although menstrual leave is regulated within the incapacity for work due to sickness, there are other different circumstances, such as the fact that the specialist may issue the relevant certificate with a validity of one year, so that it is not necessary to present a certificate to the employer for every occurrence of sickness, i.e. for every menstruation. A further difference is that the remuneration, unlike the four-step calculation mentioned above, is 75% of the calculation base representing average earnings from the first day onwards.⁵⁹

As regards remuneration, the rules are more advanced, as from the first day the worker is entitled to benefits paid by the social security system, unlike the fourth day under the general rules described above. In addition, the period of menstrual leave, often wrongly referred to as 3–5 days⁶⁰ – although no such restriction exists in terms of the monthly rate⁶¹ – the days concerned do not have to be counted towards sick leave and sick pay for general incapacity for work, which also makes the regulation advantageous. As a third important advantage, which is also true of the general rules in general, the use of menstrual leave is not dependent on prior insurance periods or prior payment of contributions. The costs of menstrual leave are therefore covered directly by the social security system, at a rate of 75% of the worker's average earnings.⁶²

As this is new legislation, it is worth looking at the related position papers to see how the legislation applies. In this respect, it should be pointed out that Rodriguez, who is the Minister for Equal Opportunities, stressed at the time of drafting the legislation that it should be interpreted as meaning

⁵⁸ Ibid.

⁵⁹ Perez Del Prado, “Women's Health and Labour Law.”

⁶⁰ For example, in the following sources: Drishti, “Issue of Menstrual Leave for Women”; Isabel Jackson, “A Year on from Spain's Menstrual Leave Law – What Have We Learned?,” People Management, June 10, 2024, accessed January 31, 2025, <https://www.peoplemanagement.co.uk/article/1876316/year-spains-menstrual-leave-law-%E2%80%93-learned>.

⁶¹ Perez Del Prado, “Women's Health and Labour Law.”

⁶² Jessica Pearson and Michelle Morgan, “Menstrual Leave in the Workplace,” Shoosmiths, September 8, 2023, accessed January 31, 2025, <https://www.shoosmiths.com/insights/articles/menstrual-leave-in-the-workplace>.

that the worker would only be entitled to leave in the event of serious health complaints.⁶³ This narrows the scope of the legislation considerably.

Unfortunately, there has been little empirical research on the monitoring and impact of menstrual leave in Spain, so there is little empirical research to date. However, since the entry into force of the Spanish law, there have been 1,559 menstrual leave withdrawals, according to the Spanish Ministry of Integration, Social Security and Migration. In addition, it was found that between June 1, 2023 and April 24, 2024, an average of 4.75 people took menstrual leave per day, while the average duration was 3.03 days.⁶⁴

3. Comparison of International Examples

The above examples of national and regional social policies on menstruation show that menstruation is a very important factor in the development of labor law and social law. A difference can be observed in the underlying motivations. The introduction of such a legal provision can be justified by the argument of promoting reproductive health (Spanish legislation), which focuses on menstruation in the lens of health and safety protection at work (China). Menstruation can also be assessed as a gender-specific issue in the field of labor law (Vietnam), which promotes the protection of mothers and women (South Korea, Zambia), but its impact, which may be linked to the birth rate, cannot be ignored, and its demographic dimension must also be assessed (Taiwan). An important argument is made by Spain, which stresses the right to work without pain, and by Mexico, which concludes that physical and mental well-being is essential for the exercise of labor rights.

In addition to the argumentation, the specific regulations and their main motives may be instructive for legislators working on the social and labor rights assessment of menstruation. To this end, the main points of the above research findings can be illustrated in the following table.

⁶³ András Mizsur, “Menstruációs szabadság bevezetését tervezik Spanyolországban, három nap járna a fájdalmaktól szenvedő nőknek,” Telex, May 12, 2022, accessed January 31, 2025, <https://telex.hu/kulfold/2022/05/12/spanyolorszag-menstruacios-szabadsag-torveny-tervezet>.

⁶⁴ Jackson, “A Year on from Spain’s Menstrual Leave Law.”

TABLE 1. Table comparing national examples of menstrual leave

Country, region	Regulation	Remuneration	Experiences
Japan	Labor law – regulation does not specify the number of days off.	It is up to employers to decide whether they are remunerated.	One third of companies guarantee full or partial pay on a voluntary basis, however, less than 1% of female workers take menstrual leave (for socio-cultural reasons).
South Korea	Labour law – one day per month, to be issued by the employer, prior request required.	Unpaid leave.	Despite the risk of fines for employers, 1/5 of female workers take up this option; employers' practices that violate human dignity.
Indonesia	Labor law – possibility of up to two days per month, details to be worked out by the parties in a collective agreement; may be paid in case of pain; workers must give prior notice before taking advantage of the service.	Paid leave.	Employers often fail to provide menstrual leave, and require material evidence of an offensive nature that violates human dignity.
Taiwan	Labor law – one day per month, but up to three days per year, for difficulties due to menstruation (wider than just painful menstruation).	Sick leave at the same rate as sick leave, 50% of the average salary.	Rarely used due to lack of flexibility, the need for medical certification and inadequate information on how to claim.
Zambia	Labor law – one day per month, no medical certificate or prior information required.	n/A	Although there is no legal requirement for prior information from the employee or a medical certificate, employers still require them.
Vietnam	Labor law – thirty extra minutes a day during menstruation days and at least three days a month, with the parties negotiating the details individually.	n/A	n/A
Chinese provinces	Labor law – 1–2 days per month possible, medical certificate required.	n/A	Where not mandatory, not effectively implemented; fear of misuse.
Spain	Social security law – no maximum monthly rate + medical certificate required.	Covered by social security (75% of the income used as the basis for calculation).	Trade unions fear stigmatization (employers less likely to hire women); 1 year 1559 claims.

Source: own compilation

The data above shows that there are significant differences in national rules on menstrual leave, so there is no uniform concept and no best practice approach to menstruation in labor law. One can talk about a social security-based approach (Spanish solution), but the labor law approach is more common. There are provisions for paid rest periods, but this is not necessarily a feature (South Korea, Japan). There are some provisions that are cogent, but also some that explicitly allow derogations from the law up to the level of the collective agreement, while in others it is entirely up to the parties to agree on the details in individual agreements, or even the employer's unilateral decision may influence the implementation of menstrual leave, as in the Japanese example on pay. There are also differences in the amount of time off and in the conditions (medical certificate, prior notification), which are not covered in this study, but which the author highlights: can menstrual leave be granted only in cases of painful menstruation (dysmenorrhea) or in a wider range of cases (e.g. heavy bleeding)? The above examples also include a more progressive solution covering a wider range of cases, such as Taiwan, and a much narrower scope example for Spain. Therefore, we can conclude that it is of utmost importance for the national legislator to assess the full range of options, as there are many points where a nation's menstrual policy can be specific. An evaluation of the legal structure of these examples is beyond the scope of this paper, but we draw attention to the importance of this evaluation, which the author intends to publish in forthcoming research.

4. Conclusion

The international scientific discourse is increasingly turning towards previously unexamined, almost taboo subjects, including menstruation, one of the unfairly neglected M's (menstruation, motherhood, menopause). Menstruation, working during menstruation, is a situation that affects a large part of the world's population and is therefore difficult to accept if a national legal system does not regulate the labor and social law aspects of this natural phenomenon. One of the main reasons for this is the nature of patriarchal social structures and legal constructions, which ignore women's specific characteristics. There are very few nations where the legal system regulates menstruation in any way, or associates it with any supportive

measures. The paper presents the main known examples of national or regional employment policy instruments, with a focus on Asian countries. These regulations were analyzed, which led to the conclusion that there is no universal, flawless and exemplary menstrual leave and its framework, but that its functioning is also greatly influenced by the social context and the attitude of the social partners. Unfortunately, despite the fact that menstrual leave is introduced in a country, there are still instances of degrading treatment of female workers, and even menstrual leave itself induces it. This underlines an important lesson that must be emphasized both by the legislator and by the social partners: in order to improve the situation of women, in addition to the very important creation of labor and social law institutions, it is also important to change the cultural and social environment, which in the long term can only be based on the related educational activities.

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