



Reproductive Health in the Regulation of Working Time

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Abstract

The regulation of rest periods is crucial for the employer's production, it determines its competitiveness in the international market, furthermore, the introduction of new standards on working time and rest periods is met with a strong reaction from the social partners. However, the legislator must take into account important interests in this for which the guarantee of adequate rest may also support other objectives, like the protection of workers' reproductive health, which is intrinsically linked, inter alia, to the objective of curbing this trend in declining and ageing societies.

Consideration should then be given to what reproductive health means and what impact, if any, taking it into account might have on national working time legislation. In this context, the paper focuses on the questions of (1) what exactly reproductive health means, (2) whether there is any expectation on the part of the legislator to protect it in terms of employment, and if so, (3) how it has done so so far, based on an examination of global labour law.

With regard to the first and second research questions, it can be seen that the concept of reproductive health is extremely complex and is addressed by, for example, the WHO, the UN, the European Institute for Gender Equality and the European Parliament. The latter also sets out a number of obligations for Member States, including in relation to employment policy. Menstrual health is part of this, as neglecting it leads to attrition and lower work attendance for women. The answer to the third research question can be found in national regulations on rest periods. Based on a global labour law analysis, it can be stated that the labour laws support menstruating women in the form of a menstrual leave. However, the specific principles behind this in national legislation vary, and the specific content of each regulation also varies. The details of these stimulate further debate in legal scholarship: what is the truly appropriate regulatory concept for a menstrual or reproductive leave?

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Is there a need for a labour law or social law background for such a regulation? The latter is unique in the EU, compared to the Asian and African examples. The paper therefore compares the existing concepts, highlighting their known weaknesses. It is important to do this because like other EU Member States, the Hungarian legislator is also faced with the question of whether to interfere with the Hungarian working time regulations in this way. However, there is also pressure from below: several Hungarian employers have already introduced menstrual leave. These are not systematic and linked to different categories of rest time, full of gaps in regulation, and therefore it is imperative that the modern, sustainable corporate and national labour law toolbox should address this clearly established regulatory need in a reassuring way.

Keywords: menstrual leave, reproductive health, Hungary, employer, gender equality, right to health

1. Introduction

The issue of labour law regulations governing working hours and rest periods fundamentally determines the balance of power between parties in a traditional employment relationship. Accordingly, it is not surprising that when new (mandatory) standards are introduced in relation to working hours and rest periods, this causes a great stir among social partners, as it structurally determines employment.

The regulation of rest periods is decisive for the employer's production. A country's policy on the extent to which it regulates employees' rest rights determines its competitiveness in the international market. Nevertheless, when regulating this area, legislators must take into account important interests that can be served by ensuring adequate rest. One such interest is the protection of workers' reproductive health, which is closely linked to the goal of curbing this trend in declining and aging societies, among other things.

The regulation of employment relations has historically been based on a gender-neutral framework that, in practice, often overlooks gender-specific health needs.¹ Among these, women's reproductive health – and in particular, menstrual health – remains critically underrepresented. Integrating menstrual and broader reproductive health considerations into employment policies and labour law is not only a matter of equity but also a necessary evolution of labour rights to meet contemporary standards of human dignity, health, and non-discrimination. This fills a gap in the information available on the situation of female workers. The gap is clearly illustrated in the ILO (International Labor Organization) basic document entitled “ABC of women workers' rights and gender equality.”

¹ Ziona TANZER: Editor's Note: The Indistinguishable History of Gender and Labour Law: From Special Measures to Structural Reform. *Global Labour Rights Reporter*, vol. 3., no. 2. (2024) 4–11.

The second edition of this document was published in 2007.² The document is 221 pages long, yet the words “menstruation” or “reproduction” do not appear once, even though menstruation and reproductive health are fundamental concepts in terms of both occupational safety and the right of employees to work in conditions that do not jeopardize their health and safety.

After this, it is worth considering what reproductive health means and, if this can be expected from the legislator, what impact it has (or could have) on national working time regulations. In this regard, the research presented in this paper focuses on the following questions: i) what exactly does reproductive health mean, especially with regard to women, ii) whether there is any expectation on the part of the legislator to protect this in terms of employment, and if so, iii) how this has been done so far, based on an examination of various national labor laws. Qualitative research methodology will be used to examine these issues, with answers to the above research questions being sought through analysis of specialist literature and international and EU legal documents, as well as comparative analysis of national legal regulations.

2. The reproductive health

According to the definition established by the World Health Organization, health is a state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity.³ Health is therefore not just the absence of health problems, and the concept of reproductive health, which occupies a prominent place in the complex interpretation of the term, is similarly complex. Reproductive health is a state of physical, emotional, mental, and social well-being in all matters relating to the reproductive system and its functions and processes, not merely the absence of disease, dysfunction, or disability. Accordingly, reproductive health means that people have a satisfying and safe sex life, are able to reproduce, and have the freedom to decide when and how often they want to do so.⁴ Reproductive health, according to the European Institute for Gender Equality (EIGE), is defined somewhat more succinctly as a state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes.⁵ Reproductive health is an important element of reproductive rights and is linked to a number of other rights, such as the right to information. The right to reproductive health also places

² *ABC of women workers' rights and gender equality*. Geneva, International Labour Office, 2000.

³ *Constitution of the World Health Organization*. 1946. 100. <https://apps.who.int/gb/bd/pdf/bd47/en/constitution-en.pdf>

⁴ *Resolution 49/128: Report of the International Conference on Population and Development, Cairo, 5–13 September 1994*. New York, United Nations, 1994.

⁵ *Reproductive health*. European Institute for Gender Equality. https://eige.europa.eu/publications-resources/thesaurus/terms/1079?language_content_entity=hu

serious obligations on the state. States are required to do everything in their power to protect their citizens from disease and health damage, which includes protecting sexual and reproductive health.⁶

Reproductive health can therefore be interpreted in many ways. In this regard, the European Parliament specifies obligations related to education, health care, such as the widespread provision of adequate and accessible services, and the implementation of equal treatment. From the perspective of this study, it is important to emphasize that reproductive health, which has serious fundamental rights implications, also includes menstrual health, and since it is one of the most important reproductive activities of the female body, menstrual health is of paramount importance.⁷ UNICEF has a sharp definition for menstrual health, which is a state of overall physical, mental and social well-being, and not merely the absence of disease or illness associated with the menstrual cycle.⁸ Menstrual health is assessed along five dimensions:

1. The availability of correct, timely, and age-suitable information regarding the menstrual cycle, menstruation, life transitions, and the corresponding self-care and hygiene practices.
2. Ensuring women can manage their menstruation to align with their preferences, hygiene needs, comfort, privacy, and safety. This involves providing access to affordable and reliable menstrual products, as well as adequate facilities and services for washing, changing products, and disposing of used materials, including access to water, sanitation, and hygiene services.
3. Prompt diagnosis, cure, and care for discomforts that are in connection with menstrual cycle, and conditions, which includes access to suitable healthcare services, self-care strategies, and pain relief options.
4. To be in a supportive, stigma-free environment regarding menstruation, with access to resources that enable confident self-care and informed choices during the menstrual cycle.
5. The right to participate fully in all areas of life – civic, cultural, economic, social, and political – throughout all stages of the menstrual cycle, without facing exclusion, discrimination, coercion, or even violence.⁹

Menstrual health has recently received increased international attention. Grassroots workers and activists have played a key role in bringing menstrual health to the forefront of global discussions on health, education, human rights, and gender equality. As a result, an increasing number of international organizations, including the WHO, are focusing on menstrual health. The WHO has also advocated for menstrual health to be seen as a matter of health and human rights, rather than just a hygiene

⁶ Rui GOMES (ed.): (2020) *Kompasz – Kézikönyv a fiatalok emberi jogi neveléséhez*. Strasbourg, Council of Europe Publishing, 2020. 282. <https://rm.coe.int/compass-2021-hu-final-web/1680a57823>

⁷ *Committee on Women's Rights and Gender Equality: Report on the situation of sexual and reproductive health and rights in the EU in the frame of women's health*. Brussels, European Parliament, 2021. point S.

⁸ Charlotte HUGGETT – Pisey CHEA – Alexandra HEAD – Heather SUTTOR – Brooke YAMAKOSHI – Julie HENNEGAN: *Menstrual Health in East Asia and the Pacific Regional Progress Review: Indonesia*. UNICEF, Burnet Institute and WaterAid, 2023. <https://www.unicef.org/eap/media/13911/file/Indonesia-%20Country%20Profile.pdf>

⁹ Ibid. 2.

concern.¹⁰ International organizations, like the mentioned WHO or the United Nations Population Fund¹¹ recognize menstrual health as a fundamental issue tied to human rights, gender equality, and basic rights. The WHO emphasizes that menstrual health should be viewed not only from a physical perspective but also through psychological and social lenses. This includes fostering an environment where menstruation is free from stigma and shame. Such an environment, referred to as a menstruation-friendly or period-friendly workplace, necessitates specific actions and initiatives from employers.¹² King highlights that knowledge about the nature, frequency, and effective management of menstrual symptoms remains limited among the general population. This widespread lack of understanding is not coincidental, especially considering the availability of high-quality research, nor is it confined to a handful of East Asian countries. Instead, this global ignorance around menstrual health can be seen as strategic, reinforcing gender inequality by allowing entrenched myths to go unchallenged by empirical evidence. Consequently, effective menstrual health interventions must inherently include an educational element.¹³

Based on this, the conceptual network supported by reproductive health and, within that, menstrual health becomes visible. Of course, for the sake of completeness, we must also add that reproductive health encompasses both female and male reproductive processes and organs, during all life stages. The term reproductive disorders is therefore more comprehensive than we might think, as it covers a wide spectrum of female disorders, such as

“endometriosis, a condition where the tissue that normally lines the inside of the womb, known as the endometrium, grows outside of it, inadequate breastmilk supply, infertility or reduced fertility (difficulty getting pregnant), menstrual problems including heavy or irregular bleeding, polycystic ovary syndrome, ovaries produce more male hormones than normal, or problems during pregnancy.”¹⁴

And the disorders related to male reproductive health include for example the impotence or erectile dysfunction and the low sperm count.¹⁵

Clearly, therefore, there are health risks associated with women’s reproductive health, which is a priority area for research, that raise the question of whether there is any expectation on the part of the

¹⁰ *Statement on menstrual health and rights*. World Health Organization, 2022.
<https://www.who.int/news/item/22-06-2022-who-statement-on-menstrual-health-and-rights>

¹¹ *Menstruation and human rights – Frequently asked questions*. United Nations Population Fund, 2022.
<https://www.unfpa.org/menstruationfaq>

¹² Manav SETH: Why is it important to have a period-friendly workplace? *peoplematters.in*, 2023.
<https://www.peoplematters.in/article/wellness/why-is-it-important-to-have-a-period-friendly-workplace-37083>

¹³ Sally KING: Menstrual Leave: Good Intention, Poor Solution. In: Juliet HASSARD – Luis D. TORRES (eds.): *Aligning Perspectives in Gender Mainstreaming*. Cham, Springer, 2020. 151–176.

¹⁴ *Reproductive Health*. National Institute of Environmental Health Sciences, 2025 August 2022.
<https://www.niehs.nih.gov/health/topics/conditions/repro-health>

¹⁵ Ibid.

legislator to protect this health in terms of employment, and if so, how this has been done so far, based on an examination of global labour law regulations.

3. Legislation in relation to reproductive health, especially menstrual health

Labor legislation is of fundamental importance to every nation's economy, employment policy, and competitiveness in the international arena. It is therefore no exaggeration to say that, in general, the intertwining of reproductive health and employment policy instruments is not worth debating, as reproductive health and employment are in many ways inextricably linked. Worldwide, women are the primary caregivers for children, and women's reproductive years generally overlap with their economically productive years. This is strongly illustrated by the fact that planned and unplanned pregnancies and childbearing affect women's ability to seek different types of economic opportunities and even the sectors in which they wish to work. In the absence of childcare services and due to efforts to balance care responsibilities, women often work in the informal or unregulated economy. The "choice" between formal and informal work is also likely to vary based on women's access to reproductive health support.¹⁶ It is therefore clear that employment support measures related to reproductive health have a significant impact on women's entry into the labour market and the fight against female unemployment, and can also help, in line with the welfare state's objective of ensuring that women's reproductive health is adequately protected during their working lives. Rules introduced in labour law for this purpose, i.e., rules that protect and support reproductive health, therefore clearly support employment, and the introduction of any new legal institution must be preceded by a serious debate on employment policy, as it will also have an impact on this.¹⁷

Menstrual health is a serious employment policy issue. To further emphasize this message, we can examine the positions taken in European Parliament documents. One such resolution states that untreated menstrual pain and discriminatory traditions lead to school dropout and lower attendance rates for girls in school and women in the workplace.¹⁸ This is why the European Union emphasizes that reproductive health challenges must be addressed as national and EU challenges, as they are crucial not only for gender equality but also for economic growth and development.¹⁹ Member States therefore also have a responsibility to support the achievement of reproductive health through budgetary

¹⁶ Sarah GAMMAGE – Naziha SULTANA – Allison GLINSKI: Educating vulnerable employment: Is there a role for reproductive health, social protection, and labour market policy? *Feminist Economics*, vol. 26., no. 1. (2020) 121–153.

¹⁷ BÍRÓ, Noémi – NÁDAS, György – PRUGBERGER, Tamás – RAB, Henrietta – SÍPKA, Péter: Az aktív és passzív foglalkoztatáspolitikai eszközök alakulása, hatásuk a munkaerőpiaci mutatókra. Debrecen, Debreceni Egyetem Állam- és Jogtudományi Kar, 2010. https://employmentpolicy.munka.hu/Lapok/fejlesztési/tamop_252/252_1/content/252_merop_aktiv_passziv.pdf

¹⁸ *Committee on Women's Rights and Gender Equality: Report on the situation of sexual and reproductive health and rights in the EU in the frame of women's health*. Brussels, European Parliament, 2021. Point S.

¹⁹ *European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the frame of women's health (2020/2215(INI))*. Brussels, European Parliament, 2021. Point 4.

resources,²⁰ which also covers related employment policy. In this regard, however, menstruation is not the only factor relevant to reproductive health. The European Parliament also emphasizes that other health needs related to reproductive health, such as menopause, must also be taken into account.²¹ To achieve all these goals, EU-level organization is also needed. For example, the European Parliament calls on the Council to set up a formation comprising ministers and secretaries of state responsible for gender equality, in order to take joint and concrete measures to address challenges in the field of women's rights and gender equality, including sexual and reproductive health and rights.²² The European Parliament also considers reproductive health to be a fundamental demographic issue, linking it to the demographic challenges facing the EU.²³

The argument for the need for regulation can be approached from other angles as well, such as gender equality, but in this publication we have limited ourselves to health, and specifically to arguments based on reproductive health. This is not unique; among the foreign examples below, there are several that base the need for regulation directly or indirectly on the requirement of healthy working conditions.

4. Results from other countries' legislation – the menstrual leave

Legislators can affect promoting menstrual and so reproductive health in a number of ways, e.g. developing policies to combat menstrual poverty or, especially highlighted by this research, by regulating the connections and relationship of menstruation and labour. An example is the Indonesian legislature, which is trying to promote menstrual health through various policies. The country, highlighted below, has made significant progress in integrating menstrual health into policies on water, sanitation and hygiene (WASH), education and school health, and labour legislation in the workplace. Menstrual health is supported by the following policies, plans and guidelines. First of all, we have to mention Article 18 (Menstrual leave) of Labour Law No 13/2003, that allows female workers to take two days of paid leave during menstruation. Second is the Standard Regulation on the Design of Disposable Sanitary Pads in Indonesia (2000 and revised in 2015). This regulation sets standards for disposable sanitary pads. The National School Health Strategy is also worth highlighting, because this strategy includes three menstrual health provisions i.e., (i) health education by providing menstrual health knowledge and awareness; (ii) health services; and (iii) providing a healthy school environment for adolescent girls. Very exciting is the Water, Sanitation And Hygiene (WASH) programme, because this programme aims the schools, which includes facilities that support menstrual health (for example,

²⁰ Ibid. Points 6–7.

²¹ Ibid. Point 20.

²² Ibid. Point 52.

²³ Ibid. Point 55.

functional, clean, sex-segregated toilets and handwashing facilities with soap). They also address menstrual health knowledge and awareness in schools and communities, so it is in connection with the educational goals. Regarding the education, we have to mention other policies, like the Menstrual Hygiene Management Guide for Teachers and Parents (2017), the Menstrual Hygiene Management Communication Strategy (2019), and Sexual and Reproductive Health Guidelines (2021). These are all in connection with menstruation and education, communication in many forms.²⁴

Following this distant example, if we look at the EU, we can note that it is interesting that the EU resolution cited above, which calls for support for reproductive health, does not specifically mention employment policy, yet the role of employment policy is indisputable when we look at the implementation of the other tasks mentioned, such as achieving gender equality and protecting health. With regard to menstruation, educational and informational objectives are mentioned, as well as the treatment of menstrual poverty.²⁵ What may also catch our attention in relation to the lines below is that the European Parliament calls for girls and women to be guaranteed access to education, as this is an essential means of increasing women's social and economic participation; calls for efforts to reduce absenteeism among girls during menstruation by improving menstrual hygiene facilities in schools, particularly WASH services, and by combating stigma.²⁶ In contrast, the resolution does not specify that women's role and position in the labour market is similarly affected by forced absences due to menstrual difficulties, which is particularly surprising given that it treats school absences during menstruation as an obvious circumstance. At the same time, absences due to menstruation do not cease when a student transitions to employee status, as they are not linked to the categories of "insured persons." Thus, in view of the specifically named school absences, it is particularly problematic that Parliament does not consider the impact of absences due to menstruation to be equally noteworthy in terms of increasing women's social and economic participation. However, this omission should not be a reason for national and EU organizations and individuals responsible for this issue to ignore it, as this goal clearly stems from other expectations, generally from the requirement to protect reproductive health.

Women's reproductive processes, especially motherhood, are protected by social and labor law, contributing to the status security of the women concerned. However, menstruation is inextricably linked to women's fertility and is currently undervalued in the context of labor and social law, for example in Hungarian labor law, while menstrual poverty, which threatens social security, is at the center of ongoing international action plans and programs. The concealment of menstruation and legal silence on the subject provide fertile ground for unequal treatment, particularly in the form of indirect discrimination.²⁷

²⁴ HUGGETT–CHEA–HEAD–SUTTOR–YAMAKOSHI–HENNEGAN op. cit. 2.

²⁵ *European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the frame of women's health (2020/2215(INI))*. Brussels, European Parliament, 2021. Point 28.

²⁶ Ibid. Point 65.

²⁷ Beth GOLDBLATT – Linda STEELE: Bloody unfair: Inequality related to menstruation – Considering the role of discrimination law. *Berkeley Comparative Equality & Anti-Discrimination Law Working Paper*, 2019. <https://ssrn.com/abstract=3485987>

One possible way to regulate menstruation in labor law (and thus in employment policy) would be to introduce menstrual leave. This is perhaps the most progressive form of support related to menstruation, and there are examples of this at the national level within the EU. Therefore, support for menstruation in labor law is clearly linked to the issue of working hours and rest periods and their sustainable regulation. The answer to the research question concerning the ways in which reproductive health is protected in labor law can be found in national regulations on rest periods. Based on a global analysis of labor law, I have concluded that labor law regulations from Asia to America support menstruating women in the form of a special day off. However, the specific theoretical background of this in national regulations varies, and the specific content of the individual regulations also differs.

Without claiming to be exhaustive, but highlighting important regulations, Japan is worth introducing first. Japan was the second country in global history to introduce menstrual leave in 1947. Thus, in Japan, since 1947, menstruating women have been protected by law (labour law) under the provisions of the Japanese Labour Standards Act.²⁸ 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.²⁹ 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.³⁰ 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.³¹

Indonesia is the third country to have legal menstrual freedom in the first half of the 20th century.³² 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.³³ Under the 2003

²⁸ Act No. 49 from 1947, „Labour Standards Act”. ASBOTH, Beatrix: Menstruációs szabadság – példák a nagyvilágból. *Euronews*, 2022. <https://hu.euronews.com/2022/05/26/menstruacios-szabadsag-peldak-a-nagyvilagbol>

²⁹ 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 woman work on days of said menstrual period”. Marian BAIRD – Elizabeth HILL – Sydney COLUSSI: Mapping Menstrual Leave Legislation and Policy Historically and Globally: A Labor Entitlement to Reinforce, Remedy, or Revolutionize Gender Equality at Work? *Comparative Labour Law and Policy*, vol. 42., no. 1. (2020) 195.

³⁰ Ibid. 196.

³¹ ASBOTH op. cit.

³² 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*, vol., 16., no. 1. (2023) 18.

³³ BAIRD – HILL – COLUSSI op. cit. 196.

regulation³⁴ Indonesian law allows a maximum of two days paid leave per month, specifically for the first two days of menstruation,³⁵ but further details are left to the parties.

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 revision³⁶ 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.³⁷ 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,³⁸ and may even face criminal prosecution.³⁹

Unlike the examples above, the formulation of Taiwan's menstrual leave policy is closely linked to the provision of sick leave.⁴⁰ 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 16 January 2022 under the Gender Equality in the Workplace Act. Article 14 of the law provides, in an unusual way, that female workers who experience difficulties⁴¹ 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.⁴² 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.⁴³ Menstrual leave is paid at 50% of the daily rate of pay, in line with the rules for sick leave.⁴⁴ In the literature, this Taiwanese menstrual leave is presented as a measure to support national birth rates.⁴⁵

³⁴ 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. BAIRD–HILL–COLUSSI op. cit. 196.

³⁵ Hilary H. PRICE: Periodic Leave: An Analysis of Menstrual Leave as a Legal Workplace Benefit. *Oklahoma Law Review*, vol. 74., no. 187. (2022) 193.

³⁶ In other source 2001. BAIRD–HILL–COLUSSI op. cit. 200.

³⁷ PRICE op. cit. 190.

³⁸ 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 op. cit.

³⁹ BAIRD–HILL–COLUSSI op. cit. 201.

⁴⁰ Ibid.

⁴¹ Here I must briefly draw attention to the progressive approach to regulation. Here, menstrual leave is not only linked to painful menstruation according to the text of the legislation, but can be justified by any symptom of it.

⁴² ASBOTH op. cit.

⁴³ BAIRD–HILL–COLUSSI op. cit. 202.

⁴⁴ ASBOTH op. cit.

⁴⁵ BAIRD–HILL–COLUSSI op. cit.

Vietnam has a specific legal and socio-political environment. In terms of gender rights, Vietnam has one of the most comprehensive and developed labour codes in the Southeast Asia and Pacific region. Accordingly, Vietnam enacted menstrual leave into the national labour 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.⁴⁶

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.⁴⁷ The policy behind the legislation sees it as a "Mother's Day", which emphasises the opportunity for women to become mothers.⁴⁸

And finally, Spain is the first EU country 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.⁴⁹ 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 1 June 2023.

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.⁵⁰ 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.⁵¹ 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.⁵²

⁴⁶ Rizichi KASHERO-ONDEGO – Njeri WAGACHA: The concept of menstrual leave. *Cliffe Dekker Hofmeyr*, 2023. <https://tinyurl.com/4ftfsz5m>

⁴⁷ Unfortunately, practice suggests that employers expect prior notice before requesting time off, even though the legislation does not require it. ASBOTH op. cit.

⁴⁸ Will WORLEY: The Country Where All Women Get a Day Off Because of Their Period. *Independent*, 04 January, 2017. <https://tinyurl.com/5n8bckhe>

⁴⁹ PRICE op. cit. 187.; Anna MOMIGLIANO: Giving Italian Women 'Menstrual Leave' May Backfire on Their Job Prospects. *Washington Post*, 24 March, 2017. <https://tinyurl.com/ybn63rh3>

⁵⁰ Daniel PEREZ DEL PRADO: *Women's Health and Labour Law*. Novelties from Spain. 2024. <https://tinyurl.com/scumv5ct>

⁵¹ Lidia DE LA IGLESIA AZA – Bernadett SOLYMOSI-SZEKERES: La menstruación en el entorno laboral. *Lan Harremanak - Revista De Relaciones Laborales*, vol. 51. (2024).

⁵² Ibid

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 gynaecologist. This differs from the rules on ordinary sick leave and sick pay, under which a certificate from a general practitioner is sufficient.⁵³ 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.⁵⁴

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. In addition, the period of menstrual leave, often wrongly referred to as 3-5 days⁵⁵ – although no such restriction exists in terms of the monthly rate⁵⁶ –, 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, 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.⁵⁷

Comparing the foreign regulations presented, the following key elements can be highlighted.

1. Table: Examples of foreign regulations on menstrual leave. Own compilation.

Country, region	Regulation	Remuneration
Japan	Labor law – regulation does not specify the number of days off.	It is up to employers to decide whether they are remunerated.
South Korea	Labour law – one day per month, to be issued by the employer, prior request required.	Unpaid leave.
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.
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.
Zambia	Labor law – one day per month, no medical certificate or prior information required.	n/A

⁵³ Ibid

⁵⁴ PEREZ DEL PRADO op.cit.

⁵⁵ For example in the following sources: Isabel JACKSON: A year on from Spain's menstrual leave law – what have we learned? *People Management*, 2024. <https://tinyurl.com/ytbwxbzr>

⁵⁶ PEREZ DEL PRADO op.cit.

⁵⁷ Jessica PEARSON – Michelle MORGAN: Menstrual leave in the workplace. *Shoosmiths*, 2023. <https://www.shoosmiths.com/insights/articles/menstrual-leave-in-the-workplace>

Country, region	Regulation	Remuneration
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
Spain	Social security law – no maximum monthly rate + medical certificate required.	Covered by social security

5. *De lege ferenda* recommendations regarding the regulation in Hungary

The above lines clearly outline the fundamental right that reproductive health, including menstrual health, are expectations that must be taken into account when developing relevant areas of legislation, and regulations must be created in accordance with them. This is no different in the case of labour law, which permanently determines the everyday lives and relationships of workers, especially given that labour law (and employers) must ensure that the framework for work does not endanger health. For this reason, there is a noticeable gap in Hungarian labour law, which has not yet provided for menstrual health support tools. Of course, a number of soft tools are conceivable in this area, provided that the task of regulation is primarily shifted to market players,⁵⁸ however, if we take foreign legislative examples as a basis, the introduction of menstrual leave is conceivable. It should be noted that whatever form menstrual leave takes, it must pursue the goal of providing a recurring, individually short-term, paid period of exemption from the obligation to work and be available for work, as menstruation-related problems also occur periodically for a short period of time and may necessitate absence from work.⁵⁹ It is also important that the benefit should not be dependent on the specific characteristics of the employment relationship, such as part-time work, the length of time spent in a specific employment relationship, or even the size of the employer granting the benefit. Under Hungarian law, a possible solution would be to extend the otherwise guaranteed framework of sick leave or regular leave. A detailed analysis of these options is beyond the scope of this study,⁶⁰ thus, without conducting an in-depth examination, it should be noted that if the legislator follows the concept of sick leave, it can refer to the fundamentals of incapacity for work and the right to health, but if it provides for additional leave, the legal institution would be based on (otherwise controversially assessed) gender equality. Bármely jogi háttérrel is vesszük alapul, figyelemmel kell lenni az eljárási kérdésekre. This is because women play a fragile role in terms of gender equality in the labor market, and therefore, when a stigmatized natural phenomenon becomes a protected legal subject, the sensitivity of the situation must also be taken into account in the manner in which legal regulations are applied. Thus, there is an increased expectation on the part of the legislator to call on employers to establish appropriate

⁵⁸ See: Bernadett SOLYMOSI-SZEKERES: Menstruáció és munkajog a reprodukciós egészség és a nemek közötti egyenlőség viszonyában. Miskolc, Bíbor Kiadó, 2025.

⁵⁹ PRICE op. cit. 203.

⁶⁰ SOLYMOSI-SZEKERES op. cit.

procedural rules so that recourse to legal institutions actually provides an opportunity to overcome and reduce inconveniences.

In view of this, thorough and careful preparatory work is necessary before Hungarian (and other national) legislative reform, but it is certain that the legal institution of menstrual leave will be linked in some way to the framework of working time and rest periods. However, soft measures beyond this, whether based on unilateral employer provisions or included in collective agreements, are of particular importance in the holistic support of menstrual health and are therefore indispensable for the realization of reproductive health requirements. A soft measure can be such an extra benefit, that an employer provides possibility or support to visit the specialists regarding these issues, or other type of methods to achieve better reproductive health at the workforce.

6. Conclusions

Reproductive health is a concept that embodies an indisputably essential aspect of employment policy in a developed, welfare society, in a state that operates a human-centred labour law system. In view of this, reproductive health has been defined, on the basis of which it has also been established that it must be covered by labour law regulations. However, how this is done is an often-neglected question, especially when we examine one aspect of reproductive health, namely menstruation and menstrual health. Menstruation can be reflected in labour law in the form of menstrual leave, for which we can find examples abroad by examining national legal systems. This leave takes different forms in several respects. 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 labour law. One can talk about a social security-based approach (Spanish solution), but the labour 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 should be also evaluated when preparing a national legislation: 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, which may be particularly important for national working time regulation issues. For example, if menstrual leave were to be included in the system of rest periods, it would have an impact on the well-being of female employees, the employer's ability to organize working time, and ultimately the international competitiveness of the state.

As an ultimate conclusion it must be stated, that if a country that has not yet implemented regulations to support menstrual health wishes to develop such a policy, it is particularly important to consider the following: i) whether the regulation should be implemented in the field of labour law or social law (social security); ii) if the regulation remains within the framework of labour law, whether it will be linked to the concept of illness or implemented more broadly, based on gender equality; and finally, iii) how many days, what remuneration, and under what conditions the legislator will provide for menstrual leave. The latter question is also illustrated by the table above, as it can be seen that there is no uniform foreign example based on the national systems presented, so it is important to have individualized, well-thought-out regulations prepared through social dialogue if the legislator is considering permanent and sustainable regulations. These questions might serve as a starting point also for the Hungarian labour law development, when preparing a much needed regulation on women's reproductive health at the workplace.