

Regulating for ILO 'Decent Work' and Family-Friendly Employment



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Introduction

Our project's focus:

- Work-life balance and flexible working
- Identifying a model regulatory framework for maternity/parental leave and return flexible working schemes that aligns to ILO Decent Work and best practice in national law and HRM.

After some introductory themes...

- The *first* phase
- The *second* phase

Some Initial Issues

What is family-friendly work?

Broadly, work practices that facilitate work-life balance (WLB) and which complement and build on statutory requirements (OECD, 2016: 23)

Work based on minimum 'floor' of rights/duties re

- Equalities and labour market participation
- Parental and carers' leave needs
- Opportunities for part-time work
- Childcare and other support, eg income replacement
- ILO Decent Work agenda/standards (ILO, 2006; 2007; 2015; 2016b)

Law & Regulation

The Problem? Even in the most ‘regulated’ schemes, eg Netherlands, reinforced by legislation like

- Pregnancy/post-pregnancy support (Dir 92/85)
- Parental leave (Dir 2010/18)

law has limitations, eg in preventing discrimination, promoting a genuine commitment to WLB, and securing effective employment protection.

The Charter of EU Fundamental Rights tried to address this but just highlighted the limitations (Burri, 2016: 2). If schemes work, though, they help labour market participation by women, carers and others (Merkel 2015).

Factors in Schemes' Success

Law is only *one* factor shaping schemes - national, sectoral, enterprise - and informing stakeholders' actions and choices

Others?

Family and cultural values, availability of financial help, State support, eg with childcare, and the quality of collective bargaining and HRM systems

(Caracciolo di Torella and Masselot, 2010; Nespoli, 2015).

Law's Role? Helps to establish norms and standards, shape expectations, and allocate risks and costs between employers, workers, and the State (Puttick, 2016: 159).

ILO: ‘Effective Enforcement & Redress’

‘Sound legal frameworks that ban employment discrimination based on gender, maternity, paternity and family responsibilities must also be effectively enforced and have adequate redress. Legal and other barriers to employment and career progression must [also] be addressed ...’ (ILO, 2016a: 23; ILO, 2016b).

A factor even in light touch regimes like UK (ERA 1996)

Default can be hit by a ‘triple sanction’ - penalties for process failures; indirect sex discrimination; and constructive unfair dismissal (*Commotion Ltd v Ruddy*).

However... much depends on other, non-law factors.

Project: Phase 1

Preliminary Work

- Literature review
- Analysis of current world schemes having regard to legal frameworks and HR practice, including those that have been collectively bargained and are in collective agreements (Beszter, 2014: 364; 2016: 49)
- Research on the application of ILO Decent Work and other standards to schemes
- Identification of key features/attributes of an effective 'model' for countries currently without legal regulatory frameworks within which schemes can be developed

Project: Phase 2

Factoring in current arrangements/good practice in Sri Lanka and national 'models' in Phase 1, we will survey consultees - employers' organisations, unions, SL IPM, and others - on the scope for, and form of, a possible SL regulatory framework.

This will entail:

- Consultation and data gathering by questionnaire
- Follow-up face-to-face meetings with consultees
- Data processing and evaluation of responses

Outputs? Conference papers, articles, support for teaching/learning, public engagement

Research Question 1

The *first* ‘question’: is there scope in SL for a legal regulatory framework for a flexible working scheme?

Initial evidence from some Sri Lanka sectors suggests ‘yes’ - eg the SL military, where the benefits of work-life balance is well understood (Keppetipola, 2014)

The research will test this re specific parental leave/return schemes in *other* sectors

It will also assess whether, and how, a statutory framework could assist the HRM function in practice given the recognised advantages of stable flexible working schemes (Bratton and Gold, 2010: 187)

Research Question 2

What *form* should such a framework take?

A 'light touch' model? Initially just establishing a right to *request* a flexible working arrangement: then leaving it to negotiation/agreement on specific arrangements?

Or should it *go further* - as in some jurisdictions - and be *more* rights and duties prescriptive?

A key function would be to reach workers in non-union workplaces ie the 'unorganised worker' (Puttick, 2015:2).

The 'conditions' for regulation to work - what types of regulation will work, what are the cost/benefit trade-offs? (Williamson, 2017).

Flexible Working: Leave & Return

Effective Pre-Leave Processes?



A Smooth Run *after* a Return?



Thanks for Your Kind Attention!

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Legislation, Cases, etc

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Council Directive 76/207 (Recast Dir 2006/54) (Equal Treatment)

Council Directive 2010/18/EU of 8 March 2010 (Parental Leave)

ERA (1996) Employment Rights Act 1996, Part 8A (ss.80F-80I) and regulations; and ACAS Code on Flexible Working:

<http://www.acas.org.uk/media/pdf/s/7/The-right-to-request-flexible-working-the-Acas-guide.pdf>

Charter (2010) Charter of Fundamental Rights of the European Union

30.3.2010, OJ EU, C83/389 http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

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