

# **Women's Labour Rights under Georgian Legislation**

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## **Introduction**

The reform in Labour Legislation was recently carried out in Georgia. A new Labour Code was adopted on December 29, 2006. This fact constituted a remarkable legislative step forward as far as the Code prior to it and operating since 1973 (in spite of a number of amendments made to it) contained many characteristic features manifesting soviet approach to the Labour Law in terms of its content and terminology.

With the adoption of a new Labour Law Code Georgia made an attempt to regulate labour relations in conformity with international standards. The key principle of Labour Law is minimum involvement of a state in the relationships between private individuals and facilitation of free economic development, and consequently, the regulation of labour relations based on the free will of the parties<sup>1</sup>.

Under the new Code of Labour Law the labour rights of the women are regulated differently. As some experts claim the women's rights under the new Code are relatively curtailed in contrast to former 'Labour Law Code of Georgia'. The previous Code expressly stipulated and defined the peculiarities of women labour, identified the types of jobs women should do and the remedies for asserting the rights violated<sup>2</sup>.

Further we will try to give a brief overview of women's rights under the operating Labour Law in terms of:

1. Gender equality
2. Peculiarities of labour terms/conditions
3. Pregnancy, child delivery, children care and adoption of a newly-born baby.

## **Ensuring gender equality in labour relationships**

The Constitution of Georgia provides equal rights for men and women. This constitutional right is set out in the Labour Code of Georgia. Under Art.2 of the Code, any kind of discrimination is prohibited including the discrimination on the ground of sex. According to the code discrimination is defined as any kind of direct or indirect oppression, intending to foster the intimidating, cruel, humiliating or degrading treatment of an individual, or creation of such conditions which deteriorates her condition in comparison with other individuals in the same situation (discriminatory culture at work). Given the fact that the abovementioned wording is too general, the article does not provide with the relevant guarantees in terms of the observance of the equality of men and women.

The equality of men and women and the prohibition of discrimination imply that there should be no discrimination relative to working terms/conditions and hiring requirements. All kinds of

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<sup>1</sup> New "Labour Code" – an effort to regulate the reality, Georgian Young Lawyer Association, 17 April 2006

<sup>2</sup> Women's Labour Rights and Law; "24 Hour", September 2009

work and cooperation at all levels of the professional hierarchy should be equally facilitated regardless the activity or the field of work<sup>3</sup>.

On March 26, 2010 a law ‘ On Gender Equality’ was adopted, which stipulates the safeguards guaranteeing equal rights, freedoms and opportunities of men and women in general, and within the frameworks of labour law relations in particular, and defines the legal mechanisms for their implementation in the relevant spheres of social life. The current law is designed to prohibit any discrimination (direct or indirect), and to create relevant conditions for exercising equal rights, freedoms and opportunities of men and women.

Under given law the state assumes the responsibility to provide equal availability of employment for men and women. The state is to ensure: a) free choice of a profession or a job, b) promotion at work, 3) professional training/retraining, d) taking position in public service according to the professional qualification and skills and e) equal treatment while assessing the quality of their performance at work.

In the hiring and working process the discriminatory treatment can be considered as admissible when sex is a Genuine Occupational Qualification (GOP), i.e. if a job specification or its performance allows it<sup>4</sup>.

### **The peculiarities of Women’s Labour Rights**

As we have already mentioned, the Labour Code of Georgia prescribes different regulation of women’s working terms during their pregnancy, after child delivery and breastfeeding. There are no other restrictions or privileges provided under new legislation.

Under Art.4, #5 of the Labour Code it is prohibited to conclude a contract to a pregnant or a breastfeeding woman if a job is dangerous or stressful. Under Art.17, # 2 it is prohibited to employ a pregnant or newly-delivered woman for an overtime work without her consent. Art.18 prohibits the employment of a pregnant, breastfeeding or newly-delivered women for night shifts (from 10 p.m. till 6 a.m.) without their consent. It should be noted that the legislation empowers employees with the right of free choice.

The Labour Code provides women with additional holiday entitlement of at least 1 hour per day (at their request) for breastfeeding a child under 12 months. The break for the breastfeeding is included in the working time and is payable. The abovementioned right is definitely a positive point under operating Labour Code.

Georgian Legislation is relatively harsh when it comes to the pregnant women or the women with children, employment guarantees and dismissal from work. When such categories of women are refused to be employed, the administration is obliged to inform them about the reasons in writing. The refusal can be appealed in the court. Besides that, the administration is enjoined from dismissing the women with children under 3 years (and solo parents with children under 14, or disabled children under 16) under any conditions except for the cases when a

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<sup>3</sup> Labour Law Reform in Georgia and EU Standards, Review of Georgian Legislation, Ana Loria, Maick S. Masbaum, 6/2003-04.

<sup>4</sup> The Law of Georgia on Gender Equality, 26 March 2010

company, institution or organization is liquidated, i.e. when the dismissal is considered to be fair under labour regulations.

In the Georgian judicial practice the disputes related to the facts of unfair dismissal of pregnant women or women with children under 3 years are relatively rare and in most cases are resolved in favour of women<sup>5</sup>.

As regards to specific regulation of working terms and conditions of women, the decree of the Minister of Health and Social Welfare of Georgia “On the Hygienic Requirements for the Working Conditions of Women” constitutes an exception. This document states and defines necessary hygienic requirements in connection with the production process, equipments, workplace and working process, working environment, and sanitary maintenance. The purpose of the given document is to eliminate negative impacts of working conditions on women, to create a hygienically secure working environment (taking into consideration the anatomic and physiological peculiarities of the human body), to maintain their health on the basis of complex assessment of the working environment and negative factors of working process.

### **The rights of women related to their pregnancy, child delivery, child care and adoption of a newly-born baby.**

The Labour Code lays down the rights of working women related to pregnancy, child care and adoption of a newly-born baby. Under Art.27 an employee is given a parental leave of 447 calendar days in case of pregnancy and for child care. 126 days out of 447 are payable. In case of complicated pregnancy or delivery of twins – only 140 days are payable. The employee is entitled to use these days at her discretion rearranging the days throughout the whole period of pregnancy and child delivery. Besides that, the employee, who adopts a child under 12 months, is entitled to a parental leave of 350 days commencing from the day of the birth (a parental leave for the adoption). In this case only 70 days are payable. The reimbursement for the pregnancy, child delivery, child care and the adoption of a newly-born baby is carried out from the state budget and the order of payment is determined by the decree of the Minister of Labour, Health Care and Social Welfare. The amount of social benefit is calculated under the abovementioned decree and on the basis of the salary of the employee. Apart from that, the decree states the limit of maximum amount as 600 lari.

Unfortunately, the stated amount doesn't correspond to the reimbursement at the labour market being less than that. The amount of money paid by the state is less than amount prescribed by the legislation in the period of parental leave. The Code stipulates that the employer and the employee enjoy the right to agree upon the specific terms of reimbursement.

Giving additional compensation increases the expenses of the employer and decreases the motivation of hiring the women. It would be better if states acted as guarantors for the protection of constitutionally recognized rights and determined the terms of reimbursement in case of pregnancy, child delivery and child care.

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<sup>5</sup> Women's Labour Rights and Law, “24 Hour”, September 2009.

In this respect, the situation is different with the women employed in the public service. A public servant woman is given a compensation (together with the benefit) in case of pregnancy, child care and adoption, to fully cover her prospective earnings<sup>6</sup>. The compensation is paid out of the sum allocated to the public institutions in accordance with the law of Georgia on budgetary matters. Consequently, the problem related to the women employed in the private sector, is eliminated.

## **Conclusion**

In Conclusion can be said, that as a result of labour legislation reform in Georgia women's labour rights regulations more or less approaches international standards. New regulations of women's rights are based on gender equality. Herewith, provides the basic peculiarities of women's work and rights related to their pregnancy, child delivery, child care and adoption of a newly-born baby. Georgian Legislation reflects key principles of international regulations of above mentioned issues. Definitely, for full compliance with international standards and for perfection of Georgian labour law farther legislation actions are necessary.

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<sup>6</sup> The Law of Georgia on Public Service, 31 October 1997.