

# Menstrual Leave – A new controversy?

Marian Baird and Elizabeth Hill

RA: Sydney Colussi

(Investing in Women Project, DFAT)

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## WOMEN, WORK AND CARE IN THE ASIA-PACIFIC

Edited by Marian Baird, Michele Ford and Elizabeth Hill



# Australian Government Department of Foreign Affairs and Trade aid project: 'Investing in Women' in S-E Asia

→ Logics of labour legislation and gender equality:

*Is menstrual leave protective, equalising or disruptive of workplace gender norms and practices?*

| Law   |   | Philippines         | Indonesia     | Myanmar | Vietnam |
|---|---|---------------------|---------------|---------|---------|
| <i>Protecting Women specifically</i>                              | Protection from night working                 | ✓                   | ✓             | ✗       | ✗       |
|   | Menstrual leave                               | ✓                   | ✓             | ✗       | ✓       |
|   | Protection for domestic workers               | ✓                   | (abroad only) | ✗       | ✓       |
|   | [domestic violence unlawful]                  | ✓                   | ✓             | ✗       | ✓       |
| <i>Protecting Women as mothers</i>                                | Paid maternity leave                          | ✓                   | ✓             | ✓       | ✓       |
|   | Job guarantee on return from maternity leave. | ✗                   | ✗             | ✗       | ✗       |
|   | Breastfeeding breaks                          | ✓                   | ✓             | ✗       | ✓       |
|   | Workplace childcare                           | ✓                   | ✗             | ✗       | ✓       |
| <i>Formal gender equality</i>                                     | Equal pay                                     | ✓                   | ✓             | ✓       | ✓       |
|   | Non-discrimination in hiring                  | ✓                   | ✓             | ✓       | ✓       |
|   | Sexual harassment unlawful                    | ✓                   | ✓             | ✗       | ✓       |
| <i>Challenging and disrupting work/care; public/private norms</i> | Paternity leave                               | ✓                   | ✓             | ✓       | ✓       |
|   | Flexible/PT work                              | (sole parents only) | ✗             | ✗       | ✗       |

# Menstrual Leave (ML)

- Affects all women, whereas maternity leave affects only a proportion –
- Ranges from leave for dysmenorrhea; hygiene need due to lack of workplace sanitary facilities; to need to ‘synchronise work with the body’s natural cycles’ (Coexist co) → i.e. from ‘medicalism’ to paternalism to ‘naturalist feminism’
- Highlights the feminist tension and controversy - critical distinction b/n men and women.
- Menstrual leave *‘brings into focus the presumed tensions between gender equity and gender difference with regard to women’s economic citizenship’* (Lahiri-Dutt and Robinson 2008)
- *ML is the misguided brainchild of “elite and spoiled” women who fail to recognize the policy’s “bizarrely paternalistic” character ... a lapse to the “biological determinism of the lives of women.”* Dutt, B. (2017) “I’m a Feminist. Giving women a day off for their period is a stupid idea”, *The Washington Post*, 3 August, viewed 16 September 2017, <https://www.washingtonpost.com/news/global>.

# Question and Method

Is menstrual leave protection or progress? In four areas:

1. of women's reproductive capacities?
2. of women' health?
3. of women's jobs? (e.g. Japanese bus drivers)
4. of women's pay and bonuses?

**Hence, we seek to map the spread of, and reaction to, menstrual leave policies, using:**

- Literature review: peer reviewed journals – articles located in gender; law, labour journals (not PE, family or demography journals).
- Grey literature/press – Search terms: "menstrual leave" (1995-Present)  
ProQuest Central focused only on non-academic publications:
  - ❑ 101 cites. 80% appearing in 2016-2017; 7% pro; 22% anti; 48% neutral; 22% undecided.
  - ❑ Most recent in *The Guardian* 'Menstrual leave: a workplace reform to finally banish the period taboo?' (June 28, 2018)
- Company policies (as available, online)

## Previous studies:

**Legislation/history-** Japan: Molony, B. (1995) Traces ML early beginnings to 1928 “when female conductors for the Tokyo Municipal Bus Company struck for ML [so] they would not have to abandon their jobs altogether due to monthly absences” (pp. 279); then reclassified in 1986 to become part of the 90 sick days per year allocated to every worker (Rawstron, 2011).

**Discrimination and breaches of law** – Indonesia (Rahayuningsih, 2016; Siahaan, 2016; Wells, D. 2007)

**TU strategy and class/occupational differences** – Russia (Ilic, 1999); Indonesia (Horgan, 2001; ILO, 2004; 2006; Robinson, 2014)

**Connection b/n menstruation and motherhood** - need to protect women’s reproductive functions - Russia; Japan (Ilic, 1999; Blumberg, 1981; Nohara, and Kagawa 2000)

**The body and the workplace** - Kelland, Paphitis and Macleod (2017) ‘expressed by the norm of concealment’ (quoting Iris Marion Young); ‘paternal pathology of menstruation’

**Effect on Gender Pay Gap** - Ichino and Moretti (2009) find absences of (Italian, bank) women <45 follow a 28 day cycle and explanatory factor *in GPG*; but Herrman and Rockoff (2012; 2013) found ML explains <1% gender gap and v small proportion of gender gaps in illness-related *absences*.

**Effect on job productivity and satisfaction** - Mitchell (2017) qual study Nepal, ML had positive impact; Indonesia Lahiri-Dutt, and K. Robinson (2008)

## Legislated – by country

- Soviet Union 1922/31 and Russia 2013 proposal
- Japan – 1947
- Indonesia – 1948
- South Korea - 2001
- Taiwan – 2002
- The Philippines - 2004 proposed but not yet legislated
- China – Provinces: Anhui & Ningxia 2016; Hubei 2009; Hainan 1993
- Vietnam - 2015
- Hong Kong – 2016 petitioned, no legislation as yet
- Italy – 2017 proposed, not passed
- Zambia - 2017
- Brazil - 2017 proposal, under review
- Nigeria – 2017, public opinion demanding ML, following Zambia
- India – 2017 – petition for ‘First Day of Period Leave’

## Corporate examples

# Victorian Women's Trust (Australia, 2017)

### Rationale

*Insert organisation name* has introduced a menstrual **and menopause policy**. Experiences of menstruation and menopause can be very debilitating, yet we have been enculturated to mask their existence in the workplace, at schools and at home. This policy **supports employees in their ability to adequately self-care during their period and menopause, while not being penalised by having to deplete their sick leave**. Periods and menopause **are not a sickness** after all. This policy also seeks to **remove the stigma and taboo** surrounding menstruation and menopause.

### Policy

This policy is designed to **provide opportunities for restful working circumstances and self-care** for employees experiencing symptoms of menstruation and menopause.

The policy is designed to be flexible depending on the employee's needs, providing for the following options:

1. The possibility of working from home\*;
2. The opportunity to stay in the workplace under circumstances which encourage the comfort of the employee eg. resting in a quiet area; or
3. The possibility of taking a day's paid leave.

In the case of paid leave, employees are entitled to a maximum of 12 paid days per calendar year (pro-rata, non-cumulative) in the event of inability to perform work duties because of menstruation and menopause, and their associated symptoms.

A medical certificate is not required.

## Corporate examples

- **Nike** Code Leadership Standard (September 2017) Menstrual leave. ‘No physical exams may be conducted to verify eligibility for menstrual leave if it is a benefit mandated by country law.’
- **Coexist** (UK company) ML policy “designed to allow women to take time off without being stigmatised in the hope it will make [the] workplace more efficient and creative. Bex Baxter, Director of Coexist, said the move [is] an attempt to synchronise work with the body’s natural cycles.” (Morris, S. (2016) “UK company to introduce ‘period policy’ for female staff”, *The Guardian*, 2 March accessed 20 October 2017, <https://www.theguardian.com/lifeandstyle/2016/mar/02/uk-company-introduce-period-policyfemale-staff>.)
- **Culture Machine** (India) – First Day of Period leave: Ruchir Joshi, Head of Content: “Lot of times, I find men complaining about the fact that she gets her period and gets a day off or gets to sit idle and not do any work. But the realisation that we have to have is that we {men} don’t understand that pain and we don’t go through it. And if we were to [have] that kind of discomfort, we would possibly not be coming to office or not be doing work at that point of time.”



## Not just manual workers ...

Australian study of women in Investment Management (Oxenbridge, Cooper and Baird, 2018): In response to the survey question, “Q21 please list any initiatives you've experienced, or have knowledge of, that have improved (or might improve) women workers' participation and their daily workplace experience.”

– *“one day leave day provided to women with menstrual pains”*

\* In the follow-up interview, this interviewee also made the point that this denial of gender (working to a male norm) meant that women are expected to work through menstrual pain and not take time off to deal with it.

– *‘Sometimes I'll be at work and I'm in pain but you have a deadline, I also don't want to look like that... there's this perception “Well, you're a woman and you said something about “Oh yeah I have menstrual (pain)”... People are like “Oh my God, you're not strong enough”, or, “But look at this guy, he's working, he never takes (time off)”... Again it goes back to the point that we are expected to work as males when we're not. (AM)'*

## - Architecture of menstrual leave varies:

- Duration: days/hours/breaks
- Eligibility: sex/age; medical, conditions of work, onus of proof/no need to prove
- Payment: paid and unpaid; work from home; protection from loss of bonuses

# Conceptualisations and tentative conclusions

- Given the continued rise in and demand for female workforce participation and ongoing fertility concerns from governments → protective legislation approach may continue and support introduction of ML policies in more countries.
- But the reality of the physical distinction between males and females and the uniquely female menstrual experience (as opposed to child care/parental leave) → suggest equality policies not possible and are redundant in this area.
- If aim is to disrupt male normative model of the workplace and make explicit the female worker's needs → then ML policies are appropriate.
- It is possible that menstrual leave could be both protective and progressive at the same time, i.e. a new approach women and work policies?
- Menstrual leave is on the agenda of countries as well as companies, and there are and will continue to be conflicting responses from women/feminists.
- **Is it a generational shift in attitudes towards feminism and women and work?**

**Gloria Steinem**

***If Men Could Menstruate (adapted)***

**(1978)**

‘So what would happen if suddenly, magically, men could menstruate and women could not?’

Clearly, menstruation would become an enviable, worthy, masculine event:

Men would brag about how long and how much.

Young boys would talk about it as the envied beginning of manhood.

Gifts, religious ceremonies, family dinners, and stag parties would mark the day.

To prevent monthly work loss among the powerful, Congress would fund a National Institute of Dysmenorrhea. Doctors would research little about heart attacks, from which men would be hormonally protected, but everything about cramps.

Sanitary supplies would be federally funded and free.’

***And menstrual leave would be the norm.***