

**Original Article**

## **LEGISLATIVE LANDMARKS: A COMPARATIVE ANALYSIS OF BAHRAIN'S PROGRESS IN WOMEN'S LABOR RIGHTS**

***Fatima Hassan Al-Khalifa, LL.D. and Ali Jaber Al-Ahmed, LL.D.***

Assistant Professor of Civil Law, Applied Sciences University, Faculty of Law, Private Law Section, Kingdom of Bahrain

**Abstract:** The increasing participation of women in the labor market is influenced by various factors, including higher educational attainment, evolving labor laws, financial responsibilities, and the shift from traditional to modern means of production. This paper examines these influences and highlights the importance of aligning labor legislation with the reality of women's roles in the workforce, in line with international principles and conventions.

**Keywords:** Women in the labor market, labor legislation, gender equality, workforce participation, Bahraini labor law

### **Introduction:**

Many factors have contributed to increasing women's market share in the labor market, as women work side by side with men, for a number of reasons, which can be summarized as follows:

First: The high proportion of education among women. Second: The continuing development of the Labor Code, which has contributed to the creation of a legal environment that protects women employer. Thirdly, increasing the financial burden of the family, women have been forced to work to contribute to the increased expenses of the family. Fourth: Replacing traditional, muscle-based means of production, the replacement of modern means of production, encouraged women to work in different productive sectors.

In view of the international concern for employer rights, the Bahraini legislature had taken into account international principles and conventions in drafting the labor law, calling for the protection of working women by emphasizing the need to take into account the reality of women in drafting labor legislation so as to stimulate women's access to the labor market.

In this research, I have tried to highlight an aspect of contemporary women's issues, with the title "Special provisions for women in labor law in the Bahraini civil sector - comparative study". The following is a statement of the importance of this topic, the reasons for its selection, its objectives, the methodology of research followed, as well as the problem of research.

### **The importance of research and the reasons for choosing it:**

The importance of this research stems from the fact that it highlights the special rights of working women in comparison with some laws, as this research highlighted the points of agreement and the difference between those laws in comparison with Bahraini law.

## **Original Article**

### **Study methodology:**

Since the study is a comparative legal study, it has adhered to the comparative critical analytical approach, by referring to specialized references in women's work and analyzing legal texts related to that subject.

### **Study objectives:**

1. The study aims at identifying the special rights of employed women contained in the Bahraini Labor Law and some other labor laws in some countries. The main objectives of the study can be summarized as follows:
2. The study aims at identifying the special rights of employed women in the Kingdom of Bahrain in comparison with some other labor legislation.
3. The study aims at identifying the compatibility between these laws and international and Arab standards.

### **Study problem:**

The problem of the study is that employers and employed women do not know their respective rights and obligations, as the rights and obligations of the employer are sometimes confused with those of many citizens in employment contracts. Therefore, this problem leads us to the following question, which will be the course of our study in this research. Have Arab legislation, particularly in the Kingdom of Bahrain, taken into account international and Arab labor standards when drafting legislation on employed women?

### **Study Plan:**

The study plan included an introduction, two researches and a conclusion, as follows:

Introduction: The subject matter, its importance, reasons for its selection, the approach taken, and the problem of research as well as the research plan, which are as follows:

First research: Holidays for employed women.

Second: Provisions on the conditions and conditions of employment of women.

#### **1: Vacations for employed women**

Because of the physical nature of women and their social function as mothers, the Bahraini legislator has made special provisions for the leave of employed women, and I have considered that I divide this research into two demands. The second requirement will be for legal protection of employed women against dismissal during the period of leave.

##### **1.1: Maternity leave:**

The Bahraini legislature has provided special leave for employed women during the period of birth, as well as special leave for the care and well-being of their child, which I will address in the detailed commentary on the following points.

##### **First: Maternity leave**

The Bahraini legislator grants the employed women a maternity leave <sup>(i)</sup>. This leave has a health and humanitarian dimension, both for women and for her child, as article 32 (a) of the Bahraini Labor Code (36) of 2012<sup>(ii)</sup> stipulates that: "A employer receives a 60-day paid maternity leave, including the period preceding and following the situation, provided that she provides a medical certificate accredited by a government scientific center or an employer-approved clinic indicating the date on which the situation is likely to occur."

It is clear from the previous text that maternity leave, which is 60 days <sup>(iii)</sup>, is compulsory leave for employed women and the employer, and that the burden of proof of birth is on the employer. Access to maternity leave depends on the provision of an approved medical certificate issued by a government scientific center. If the certificate is issued by a non-governmental clinic, the clinic must be approved by the employer.

It is noted that the Bahraini legislature did not require the employer to spend a certain period in the employer's service until maternity leave is due <sup>(iv)</sup>. The Egyptian legislature does not qualify for maternity leave unless at least 10 months have elapsed in the employer's service<sup>(v)</sup>, I hoped that the Egyptian legislator would not make the

## Original Article

entitlement of employed women to maternity leave a standing clause. The Bahraini legislator was granted an additional 15-day unpaid leave for employed women - for which she is an optional leave - article 32 (a) stipulates that: "A employer may take 15 days' unpaid leave on the occasion of childbirth in addition to previous leave"<sup>(vi)</sup>. In order for women to become full of care for their children, the Bahraini Labor Code prohibits the employment of employed women within 40 days following their status, article 32 (b) of the Labor Code stipulates that: "Women are prohibited from being employed during the 40 days following their status"<sup>(vii)</sup>. In order to ensure that women are free to care for their births and to preserve their health, the Bahraini legislature has prevented them from working for another place during maternity leave, as article 32 (b) of the Labor Code stipulates: "... The provisions of article 62 of this Act apply to another employer's employment during maternity leave".

Article 62 of the Bahraini Labor Code states: "An employer may deprive the employer of his or her wages for the period of leave or recover his or her wages if he or she is found to be employed during his or her period of leave with another employer, without prejudice to disciplinary responsibility". It is noted that the issue of depriving the employer of his wage if it is found that he is working with another employer is a discretionary issue for the employer, meaning that the owner has the right to deprive the employer of the entire wage or part of it for the period during which he worked for another employer, and he may also grant the employer His full wages, all within the framework of implementing the contracts in good faith.

It is further noted that the legislator has granted the employer to impose an additional penalty represented by disciplinary penalties for the employer who works for another employer during the leave period <sup>(viii)</sup>.

The Bahraini legislator did not set a maximum number of times for obtaining maternity leave, which is contrary to what was mentioned in the Egyptian labor law, as this right was restricted only twice for the duration of the employer's service, and I believe that the Egyptian legislator's position does not match the human and social dimension of the maternity leave. Although the Egyptian legislature intended to reduce the problem of population explosion, there are many available means to address this problem, above all, to sensitize communities to the importance of birth control, without prejudice to women's right to maternity leave<sup>(ix)</sup>. The employer may not dismiss the employer or terminate her services during maternity leave <sup>(x)</sup>, or because of her marriage and assumes that the dismissal or termination during such leave is arbitrary unless the contrary is proved <sup>(xi)</sup>.

The Bahraini legislature has specifically concerned employed women with a further type of protection, as provided in article (5) of Act No. (74) Of 2006 on the care, rehabilitation and employment of disabled persons <sup>(xii)</sup>: "An exception to the provisions of the Civil Service Labor Act and the Civil Service Regulations, a employed women shall be entitled to a full salary leave not to be withdrawn from her other leave, if she is pregnant and the Medical Committee recommends that her case so require in accordance with the conditions and rules established by the Minister's decision".

On the basis of the previous provision, the legislator granted employed women paid leave and did not calculate the balance of their other holidays, provided that this was provided by a medical report issued by the Medical Committee determined by the Minister of Health, and noted that the legislator had not specified the duration of the leave; But the task of determining the duration of the leave was assigned to the medical authority formed by the Minister of Health <sup>(xiii)</sup>

In order to complement the legal protections enjoyed by employed women in the field of labor, international and Arab labor standards have referred to the special rights of employed women, as the International Labor Organization (ILO) has issued <sup>(xiv)</sup>, The organization has allocated 12 conventions on women's rights, including the Maternity Convention No. 183 of 2000, revised Convention No. 103 of 1952, which contains provisions for the protection of employment and non-discrimination, and where the employer has prohibited the separation of employed women during maternity leave and during pregnancy or childbirth. The prohibition of the dismissal of

## Original Article

employed women in the 1982 International Convention No. 158 on the termination of employment by the employer was confirmed, article 5 of which states that pregnancy, absence from work during maternity leave, family burdens or the marital social situation is not a legitimate reason to terminate the employment contract. The Convention No. 183 referred to has also been granted maternity leave for 14 weeks, where a employed women is entitled to a period of pre-maternity leave equal to the period between the date of birth and its actual date <sup>(xv)</sup>, Article 10 of the Convention also included the right of women employers to a daily period or stoppage or to a reduction in daily working hours to feed their children, and periods of stoppage or reduction of daily working hours were paid hours<sup>(xvi)</sup>.

These rights, enshrined in the ILO Convention, are enshrined by the Arab Labor Organization in its Conventions, which are contained in Arab Convention No. 5 of 1976 (Basic Convention). It also decided the right of the employer to a full paid maternity leave before and after childbirth, for a period of not less than 10 weeks, with the duration of such leave after childbirth not less than six weeks. This Convention also included the need to give full daily feeding periods to employed women whose children are breast-fed by the legislation of each State (xvii).

### **Second: Child-care leave**

There is no doubt that the child in his first years needs special care, which may require the mother to stay next to him, so that he may become too old, and he may fear that if she leaves her job and wants to stay next to her child, she will not find work at a time when she needs work to help her family economically <sup>(xviii)</sup>. Thus, in article 34 of the Labor Code, the Bahraini legislature provided for the right of women to leave for the care of their child, which provided that: "employed women are entitled to unpaid leave to care for their child, who has not exceeded six years, for a maximum of six months at a time and three times the length of her service".

Through a review of the previous text, it has been found that the Bahraini legislature has granted employed women a right to unpaid leave to care for their child, who is under six years of age, but the legislature has maintained a balance between the interests of employed women and those of the employer. Limit this right to a maximum of three times for the duration of its service, and to not exceed the duration of the leave every time for six months. I believe that the Bahraini legislature's position on the determination of this leave in terms of its duration and the number of time it has been granted is a welcome one, since, while these holidays are important, they do not see their importance in regard to maternity leave. It is noted that the Bahraini legislature - and a good doing - did not require the consent of the employer in order for employed women to be entitled to child-care leave, but I believe that the employer should exercise this right in good faith <sup>(xix)</sup>.

The Jordanian legislator provided for child-care leave in article 67 of the Labor Code, which reads as follows: "A woman who works in an institution that employs ten or more employer shall have the right to leave without pay for a period of not more than one year to devote full time to the upbringing of her children, and may return to her work after the termination of such leave, subject to loss of that right if she works for a wage in any other institution during that period".

By reviewing this text, the provisions of this right can be drawn into Jordanian labor law as follows:

1. The legislator has only one requirement that the number of employees in the enterprise is at least 10, and therefore no previous service is required for the enterprise. I had hoped that the Jordanian legislature would reduce the number of employees in the employer below so that employed women could obtain leave to take care of their children.
2. Employed women have more than one child, which is understood from the drafting of the text, which is in the plural (to raise their children), so employed women with only one child are not entitled to child-care leave(xx).

## Original Article

3. The purpose of granting such leave to employed women is to provide them with full care for their children, so they lose their work if they are found to have worked for another employer during their childcare leave, a commendable course of the Jordanian legislature because it constitutes protection for the employer. This leave also has the social and human dimension of the legislator.

4. Leave without pay, where the legislator has removed the burden of paying the employer, since the rule is pay for work<sup>(xxi)</sup>.

5. The Jordanian legislator defined the duration of this leave by one year, but did not specify the number of times women are entitled to such leave by one year, but there are those who see it<sup>(xxii)</sup>. Such leave cannot be obtained more than once for the duration of the employment of women employed by the employer, since all holidays are contrary to the general origin of the continuity of the term and therefore cannot be judged solely by text. Unlike the French legislator, who authorized the employer to obtain an educational holiday on the occasion of the birth or adoption of each child<sup>(xxiii)</sup>.

In my view, and in the interests of the employer, the legislator determines how many times women can obtain child-care leave, especially as the law gives women a full-year leave.

6. Jordanian legislator did not specify the age of the children who need care, and I hoped that, in order to prevent conflict, the legislator would determine the maximum age of the child who needs care.

7. The fact that a employed women receives leave to take care of her children leads to the suspension of the employment contract during that period, and thus can play her role as a mother without having to sacrifice her work<sup>(xxiv)</sup>.

### **Third: Breastfeeding leave**

In order to supplement the right of employed women to maternity leave, the Bahraini legislature stated in article 35 that: "After maternity leave, employed women shall have until their child reaches six months of age two childcare periods of at least one hour each. They are entitled to two half-hour periods of care until their child reaches its first year, and the employer has the right to join these two periods and these two additional periods are calculated from working hours and do not result in any reduction in remuneration. The employer shall determine the date of the period of care referred to in the preceding paragraph in accordance with the conditions of the employer and the employer"<sup>(xxv)</sup>.

In the previous text, it is clear to us how keen the Bahraini legislature is to promote breastfeeding with a view to maintaining the stability of the working mother and her feeling of comfort and tranquility, which positively reflects on her health and the health of her newborn and thus contributes to increasing productivity<sup>(xxvi)</sup>.

The Bahraini legislator has given two kinds of holidays seeking to feed her child, the first of which is at least one hour until her child reaches six months, and the second of two half-hour care periods until her child reaches his first year. The employer was also given the right to include these two periods in one period, with the benefit of the nursing leave - and the improved work of the legislator - within actual working hours, without a reduction in the remuneration for that leave.

In order to balance the interests of the mother and her child with that of the employer, the legislator has entrusted the employer with organizing this leave, taking into account the interests of the employed women and the labor interest.

In comparison with the period of breastfeeding set out in the previous Labor Code promulgated by Decree-Law 1976, and the current law on nursing leave, the current Labor Code granted employed women two periods of care in total of not less than two hours, while in the past they were only one hour. We note, however, that under the previous law, the Bahraini legislature granted women the right to two terms of care for two years, while the new law granted them this right until the child reaches its first year (i.e. one year)<sup>(xxvii)</sup>.



## Original Article

### 1.2: Prohibition of the dismissal of employed women during maternity leave

In order to protect employed women, the Bahraini legislature prohibited dismissal during maternity leave, as article 33 of the Labor Code stipulates: "The employer is prohibited from firing the employer or terminating her employee contract because of marriage or during maternity leave".

Through the previous text, we have found out how keen the Bahraini legislature is to protect the right of employed women to continue their work, but also to protect the interests of the employer. He has given him the right to deprive the employer of his wages for the period of leave or to recover his wages and his right to impose disciplinary sanctions against that employer, if he is found to have worked for another employer during the period of leave (xxviii).

The Jordanian legislature prohibited the dismissal of employed women in article 27 (a/1) of the Labor Code, which stated that: "A - subject to the provisions of paragraph (b) of this article, an employer may not terminate the employment of the employer or give notice to him to terminate his service in any of the following cases: 1. employed women who are pregnant from the sixth month of pregnancy or during maternity leave"<sup>(xxix)</sup>.

This is what the Jordanian Court of Cassation referred to, which ruled that "an employer may not terminate the employer's service or give notice to him to terminate his service in specific cases mentioned in article (1/2) (27) of the Labor Code"<sup>(xxx)</sup>.

Another provision of the Jordanian Court of Cassation stated that: "Article 27/a of the Labor Code expressly stipulates that pregnant employed women may not be terminated from the sixth month or during maternity leave or that notice of termination of employment during that period shall be given. Accordingly, the claim that the dismissal of the plaintiff was not arbitrary is not made that the respondent notified her of the termination of his services, since the provisions of the Labor Code in what she ordered or terminated in order to benefit the employer or determine his right are public order against which no agreement may be made.

The contrary conduct is void, and the court is entitled to raise it and to judicial it on its own, so the prosecutor was alerting at the end of January 1991 and 15 days before the birth was placed on the leave of maternity leave from June. Contrary to article 27/1/a of the Labor Code, the dismissal of labor is arbitrary, and the compensation provided for in article 25 of the Labor Code is compensable, and the award of six months' pay is in accordance with the law"<sup>(xxxi)</sup>.

Although the Jordanian legislature has been keen to protect employed women and to maintain their employment opportunities, such protection is conditional on their compliance with the provisions of the Labor Code and in accordance with the legislative wisdom of such protection, and the employer is therefore in a position to do so under article 27, paragraph (a), If the employer is found to be employed by another employer during maternity or maternity leave<sup>(xxxii)</sup>. The article stipulates that: "An employer shall be in a position to be free from the provisions of paragraph (a) of this article if an employee of another employer uses any of the terms set forth in that paragraph".

In comparison with the text of article 33 of the Bahraini Labor Code and article 27 of the Jordanian Labor Code, both laws provided legal protection to women working during maternity leave, but Jordanian law prohibited notification of employed women to terminate their services during the period of leave. I wish the Bahraini legislature to amend the text of article 33 of the Labor Code so that the employer is granted notice during the period of leave to terminate the employer's services.

On the other hand, however, I believe that the Jordanian legislature may intensify the impact of women's employment on another employer during the period of leave, giving him the right to terminate women's services accordingly. The Bahraini legislature, however, has done well to give the employer the right to deprive the

## Original Article

employer of the wage with the right to impose disciplinary sanctions without giving him the right to terminate the employer's services"<sup>(xxxiii)</sup>.

### 1.3: Waiting period husband's death

Muslim employed women have the right to obtain a knot in the event of the death of their husband, as article 63/c of the Bahraini Labor Code stipulates: "A Muslim employer has the right to a paid month's leave if her husband dies, to complete several deaths from her annual leave of three months and ten days, and if she does not have a balance of her annual leave, she has the right to leave without pay".

On the basis of the previous text, we are concluding the following provisions with respect to the leave of several spouses:

1. The spouse's death kit is a woman's right and is binding on the employer and is not required to grant her employer acceptance to grant women a maternity leave.
2. The leave of multiple leave is for Muslim women only.
3. The Act gave women employers the right to complete several deaths from their annual leave balance of three months and ten days, and I believe that this option may not be available to employed women, especially given that the law obliges the employer to settle the annual employer's leave balance every two years. This means that a woman will have to take unpaid leave at a time when she may be most in need of that wage after her husband's death<sup>(xxxiv)</sup>.

I had hoped that the Bahraini legislature would grant employee Muslim women four months, 10 days and full pay leave, especially since the death of an employed women's husband was low during the period of employment of married women and was mostly one-time.

However, the Bahraini legislature records its consideration of the religious and humanitarian aspects of the employer when he organized the husband's death leave, while some Arab legislation neglected to organize this kind of leave, such as the Egyptian Labor Law and the Jordanian Labor Law. I call upon the legislation of the Arab and Islamic States to amend the Labor Code to regulate the leave of several spouses' deaths as a special leave for employed women<sup>(xxxv)</sup>.

### 2: Provisions on the conditions and conditions of employment of women

The Bahraini legislature has set special provisions for the conditions and conditions of employment of women to protect them from the risks that they and their soldiers may face in the course of their work. Because of its physiological and health nature, which differs from that of men, and taking into account its primary role in society as a wife, mother and nanny<sup>(xxxvi)</sup>. In order to address this issue, I considered that I would divide this research into two demands, the first of which would be allocated to the working times of women, and the second of which would be allocated to the scope of employed women's.

#### 2.2: Women working times

Numerous studies and researches have shown that working at night is a stress on the health of employed Women<sup>(xxxvii)</sup>. This is due to two reasons: sleep disturbances, and changing dietary habits, as it was found that night work may expose women, especially during their menstrual periods, to excessive stress, which makes their need for protection first and obligatory for men to need protection<sup>(xxxviii)</sup>.

The question that arises in this regard, what is meant by the term night?

To answer this question, we find that the Bahraini legislator defined the night in Article (1/12) of the Labor Law, which stipulated that "The night: the period between seven o'clock in the evening and seven in the morning". As for the Egyptian legislator, the night was defined astronomically - well done - as article (2 / z) stipulated that "the night: the period between sunset and sunrise." It seems clear that the Egyptian legislator has taken into account

## Original Article

the changes that occur on day and night times in the winter and summer and thus adopted the astronomical standard.

The Jordanian legislator did not know the word of the night, leaving the issue of defining its concept in my opinion to the Minister of Labor, as article 69 of the Jordanian Labor Law stipulates: "It is determined by a decision of the Minister after the consultation of the competent official authorities... B. when women may not be employed and the cases excluded from them". I believe that the Jordanian legislator's approach to the question of the word "night" is consistent with the nature of the climate, since there is a difference between the night in winter and the night in summer.

As for the position of the UAE legislator, he has taken a different approach, since night has been known more than once in the labor law, taking into account the interest that he aims to protect each time, and we find it known at night in chapter II on the employment of juveniles in article (23) as follows: "Juveniles shall not be employed at night on projects and shall be meant to be employed at least twelve consecutive hours, including the period from 8 p.m. to 6 a.m."

"Women may not be employed at night and at night is intended for at least eleven consecutive hours, including between 10 p.m. and 7 a.m.". It is noted that the UAE legislator has expanded the night-time for juveniles beyond the night-time range for employed women, taking into account the physical conditions of juveniles.

We conclude, therefore, that the legislator has provided protection to women working in various legislation, and the question that may arise in this regard is whether the legislator makes women's work at night permissible according to origin and prohibited or not? In order to answer this question, article 30 of the Bahraini Labor Code stipulates that: "The Minister shall issue a decision to renew the conditions, actions and events in which women may not be employed at night"<sup>(xxxix)</sup>.

This is also the position of the Egyptian legislature, as article 89 of the Egyptian Labor Code stipulates that: "The competent minister shall issue a decision to renew the conditions, actions and events in which women may not be employed between 7 p.m. and 7 a.m.". It is noted that the Egyptian legislature did not adopt the astronomical definition to define the concept of night in this article, but set the night hours from 7 p.m. to 7 a.m.

According to the provisions of article 30 of the Bahraini Labor Code and article 89 of the Egyptian Labor Code, night work by women is permissible as a general rule, except in cases, jobs and events specified by the Minister of Labor. The Jordanian legislature has adopted a similar approach, as article 69 of the Labor Code stipulates that: "decision shall be made by the Minister after the consultation of the competent official bodies.... B. when women may not be employed and the cases excluded from them".

In the previous text, it is clear that the Jordanian legislature, taking into account social considerations and the moral protection of employee women, has given the Minister of Labor and after appeals the opinion of the competent authorities to determine when women may not be employed at night and the actions excluded from them<sup>(xli)</sup>. Under the terms of reference of the Minister of Labor, a decree was issued by the Bahraini Minister of Labor stating when women may not be employed, which is between 8 p.m. and 6 a.m., as well as between the exceptions, including work in hospitals, restaurants, hotels and tourist offices<sup>(xlii)</sup>.

The UAE legislator has taken a different approach, making the prohibition of night-time employment of women the origin, as article 27 of the UAE Labor Code stipulates: "Women shall not be employed at night and shall mean night for a period of not less than eleven consecutive hours, including the period between 10 p.m. and 7 a.m.". Article 28 of the UAE Labor Code further stipulates that: "The prohibition of night-time employment of women shall be excluded from the following situations:

A. Cases where the operation of the establishment is suspended for a force majeure.



## Original Article

B. Working in responsible administrative and technical centers.

C. To work in health services and other work renewed by a decision of the Minister of Labor and Social Affairs if the employed woman does not work manually".

According to article 28 of the Emirate Labor Code, a decree was issued by the Minister of Labor No. 46 of 1980, which specified the work in which women may be employed at night, as follows:

1 – Working at hotels, restaurants, hostels, cafes, buffets, theaters, cinemas, music halls, singing and other similar shops.

2 - Work on the transport of persons and goods by inland waterways or by air, including tourism and aviation offices and airports.

3 - Annual inventory, budgeting, liquidation and closing of accounts Provided that the number of days during which women may be employed at night shall not exceed fifteen days per year unless the competent labor service permits a longer period of time.

4 - If the work is to prevent a hazardous accident or to repair the resulting accident or to avoid the loss of perishable materials.

5 - So Operation was intended to meet abnormal working pressure.

6 - Working at the shops in Ramadan, and three days before Eid al-Aldha.

7 - Work in hospitals, clinics, medical clinics and other treatment centers.

### **2.2: The scope of women's work**

The Bahraini legislature is concerned that the nature of women is different from that of men; employed women are prohibited from doing some work because of their negative effects on women's physical and psychological health<sup>(xlii)</sup>. Article 31 of the Bahraini Labor Code stipulates that: "The Minister shall, after taking the opinion of the concerned party, issue a decision to determine the acts in which women are prohibited from employment".

It became clear to us through the previous legal text that the legislator has assigned the task of defining the actions that are prohibited by women to the Minister of Labor, after taking the opinion of the relevant authorities, and this is a legislative course praised by the legislator, because the work environment is subject to change and change from one period to another, This change may be a reason for narrowing the scope of women's employee in a particular job, such as previous applied scientific studies, indicating that the work environment is safe for women because they are free from harmful rays in women and their fetus, for example, However, recent scientific research may indicate the possibility of a woman and her fetus being harmed by exposure to some rays in the work environment, so the minister issues a decision to prohibit a woman from working in those jobs according to the powers vested in him, and the opposite may happen as well. With the nature of the woman and her physical abilities, but because of the technological development, it may depend more on modern machines than on the muscle effort of the employer, and therefore this sector becomes suitable for the work of women, and the minister issues a decision to allow women to work in that sector.

According to article 31 of the Labor Code, Decree No. 32 of 2013 was issued concerning the determination of the work in which women are prohibited from employment<sup>(xliii)</sup>. The decision prohibited the employment of women in certain jobs, in the sense that the prohibition here was a general prohibition, and the prohibition on pregnant women being allowed to work in some jobs, in the sense that prevention was a prohibition of pregnant women only.

Article (1) of the resolution stipulates that:

The employment of women is prohibited in the following acts:

## Original Article

1 - Work carried out underground; because the workplace is an environment that is inappropriate for women's physical nature and inappropriate for women's psychological health, the attendant risks to women's life and mental health caused by fear.

2 - The decision prohibited women from working in these works because they were exposed to direct heat that did not match their ability to withstand this heat, and it is noted that the ban only covers work that exposed women to extreme heat. This means that women may be employed in work where the heat resulting from performing tasks is a reasonable temperature. It is further noted that work in front of metal smelter furnaces was an example, but not limited to.

3 - Work that has been subjected to a major or continuous physical effort, such as the work of a machine, a load or a weightlifting of more than 15-20 kg, as such work requires a muscle effort that is more suitable for men than women, for example, and the work described in this paragraph. It is noted that the decision has left discretionary power to renew weights according to the age and physical strength of women, in the sense that employed women may be allowed to carry weights of no more than 20 kg, while other employed women may be prevented from doing so because of their inability to do so.

4 - Operations that have been subjected to harmful vibrations to the upper extremities, etc. the prohibition is that such actions directly harm women as a result of direct handling of work equipment and machinery, whether such tools and machinery cause damage to the upper limbs - hands - or damage to the body. The acts mentioned in the text are, but are not limited to, examples. 5 - Operations that are involved in the circulation or manufacture of lead such as:

- a) The lead smelting.
- b) Bound trade, process, or reduce lead oxide sand or lead paint thawing.
- c) Weld, weld or lead-containing alloys make up more than 10%.
- d) Lead vehicle industry.
- e) Lead mixing in the manufacture or repair of electrical batteries.
- f) Cleaning of workplaces where the above operations are conducted.

The ban here is due to the risk of lead, especially to women, the work mentioned in the fifth paragraph is, but not limited to, an example.

As for the work that women are not allowed working in pregnancy, the Ministerial decision is as follows in article (2); it provides as follows:

"In addition to the work provided for in article (1) pregnant women shall not be employed in the following acts:

- 1) Work involving exposure to atomic or nuclear radiation or X-rays of more than 1.30 rem every three months during a woman's fertility and one rem during pregnancy.
- 2) Any act requiring circulation or exposure to vapors, benzene fumes or a derivative such as phenol or coloring.
- 3) Work associated with exposure to rehydrating substances (teratogenic).
- 4) Acts requiring exposure to tanning, or carbon dioxide in the industrial silk and cellophane industry, hydrocarbons in petroleum refining, mercury, phosphorus, nitrobenzol, manganese, Cesium, or pyrethrum.

Article (3) of the Ordinance referred to the penalty for violating the Ordinance, which stipulates that: "Anyone who contravenes the provisions of this Decree shall be liable to the penalty provided for in article (187) of the Civil sector Labor Act No. 36 of 2012".

Referring to the text of article 187 of the Labor Code of the Bahraini civil sector, we find it as follows:

"Anyone who violates any of the provisions of Part V and the resolutions issued pursuant to it shall be liable to a fine of not less than 200 dinars and not more than 500 dinars".

## **Original Article**

### **Conclusion:**

The Bahraini legislator is keen to encourage women to work beside men by creating conditions and conditions of work that suit the nature of women, which is the approach of the Arab legislation under consideration as well. Labor legislation has contributed to the strengthening of women's economic role at the family and community level and has reached several suggested conclusions and recommendations through this research.

### **First: Results**

1. The Bahraini legislature granted employed women a 60-day maternity leave, including the period preceding and following the situation.
2. The Bahraini legislature has granted leave to employed women to care for their child, up to a maximum of six months at one time and three times the length of their service.
3. The Bahraini legislator granted employed women, after completing the maternity leave, a leave to feed their child at least one hour.
4. In order to ensure the protection of employed women, the legislator prohibited their dismissal during maternity leave.
5. The Bahraini legislator granted Muslim employed women the right to a spouse's death several days' leave for a paid month, and the right to complete the death package from their annual leave of three months and ten days, and if they do not have a balance of their annual leave, they have the right to leave without pay.
6. As a general rule, the Bahraini legislator allowed employed women to work at night, except in cases, jobs and events decided by the Minister of Labor.
7. The Bahraini legislator has granted the Minister of Labor the power to determine the acts in which the employed women may not work in an absolute manner, as well as the actions that she may not work during the period of pregnancy.

### **Second: Recommendations**

1. It was suggested that the Bahraini legislature should amend the text of article 35 of the Labor Code, so that the right of employed women to take leave to breastfeed their child to two years of age instead of one year.
2. It was suggested that the Bahraini legislator, like the Sudanese legislator, should amend the text of article 63/c of the Labor Code, to give employed women the full and paid maternity leave according to the Islamic Shariah, which is four months and ten days long.
3. It was suggested that the Bahraini legislature, like the Jordanian legislature, should amend the text of article 33 of the Labor Code to prohibit the employer from giving notice for the separation of employed women because of their marriage or during maternity leave.
4. It was suggested that the Bahraini legislature should include in the Labor Code an article requiring employers to provide nurseries for the care of working women's children.
5. It was suggested that the Minister of Labor should review the decision on prohibiting the employment of women in certain jobs periodically or whenever necessary

### **Margins:**

(<sup>i</sup>)The situation is intended to separate the fetus from its mother on time (from seven months to nine months after the beginning of pregnancy) Dr. Salah Diab, the brief in explaining the provisions of the Labor Law and Social Insurance in the Kingdom of Bahrain, first edition, applied Science University, Bahrain, 2015, p. 181. Maternity leave does not apply to the situation of abortion, and accordingly the provisions of sick leave, Dr. Mohamed Labib Shanab, explaining the provisions of the Labor Code, fifth edition, are applied without a publishing house, p. 449.

## Original Article

(ii) Published in Official Gazette No. 3063, dated 2/8/2012, p. 14-60.

(iii) Some legislation gave employed women maternity leave for more than six weeks, such as the Egyptian legislature, article 91 of the Standard Labor Code No. 12 of 2003 stipulates that: "A employer who has spent ten months in the service of an employer or more shall have the right to a 90-day leave with equal compensation for all-inclusive wage ...". "Employed women have the right to full pay maternity leave before and after a total of 10 weeks...." the Jordanian Labor Code, article 70, stipulates that: "Employed women have the right to a full pay maternity leave before and after childbirth."

Some of the legislation gave women employers a lower period of time, as article 30 of the UAE Labor Code No. 8 of 1980 states: "An employer may be granted a full-time maternity leave of forty-five days' pay." (iv) This is also the approach of the Jordanian legislature.

(v) See the text of article 91 of the Egyptian Labor Code, and the UAE legislator has required that an employer has spent at least one year in the employer's service until she is entitled to maternity leave and maternity leave is half-paid if the employed women has less than one year.

(vi) The UAE Labor Code also granted employed women the right to leave after the entry into force of maternity leave for a maximum of 100 consecutive or intermittent unpaid days, when a medical certificate issued by the competent medical authority or approved by that authority indicates that employed women are in a healthy state due to work or childbirth. See article 30 of the UAE Labor Code.

(vii) The Egyptian legislator banned the employment of employed women within 45 days following the situation. See article 90 of the Egyptian Labor Code, while the Jordanian legislature made it six weeks, see article 70 of the Jordanian Labor Code. The French legislature guaranteed employed women the right to 16 weeks' maternity leave and the sick period resulting from pregnancy and childbirth to two additional weeks before and four weeks after delivery, i.e. a total of 22 weeks, and in the case of a twin birth, the leave is extended to 34 weeks. Dr. Murad Tarawneh, Special Rights of employed women in the Saudi Labor System, "Comparative Study between Islamic Sharia and Law", Research published in the Journal of Sharia, Qassim University, vol. IX, No. 2, Spring II 1437H - January 2016, margin of 884.

(viii) See close to this text article (92) of the Egyptian Labor Code.

(ix) Article 90 of the Egyptian Labor Code stipulates: "... Maternity leave is not eligible for more than two times for the duration of the employer's service." Some criticize this course from the Egyptian legislator and doubt its project, see for more detail Dr. Mahmoud Gamal Al-dean Zaki, individual Labor Contract, and Egyptian General Book Authority Press, 1982, 289 and later.

(x) Dr. Mohamed Hussein Mansour, Labor Law, first Edition, New University House, Alexandria, 2006, p. 363.

(xi) Dr. Salah Diab, Brief in explaining the provisions of the Labor and Social Security Act in the Kingdom of Bahrain, op. cit., p. 182.

(xii) Published in Official Gazette No. 2762, dated 26/10/2006, p. 5-10.

(xiii) It should be noted that the Bahraini legislature amended article II of Law No. 74 of 2006, which stipulates that: "The provisions of this Act shall apply to Bahraini employers". Article (2) of amended Law No. (22) Of 2017 states: "The provisions of this Act shall apply to persons with disabilities from Bahrain and to persons with disabilities from Bahraini women married to a foreigner who has permanent residence in the Kingdom of Bahrain." This is a welcome amendment from the Bahraini legislature, which extended the scope of this law to include Bahrainis or Bahrainis living in the Kingdom of Bahrain.

(xiv) The International Labor Organization (ILO) was established in 1919 by the Treaty of Versailles, which was concluded in France in 1919 and issued more than 172 working agreements and recommendations, see in detail Manal Mahmoud,

## Original Article

Women's Rights between International Charters and the Emancipation of Islamic legislation, Comparative Study, first

Edition, Culture Publishing and Distribution House, Amman, 2011, 197. For further details on the role of the International Labor Organization, see: Dr. Salah Diab, explaining the provisions of the Labor Law and Social Insurance in the Kingdom of Bahrain, op. cit., p. 185.

(<sup>xv</sup>)Mohammed Ismail, Maternity Protection in the draft unified labor law and Arab and international labor standards, Journal of Legal and Economic Research, 15th year, July 2001, p. 50.

(xvi) Article 4, 5 and 10 of the International Convention No. 183 of 2000 on maternity protection.

(xvii) Articles 10, 11 and 12 of the Arab Convention No. 5 of 1976 concerning employed women.

(xviii) Ali Aamara, New Labor Law No. 12 of 2003, fourth edition, Union Printing House, Cairo, 2006, 436 et seq.

(xix) This is also the approach of the Jordanian legislature, while the Moroccan legislature required the consent of the employer for employed women to obtain their child-rearing leave, article 156 of Act No. 995.65 on the Labor Code stipulates that: "A paid mother with an agreement with a job can take advantage of a one-year unpaid vacation to raise her birth," Yasir Zaytouni, Legal Protection of employee women provisions of the Labor Code, Al-Manara Journal of Legal and Administrative Studies, Morocco, 17th issue, 2017, p. 267.

(xx) See the same opinion, Dr. Jaafar Al-Maghrabi, cases of suspension of labor contract in the Jordanian Labor Law, a temporary magazine for research and studies, vol. XX, No. IV, p. 287, Dr. Ahmed Abdalkarim Abu Shanab, explanation of the new Labor Code, first edition, Cultural Publishing and Distribution House, Amman, 2003, p. 208, Dr. Sayed Mahmoud Ramadan; The mediator in the explanation of Labor Law, first Edition, Culture Publishing and Distribution House, Amman, 2004, p. 368-369.

(xxi) Discrimination of Rights 2234/1999 24 January 2001, Adalah Center Publications.

(xxii) Dr. Sayed Mahmoud Ramadan, mediator in explaining Labor Law, former Ref, p. 369.

(<sup>xxiii</sup>)Dr. Ahmad Abulkarim Abu Shanab, explained Labor Law, former Reference, p. 208, Dr. Sayed Mahmoud Ramadan, mediator in explaining Labor Law, former Reference, p. 369, see also: Atef Awad Al-Hryachat, Legal Protection of Women's and Juveniles' work in Jordanian Labor Law, Comparative Study, Master's Thesis, Mu'tah University, 2007, p. 56 and beyond.

(<sup>xxiv</sup>)Dr. Jaafar Mahmoud Al-Maghrabi, cases of suspension of the labor contract in the Jordanian Labor Law, former reference, p. 287.

(<sup>xxv</sup>)Article 93 of the Egyptian legislature stipulates that: "A employer whose child is breast-feeding within 24 months following the date of birth, as well as the period of rest, shall have the right to two other feeding periods of not less than half an hour each, and a employer may combine these two periods. These two additional periods are calculated from working hours and do not result in a reduction in wages." the Jordanian legislature also provided for the right of women to breastfeed in article 71 of the Labor Code, which stipulates that: "After the termination of maternity leave provided for in article 70 of this Act, a employed women shall have the right to one year from the date of birth to a period or periods of paid wages with a view to nurting her new birth not exceeding one hour a day in total", Article 31 of the UAE Labor Code stipulates that: "During the 18 months following the date of birth, a child's employer, as well as a rest period, shall have the right to two other periods of up to half an hour each. These two additional periods shall be calculated from working hours and shall not result in any reduction in remuneration".



## Original Article

(xxvi) Issam Majed al-Hami, Legal Protection of Working Children and employed women in Jordanian Labor Law, Research presented to the Conference on the Rights of Women and Children under National and International legislation, Yarmouk University Press, 16-18 July 2001, Part II, p. 1023.

(xxvii) For further details on comparisons between Bahrain's old and new labor law, see Amina Abdurrahman Al-Ma'alha, Women in Bahraini Labor Law, Research published in the Law Journal of the Law Commission and the Legal Referendum, Kingdom of Bahrain, 6th issue, Ramadan 1437H - June 2016, p. 154.

(xxviii) See article 62 of the Bahraini Labor Code.

(xxix) Article 124 of the UAE Labor Code stipulates that: "An employer may not terminate the employer's service for lack of health prior to the exhaustion of legally due leave and any agreement otherwise is invalid." We have been told that maternity or maternity leave is one of the holidays approved by the UAE legislator for employed women, and that the employer may exploit its inability to work as usual, especially in the recent months of pregnancy and deliberately separate it. Dr. Zeid Mahmoud Al-Aqaila, women's employee Rights, Comparative Study between Islamic Sharia and positive laws, Al-Mukker Magazine, 8th issue, November 2012, p. 425.

(xxx) Discrimination of Rights No. 1158/2004, 13/1/2005 (General Authority), Adalah Center Publications, Jordan.

(xxxi) Discrimination of Rights No. 2298/1998, chapter 31/3/1998 (five-year), see Journal of the Jordanian Bar Association, Technical Office, 1/1/1999, 1856, judgment referred to by Dr. Murad Ali Tarawneh, Special Rights of Women in the Saudi Labor System, "Comparative Study between Islamic Law and Law", previous reference, margin of 889.

(xxxii) It should be noted that in various legislation the legislator did not require a employer to work for a competitor to be considered to be in breach of the provisions of the law, but the text was absolute.

(xxxiii) See article 62 of the Bahraini Labor Code.

(xxxiv) Article 59/h of the Bahraini Labor Code stipulates that: "The employer shall be obliged to settle the balance of the leave and the corresponding wage at most every two years, and if the employment relationship ends before the employer has exhausted his annual leave balance, the corresponding wage shall be earned."

(xxxv) Article 48 of the Labor Code of 1997 grants the Sudanese legislator a woman whose husband is deceased several deaths at full salary from the date of death, provided that:

A - It will last four months and ten days if it is not pregnant.

B If the woman is pregnant, the maternity leave will continue until she ends In the case of pregnancy, she is authorized to take eight weeks' maternity leave from the date of birth.

It is noted that the Kuwaiti legislator gave the deceased non-Muslim woman the leave of her husband for 21 days of paid leave.

(xxxvi) See close to this meaning, Dr. Mahmoud Salama Jabr, Constitutional and Judicial Protection of fundamental Rights at work, Publications of the Information Office of the Arab Labor Organization, without a year published, p. 309.

(xxxvii) Dr. Mahmoud Salama Jabr, International and Arab Protection of employed women, Law Journal, Kuwait University, 23rd year, 2nd issue, 354 et seq.

(xxxviii) Rehab Al-Kaddoumi, Women's Rights in Jordanian Labor Law, Publications of the Advisor Center for Women's Rights, Amman, 2000, p. 7-8.

(xxxix) I believe that the term of the conditions set forth in article 30 of the Bahraini Labor Code is intended to mean conditions that may arise and to require changing the working hours available for an emergency situation requiring work to a later time.

## **Original Article**

(<sup>xi</sup>)Dr. Jaafar Mahmoud Al-Maghrabi, explaining the provisions of the Labor Code in accordance with the latest amendments and jurisprudence of the Court of Cassation, first edition, Culture Publishing and Distribution House, Amman, 2016, p. 109.

(<sup>xli</sup>)Ibid., Same page, and see the Minister of Labor's decision published in the Official Gazette, No. 4508, dated 10/1/2001.

(<sup>xlii</sup>)See close to this meaning, Dr. Zaid Mahmoud Al-Aqaila, Women's employed Rights: A Comparative Study between Islamic Sharia and positive laws, previous Reference, 416 et seq. (<sup>xliii</sup>) Published in Official Gazette No. 3110, 27/6/2013, p. 8-9.

## **References**

Dr. Ahmed Abdalkarim Abu Shanab, explanation of the new Labor Code, first edition, Cultural Publishing and Distribution House, Amman, 2003.

Ali Aamara, New Labor Law No. 12 of 2003, fourth edition, Union Printing House, Cairo, 2006.

Atef Awad Al-Hryachat, Legal Protection of Women's and Juveniles' work in Jordanian Labor Law, Comparative Study, Master's Thesis, Mu'tah University, 2007.

Amina Abdurrahman Al-Ma'alha, Women in Bahraini Labor Law, Research published in the Law Journal of the Law Commission and the Legal Referendum, Kingdom of Bahrain, 6th issue, Ramadan 1437H - June 2016.

Issam Majed al-Hami, Legal Protection of Working Children and employed women in Jordanian Labor Law, Research presented to the Conference on the Rights of Women and Children under National and International legislation, Yarmouk University Press, 16-18 July 2001, Part II.

Manal Mahmoud, Women's Rights between International Charters and the Emancipation of Islamic legislation, Comparative Study, first Edition, Culture Publishing and Distribution House, Amman, 2011.

Dr. Mahmoud Gamal Al-dean Zaki, individual Labor Contract, and Egyptian General Book Authority Press, 1982.

Dr. Mohamed Hussein Mansour, Labor Law, first Edition, New University House, Alexandria, 2006.

Dr. Mohamed Labib Shanab, explaining the provisions of the Labor Code, fifth edition, are applied without a publishing house.

Mohammed Ismail, Maternity Protection in the draft unified labor law and Arab and international labor standards, Journal of Legal and Economic Research, 15th year, July 2001.

Dr. Mahmoud Salama Jabr, Constitutional and Judicial Protection of fundamental Rights at work, Publications of the Information Office of the Arab Labor Organization, without a year published.

Dr. Mahmoud Salama Jabr, International and Arab Protection of employed women, Law Journal, Kuwait University, 23rd year, 2nd issue.

**Original Article**

- Dr. Murad Tarawneh, Special Rights of employed women in the Saudi Labor System, "Comparative Study between Islamic Sharia and Law", Research published in the Journal of Sharia, Qassim University, vol. IX, No. 2, Spring II 1437H - January 2016.
- Dr. Salah Diab, the brief in explaining the provisions of the Labor Law and Social Insurance in the Kingdom of Bahrain, first edition, applied Science University, Bahrain, 2015.
- Dr. Sayed Mahmoud Ramadan; The mediator in the explanation of Labor Law, first Edition, Culture Publishing and Distribution House, Amman, 2004.
- Yasir Zaytouni, Legal Protection of employee women provisions of the Labor Code, Al-Manara Journal of Legal and Administrative Studies, Morocco, 17th issue, 2017.
- Rehab Al-Kaddoumi, Women's Rights in Jordanian Labor Law, Publications of the Advisor Center for Women's Rights, Amman, 2000.
- Dr. Jaafar Al-Maghrabi, cases of suspension of labor contract in the Jordanian Labor Law, a temporary magazine for research and studies, vol. XX, No. IV.
- Dr. Jaafar Mahmoud Al-Maghrabi, explaining the provisions of the Labor Code in accordance with the latest amendments and jurisprudence of the Court of Cassation, first edition, Culture Publishing and Distribution House, Amman, 2016.
- Dr. Zeid Mahmoud Al-Aqaila, women's employed Rights, Comparative Study between Islamic Sharia and positive laws, Al-Mukker Magazine, 8th issue, November 2012.