

Evaluation of Law: The Parental Leave Clauses in the Act on Equal Employment and Work-Family Compatibility

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Abstract: An evaluation of law was conducted on various aspects of the parental leave clauses of the Act on Equal Employment and Work-Family Compatibility to identify problems and potential solutions. Legal parsimony, effectiveness, efficiency, legal accordance, and application conformity were set as evaluation criteria. Many problems were found to be present in the expansion of the parental leave system. In particular, consultation with the business sector was inharmonious; it is unlikely that there will be spontaneous cooperation from the business sector for the improvement of the paternity leave system if incentives are not offered to participating companies. The possibility of systematic opposition from the business sector should be kept in mind. In-depth discussion is needed in order to strengthen cooperation between the government, the business sector, and civil society on the establishment of reasonable parental leave guidelines by considering work-family compatibility as well as the burden on the business sector and the government.

Keywords: evaluation of law, evaluation criteria, parental leave.

INTRODUCTION

The importance of legislation as a policy measure is increasing along with the expansion of the roles and tasks modern states must carry out. It has been frequently

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argued that an excessive number of laws are being enacted, reflecting the complexity of life due to the development of society. This applies to South Korea as well. In the past, the number of bills passed in the National Assembly was not great. One hundred and forty-eight bills were passed in the Constitutional Assembly, 215 bills in the second National Assembly, and 154 bills in the third National Assembly. However, this figure started to increase, and 1,120 bills, 947 bills, and 1,931 bills were passed in the 15th, 16th, and 17th National Assemblies, respectively.

This has resulted in a number of troublesome side effects, such as the decline of legal effectiveness, legal acceptance, and legal guidance. Therefore, calls for enhancing the quality of legislation have been widespread (Jeong 2006; Lim 2008; Park 2002). There have been numerous evaluations by the national government of the implementation of policies, but comprehensive legislation evaluation related to the law itself has been rare. Advanced countries are now conducting various types of legislation evaluation in order to enhance the quality of legislation (Chung 2007, 98).

Under present circumstances, it would be difficult to conduct evaluation of law at the level of institutionalism present in advanced countries. However, it is imperative that we should take measures to develop evaluation of law in South Korea both through theoretical studies and by evaluating real cases in Korea.

This study focuses on the parental leave clauses of the Act on Equal Employment Opportunity and Work-Family Compatibility. First, the concept and types of evaluation of law will be discussed. A basic framework will be presented for evaluating the parental leave clauses, based on current casework research on the evaluation-of-law system. Next, the parental leave clauses will be evaluated based on that framework. The scope of evaluation as well as evaluation criteria will be discussed. Suggestions for developing the parental leave system will be presented based on the evaluation results. Finally, the results of the analysis and the implications of the study will be summed up.

THEORETICAL BACKGROUND AND ANALYTICAL FRAMEWORK

The Significance of Evaluation of Law

The Concept of Evaluation of Law

According to earlier studies and practical discussions, the concept of evaluation of law varies depending on the aim and viewpoint of the study. Some people regard evaluation of law as a system that promotes more efficient enactment and revision of laws.

They focus on ex-ante evaluation, which assesses the soundness of the legislation by predicting its effects on the country in which it is to be enacted (J. Park 2007). Others regard evaluation of law as analyzing the effects of the law synthetically from the legislation process, reflecting the results of the analysis on the legislation, and evaluating the outcomes by the ex-post enactment of the law (Lim 2007). Still others classify it as having either a broad, medium, or narrow scope—focused, for example, on evaluation of the law, the legislator of assembly and government, the legislative process, or interest groups and social organizations (Choi and Hong 2005, 21-22). Others understand it as a scientific attempt to assess the effects and unavoidable aspects of legislation by applying the methods of sociology of law and economics of law (Park 2002; Choi 2005a). In that context, Young Doe Park (2007) described evaluation of law as “an evaluation on the national measure that generally has legislative features, in other words, evaluation on the substantial meaning of law.” In Germany, forecasting and evaluation of law outcomes (*Gesetzesfolgenabschätzung*) means evaluation of law in itself—so target, methodology, and objectives of evaluation are specifically set in advance, and lawmakers or evaluators systemically analyze laws in accordance with their objectives (Hong 2006).

By integrating these concepts, evaluation of law can be understood as a process that analyzes and assesses the comprehensive and inclusive effects of the enactment or revision of a law, and as a process to make good legislation and to improve less effective and unrealistic laws.

The functions of evaluation of law

Evaluation of law has been described as having three functions (Choi 2005b; König 1986; Park 2002; Lim 2008):

- *Ensuring rationalism of legislation* – Evaluation of law eliminates excessive rules and saves resources. It promotes rules that are advanced, simple, and easy to understand. It also helps make clear whether the rationalization of the law that the current science of legislation pursues is attained.
- *Ensuring feasibility and legitimacy of policy* – The legitimacy of government policy used to derive simply from its legality and rationality. Now, however, it also requires not only democratic participation and equality but also feasibility of the outcome and scientific support for the outcome. Evaluation of law can help predict a law’s outcome and enforcement and confirm afterward whether the law’s aims were achieved.
- *Ensuring control of legislation* – Evaluation of law is a tool of control not only politically but also administratively, financially, and judicially. It supports the decisions of legislators by making the legislative process more transparent and

allowing for informed criticism. Evaluation of existing legislation can provide the basis for revision or abolishment.

Review of Recent Research

Evaluation of law was designed to improve legislation by controlling problems that emerged due to the surge of legislation related to the welfare state (Wagner 1999). It was introduced to South Korea soon after 2000, but has not received much attention. Research on evaluation of law largely falls into three categories: significance and criteria for evaluation of law, foreign evaluation of law, and case studies.

Research on significance and criteria is important in that it can form a foundation for further studies. Representative studies are those by Park (2002), Choi (2005a), and Park and Jang (2007a). Park (2002) introduced the significance and criteria of evaluation of law, reviewed Germany's evaluation of law, and forecast the future of the field. Choi (2005a) explained the significance and aims of evaluation of law, exemplifying the case of Germany, the European Union, and China. Bohert and Kozendorf (2001) offered a general introduction to the subject, translated by Park and Jang (2007a), which categorized evaluation of law into *ex-ante*, *mid-term*, and *ex-post* evaluations.

Comparative study of the evaluation of law in major states can yield useful implications. Such studies have been undertaken by the Korea Legislation Research Institute in several volumes that discuss the evaluation-of-law system in the European Union, United States, Germany, Great Britain, Austria, and Switzerland.

Recently some case studies have been attempted, although they are not close examinations of evaluation of law. Countries such as Germany and Switzerland are already operating evaluation of law, and cases studies of these countries are numerous. In the past, achievements, cost-benefit relationships, and side effects were the main criteria for evaluation. Recently a standard cost model has been introduced. The first evaluation to apply the new criterion was conducted by the international legal group Steria Mumert Consulting and Hogan and Hartson Rau L.L.P. on the Wassergesetz of Brandenburg, Germany. Case studies have also been carried out in South Korea recently (Jeong 2004; Lee 2006; Hong 2006; Jang and Ahn 2007; Y. Park 2007; S. Park 2007; Lim, 2008). Key case studies are summarized in table 1.

This research consists mostly of studies of the system itself, which focus on the concept and contents of evaluation-of-law systems and do not discuss practical evaluation. Even case studies of evaluation of law merely represent and apply normative criteria, rather than showing the kind of criteria that are actually applied. Therefore, this study intends to show the kind of criteria that are actually employed in the National Assembly's legislative process and how they could be applied to the analysis of cases.

Table 1. Evaluation-of-law Case Studies

Researchers	Law or Other Document	Focus of Analysis
German Federal Government (2002)	Election statistics legislation, information protection audit legislation, advancement of corporate tax levy legislation, witness protection legislation	Achievement, cost-benefit relationships, and side-effects
Jeong (2004)	Free trade agreement between South Korea and Chile	Cost-benefit relationships
Lee (2006)	Anti-prostitution law	Economic prospective
Hong (2006)	Anti-prostitution law	Effectiveness, efficiency, side effects
SECO (2007)	Guidance on industrial safety	Possibility and inevitability of state actions, influence on specific social groups, alternative rule
Jang and Seong (2007)	Protection and support for crime victims	Effectiveness, efficiency, validity
S. Park (2007)	Clean air interstate rule	Cost-benefit relationships
Y. Park (2007)	No specific case	Corruption impact assessment system, regulatory impact assessment system, gender impact assessment system, bill cost analysis system
SMC/HHR (2008)	Wassergesetz	Standard cost model
Lim (2008)	National Basic Livelihood Security System	Financial impact

Basic Framework for Analysis

The legislative process in South Korea starts when a demand for legislation emerges. A bill is drafted and proposed by a member of the assembly or the government. The proposal goes through a standing committee and then is brought up for discussion in a plenary session of the National Assembly. If it is approved, it is sent to the president for promulgation.¹ The law is executed, and an evaluation of the law is made. If the evaluation reveals a need for further legislation, legislation design should

1. Since the Sixth National Assembly in 1963, the standing committee conducts legislative review and decides the bill, and it is rarely discussed in the plenary session (Kim 2005, 119).

be conducted. In this process, evaluation of law functions to promote rationalization of legislation, feasibility and legitimacy of policy, and control of legislation.

Evaluation of law could be understood as focusing either simply on ex-post evaluation or on the bill's debate and passage as well as its outcome. According to the former viewpoint, the goal is to assess how effective the law is at achieving its intended goals and how it is perceived by the people who are subject to it. But according to the latter viewpoint, legislative intent as reflected in debate and passage of the bill is also part of the evaluation. That broader viewpoint is used in Choi's (2005b, 12) discussion of the "prediction and evaluation of the effectiveness of law" in Germany and the European Union. In it, evaluation of law includes three stages: (1) formulating the evaluation that confirms legislative demand as legislative motive and presents evaluation criteria; (2) applying criteria that are manifested in the stage of formulating the evaluation in order to decide the bill; and (3) presenting evaluation and alternatives after applying criteria and indicating problems.

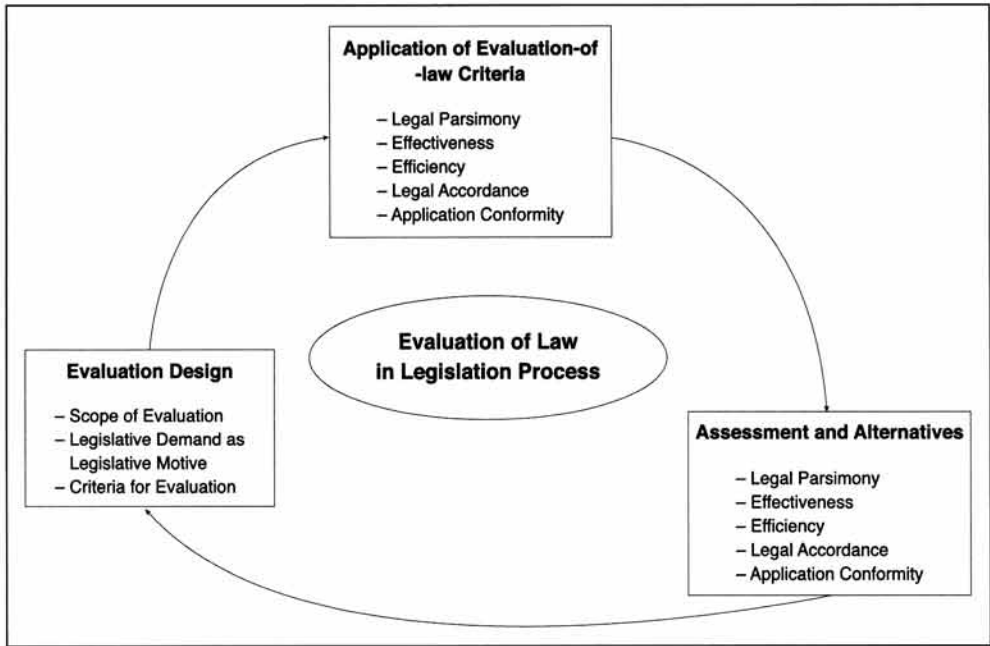
Although evaluation of law can be seen as having three stages, it is actually a circular process. Legislative motive is linked to enactment of new or revised legislation. When that legislation is enacted, evaluation is conducted and alternatives are presented. This becomes the legislative motive for enactment of new legislation, revision, or abolishment of the law. This is a structure of constant feedback. The framework for analysis is depicted in figure 1.²

This study focuses on evaluation of law of the parental leave clauses of the Act on Equal Employment and Work-Family Compatibility by using the framework of analysis described above.³ A parental leave system is stipulated in the Act on Equal Employment Opportunity and Work-Family Compatibility. This system, established in 1988, has been frequently considered for revision and sometimes revised.

We will analyze three aspects of the evaluation process: evaluation design, application of evaluation criteria, and assessment and alternatives during discussion in the National Assembly. In the first step, the scope of evaluation is decided and legislative demand to the system as legislative motive is confirmed in the design of the evaluation. Then, evaluation criteria are chosen. Five criteria are suggested: legal parsimony,

2. This framework draws on work by Choi (2005b), Hong (2006), Kettiger (2000), Lim (2007), Jang and Ahn (2007), Park and Jang (2007a), modified to match South Korea's legislative process.

3. The entire law could be the object of evaluation of law. However, considering how prevalent partial revision of laws is in South Korea (of the 1,931 bills proposed in the 17th National Assembly, most involved partial revisions), it is important to evaluate it as well. Moreover, since it would be impossible to evaluate every bill, an objective screening process is necessary to choose which bills to evaluate.

Figure 1. Framework for Analysis

effectiveness, efficiency, legal accordance, and application conformity. In the second step, these evaluation criteria are applied. In the third step, assessment and alternatives are suggested with regard to each criterion.

EVALUATION OF THE PARENTAL LEAVE CLAUSES

Evaluation Design

Scope of Evaluation

In order to conduct evaluation of law, the object and the scope of the evaluation must first be confirmed. This is because the scope of consideration during the process of the evaluation depends on the object of the evaluation (Choi 2005b; Jang 2008; Jung 2007; Park and Jang 2007a). The scope of the evaluation of the parental leave clauses could differ according to the object of the evaluation. We define the parental leave system as a system in which both male and female employees are allowed to take a certain amount of time off for child care without affecting their position at work (Lee et al. 2004). According to the International Labour Organization standard, such a system has three common features: (1) it can be used by both male and female employees; (2)

it is separate from maternity leave; and (3) employment is guaranteed during the leave (Bolle 1997; Lee et al. 2004).

The scope of evaluation in this study is limited to the Act on Equal Employment and Work-Family Compatibility Article 19. Where necessary, the State Public Officials Act, Local Public Officials Act, and Public Educational Officials Act, which also stipulate a parental leave system, are discussed as well.

Legislative Demand as Legislative Motive

Legislative demand stems from dissatisfaction with the current status of a law and demand for its revision or enactment of a new law (Choi 2005b; Jung 2007; Park and Jang 2007a). Legislative demand for parental leave could be divided into demands for the following: a basic parental leave system, expansion of the pool of qualified recipients, an income guarantee during the leave, and penalties for employers who fail to provide parental leave.

The original demand for a parental leave system was met in 1987 in the Equal Employment Act (the name was changed to Act on Equal Employment and Work-Family Compatibility in 2008). That system continued to undergo changes. Qualification expanded to include male employees and parents with infants up to three years old.⁴ Moreover, there were demands for an income guarantee and job security during the leave.⁵ Demand for stricter enforcement was present because in many cases employers avoided granting parental leave.⁶ Major proposals for change are summarized in table 2.

Criteria for Evaluation

Criteria for evaluation of law vary from one researcher to the next (Y. Park 2007). Young Doe Park (2007) counted legal parsimony, impact, effectiveness, cost, efficiency, familiarity, and legal accordance as criteria. Criteria can also differ based, for example, on whether a bill concerns the budget or the environment (S. Park 2007; Ahn 2007; Lim 2007). The meanings of these criteria are not only ambiguous but also

4. These changes were proposed by Representative Yangja Joo on November 28, 1994, Representative Myongsook Han on November 25, 2000, Representative Seongho Jeong on June 18, 2004, Representative Aesil Kim on August 17, 2005, and Representative Seongwon Lee on March 28, 2007.

5. These changes were proposed by Representative Yangsoon Oh on December 16, 1997, Representative Jeongsook Kim on December 16, 1999, and Representative Jeongsook Kim on June 29, 2000.

6. This change was proposed by Representative Youngsook Park on December 15, 1998, and Representative Myongsook Han on November 25, 2000.

Table 2. Proposed Changes to Law on Equal Employment and Parental Leave

Date and proposer	Contents of proposal
Representative Youngjeong Kim October 5, 1987	Equal employment for both sexes, maternity protection, development of job skills in order to increase welfare of working women
Representative Yangja Joo November 28, 1994	Parental leave for both male and female employees
Representative Yangsoon Oh November 6, 1997	Basis for parental leave costs in order to guarantee effectiveness to state and local autonomous entities
Representative Yongsook Park December 15, 1998	Reinforcement of penalties for failure to comply with parental leave
Representative Jeongsook Kim December 16, 1999	Partial wage for employees taking leave, provided from the Employment Insurance Fund by the Employment Insurance Act
Representative Jeongsook Kim June 29, 2000	Income guarantee for employees taking leave and employment maintenance cost support for employers
Representative Myongsook Han November 25, 2000	Expansion of parental leave application, ban on dismissal during parental leave, reinforcing penalties for employers violating antidismissal clause
Representative Seongho Jeong June 18, 2004	Parental leave to care for foster child
Representative Aesil Kim August 17, 2005	Parental leave to care for children up to three years old
Representative Seungjo Yang June 29, 2006	Post-pregnancy and pre-delivery parental leave
Representative Hyongjoo Kim October 31, 2006	Introduction of male parental leave system (papa quota)
Representative Seongkwon Lee May 28, 2007	Deletion of clause limiting the period of parental leave
Representative Myong Shin June 29, 2007	Extension of parental leave period to a year; allowing divided use of the leave
Government of South Korea September 17, 2007	Divided use of parental leave, shortening of working hours for those caring for children

Source: Legislative Bill Information System (<http://likms.assembly.go.kr/bill/jsp/main.jsp>)

overlapping. Based on an analysis of the literature and practical discussions in Germany, this study focuses on the criteria of legal parsimony, effectiveness, efficiency, application conformity, and legal accordance.⁷

Application of Evaluation-of-law Criteria

Legal Parsimony

Legal parsimony is achieved when the least number of means are used to attain a result. This criterion makes it possible to evaluate whether a law is necessary for solving a problem (Y. Park 2007).

There have been lengthy discussions about whether parental leave is necessary in Korea. In many advanced countries, it has been legislated in order to improve the welfare of working women by guaranteeing equal employment and protecting maternity (Lee et al. 2004). Representative Youngjeong Kim proposed the Equal Employment Act on October 5, 1987, stipulating parental leave in Article 11. This clause was partially modified⁸ and developed through several enactments and revisions. Expansion of the parental leave period,⁹ an income guarantee during the leave,¹⁰ and a penalty clause for employers failing to permit parental leave¹¹ were regarded as indispensable.

However, according to the Deliberation Report on Representative Seongho Jeong's proposal, parental leave for foster children was not considered to have legal parsimony since it was considered unprofitable to classify biological children and foster children together.¹²

7. These criteria are common in earlier studies (Choi 2005a; Hong 2006; Y. Park 2007; Park and Jang 2007a). Some evaluation criteria, such as side effects, will not be discussed in this study, because we have narrowed the scope of discussion to the legislation process of the National Assembly and excluded criteria that were not discussed there.

8. According to the 137th Health and Social Committee Minute and Examination Report on the bill, a provision originally contained in Article 11 in which parental leave was prohibited for one time and one child was deleted since the limitation was not congruous with the purpose of the legislation.

9. This was proposed by Representative Yangja Joo on November 28, 1994, Representative Myongsook Han on November 25, 2000, Representative Seongho Jeong on June 18, 2004, Representative Aesil Kim on March 28, 2007, and Representative Seongkwon Lee on March 28, 2007.

10. This was proposed by Representative Jeongsook Kim on December 16, 1988, Representative Yangsoon Oh on November 6, 1997, and Representative Jeongsook Kim on June 29, 2000.

11. This was proposed by Representative Yongsook Park on December 15, 1998 and Representative Myongsook Han on November 25, 2000.

Effectiveness

Effectiveness is achieved when the legislation is applied in reality. This criterion is evaluated by the degree of agreement among parties discussing the legislation, degree of enforcement, and difference between the legislation's goals and its outcomes. If the degree of agreement and enforcement is strong and goals are similar to outcomes, effectiveness is high (Hong 2006; Y. Park 2007).

- *Degree of agreement:* During the revision of parental leave provisions, discussion of systemization was not harmonious. The distance between the views of women and labor advocates and business advocates was immense.¹³ Women and labor advocates viewed child care as a social responsibility and thus considered the cost burden on society to be acceptable. In contrast, the business sector regarded child care as an individual responsibility (Ryu 2003). There were confrontations between the two groups regarding the government revision bill in 2007. The labor sector wanted to reduce working hours by half and limit working hours to six hours in order to enhance the effectiveness of the legislation. The business sector opposed this because of the difficulty of hiring substitutes and the increase in indirect labor costs.¹⁴
- *Degree of enforcement:* The penalty for violating the Act on Equal Employment and Work-Family Compatibility's parental leave clauses has been increased. In the first revision, a fine of less than 2.5 million won was imposed for refusal to provide parental leave. This revision was proposed by Representative Youngsook Park on December 15, 1998, and passed without any modification during the bill examination process.¹⁵ The penalty was increased from a fine of less than 2.5 million won to a fine of less than 5 million won¹⁶ and, in

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12. Referred to the Deliberation Report on Representative Seongho Jeong's proposal in June 18, 2004.
 13. Women and labor advocates and business advocates also held different positions in a roundtable conference and a public hearing of the Special Committee on Women of the National Assembly (1999a, 1999b) and a specialist symposium (Hankyoreh 1999). They promoted their points of view through urgent press conferences (Hankook Economics 2001) and disclosures of position (Mail Economics 2001a; Donga 2001). The two sides also had different opinions with two-year reserving agenda of authorities concerned (Mail Economics 2001b), and they continued to hold opposite positions even after a revised bill on parental leave was passed (Ryu 2003).
 14. Referred to the Deliberation Report of the Environment and Labor Committee about the government bill on September 17, 2007.
 15. Referred to the Examination Report on the bill proposed by Youngsook Park on December 15, 1998, of the Labor Committee and the 145th Extraordinary Session Minutes.
 16. Referred to the Examination Report on the bill, proposed by Yangja Joo on November 28, 2004, of the Environment and Labor Committee.

some circumstances, a fine of less than 20 million won or imprisonment for less than three years.¹⁷ Table 3 summarizes revisions to the penalty.

- *Difference between goals and results:* In order to study the difference between law and reality, we analyzed records of applications for parental leave. The parental leave system was supposed to support men in meeting their family responsibilities (Kim 1999). This objective was emphasized as the system developed. The 1995 revision allowed male employees to take parental leave.

Table 3. Revisions to Penalties in the Parental Leave System

Date of revision	Contents
April 1, 1989	Fine of less than 2.5 million won to employer who does not provide parental leave (Article 23)
August 4, 1995	Fine increase to less than 5 million won (Article 23)
August 14, 2001	Fine of less than 20 million won or imprisonment of less than three years for employers violating the antidismisal clause (Article 37, clause 2)
December 21, 2007	Fine of less than 5 million won for employers who do not consult with employees about the use of parental leave or other measures of support (Article 39)

Source: Legislative Bill Information System (<http://likms.assembly.go.kr/bill/jsp/main.jsp>)

Table 4. Number of Parental Leave Recipients, Money Received, and Length of Leave

		2003	2004	2005	2006	2007	2008
Total	New recipients	6,817	9,303	10,700	13,672	21,185	29,145
	Total recipients	8,313	12,152	14,371	18,971	27,296	39,601
	Amount of money received (million won)	10,576	20,803	28,242	34,521	60,989	98,431
	Average leave period (days)	508	596	750	755	897	1,362
Male	New recipients	104	181	208	230	310	355
	Total recipients	121	214	269	310	384	477
	Amount of money received (million won)	133	326	487	532	740	982
	Average leave period (days)	475	536	721	690	761	830
Female	New recipients	6,713	9,122	10,492	13,442	20,875	28,790
	Total recipients	8,192	11,938	14,102	18,661	26,912	39,124
	Amount of money received (million won)	10,443	20,478	27,755	33,989	60,249	97,449
	Average leave period (days)	509	597	751	756	899	1,368

Source: Korea Employment Information Service

17. Referred to the bill proposed by the Chairman of the Environment and Labor Committee on July 16, 2001.

Nevertheless, it was uncommon for male employees to take parental leave. Table 4 shows the use of parental leave from 2003 to 2008. The number of employees using parental leave has increased since the introduction of the system, but male use is merely 1-2 percent of the total, based on either the number of recipients or the amount of money received. It is clear that parental leave is used mostly by female employees. In order to solve this problem, a "papa quota" system was discussed in the National Assembly.¹⁸

Efficiency

Efficiency is a measure of the relationship between the input needed to carry out a plan in a certain period of time and the output of goods and services (Hong 2006; Lim 2007; Y. Park 2007; Park and Jang 2007a). Output was already discussed under the effectiveness criterion, so the efficiency criterion will focus on input or cost.¹⁹

Costs related to the parental leave system were discussed three times in the National Assembly. The first discussion was on the parental leave allowance, which was in the bill proposed by Representative Jeongsook Kim on June 29, 2000. It established a partial wage paid by the Employment Insurance Fund during parental leave. In the Deliberation Report,²⁰ the parental leave system was established only for female employees or their substitutes and did not include an allowance. An income guarantee seemed to be necessary to make parental leave effective; but considering the fact that some advanced countries did not provide such an allowance, prudent deliberation was required.²¹

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18. The Korean Youth Corporation held a conference encouraging people to participate in the Childbirth Strike Campaign in order to introduce the papa quota system. On October 31, 2006, Representative Hyongjoo Kim introduced a bill to establish the system.
 19. The concept of cost is multivocal. In evaluation of law, cost could be seen as impact cost. In order to evaluate the efficiency of legislation, not only the cost but also the impact should be considered (Hugger 1983, quoted in Park 2007, 54-55). However, in the evaluation of law process of the National Assembly, a restricted meaning of cost was considered, so we will consider only the restricted meaning.
 20. The report considered the allowance supported by the Employment Insurance Fund appropriate because it helped guarantee employment stabilization. In the Deliberation Report of Representative Jeongsook Kim's proposal for partial revision of the Employment Insurance Act (Article 55), prudent consideration was called for.
 21. In the 11th Environment and Labor Committee of the 215th National Assembly Regular Session Minutes, Representative Myongsook Han said, "Only a small amount of subsidy is given to the employers who allow parental leave. My party has decided to provide income maintenance of 50 billion won from the Employment Insurance annually. However, this is from the Unemployment Allowance, which is collected from employers and employees."

The second discussion was related to the bill that increased the age of children whose parents were eligible for leave from one year to three years, proposed by Representative Aesil Kim on August 17, 2005. In the Deliberation Report,²² an additional 25.8 billion won was required for this extension of the leave time. In the Environment and Labor Committee session, the minister of labor said that although the aim of the proposal was good, there was not enough funding or staffing to support it.²³

The third discussion was related to the bill that gives out the first monthly wage from the Employment Insurance Fund and increases the length of leave from 12 months to 13 months, which allows an additional month of male parental leave. The Deliberation Report and the second session of the Environment and Labor Committee²⁴ stated that between 127 billion and 406.5 million won of national financing would be needed to support this proposal and concluded there would be many difficulties in promoting the proposal.

Legal Accordance

Legal accordance is also called legal formality, which means that the contents of a law should be applicable with systematic and logical composition. This means accordance is needed not only with higher law but also with laws at the same level (Y. Park 2007).

There is no explicit rule about parental leave in the Constitution; but the parental leave system is in accordance with Articles 34 and 36 of the Constitution.

However, the parental leave clause of the Act on Equal Employment and Work-Family Compatibility is different from Article 71 of the State Public Officials Act, Article 63 of the Local Public Officials Act, Article 44 of the Public Educational Officials Act, and Article 59 of the Private School Act. These differences are summarized

22. The budget for parental leave allowance in 2006 increased from 34.6 billion to 60.4 billion won due to increase of leave use (24% to 34%) and expansion of leave period (1.5 to 3 months). The budget required for parental leave allowance totaled 60.4 billion won (0.4 million won x 16,800 people x 9 months). The number of recipients of maternity leave in 2006 was estimated based on the parental leave recipients compared to maternity leave recipients, a 24 percent increase; and the trend of recipient increase, a 10 percent point increase. (The average parental leave period in 2004, which was 7 months [209 days], would be likely to increase an additional 2 months due to the increase in frequency and length of parental leave (1.5 to 3 months).

23. Referred to the 10th Environment and Labor Committee Minutes of the 256th National Assembly Regular Session.

24. Referred to the 2nd Environment and Labor Committee Minutes of the 265th National Assembly Extraordinary Session.

in table 5. There have been continuous discussions to modify these discrepancies in the legislation, which could lead to discrimination by unreasonably limiting some employees' right to time off for child care. Therefore, qualification for parental leave has been mitigated.²⁵

Table 5. Parental Leave Provisions in Different Laws

	Equal Employment Act	State Public Officials Act	Local Public Officials Act	Public Educational Officials Act
Basis	Article 19	Articles 71 and 72	Articles 63 and 64	Articles 44 and 45
Qualification	<ul style="list-style-type: none"> Care for a child less than three years old (formerly less than one year old) 	<ul style="list-style-type: none"> Care for a child less than six years old who has not entered elementary school (formerly less than three years old) For women: being pregnant or giving birth 	<ul style="list-style-type: none"> Care for a child less than six years old who has not entered elementary school (formerly less than three years old) For women: being pregnant or giving birth 	<ul style="list-style-type: none"> Care for a child who is less than one year old at the time of the application for leave For women: being pregnant or giving birth
Period	<ul style="list-style-type: none"> One year (cannot extend past the child's third birthday) 	<ul style="list-style-type: none"> Men: one year Women: three years (formerly one year) 	<ul style="list-style-type: none"> Men: one year Women: three years (formerly one year) 	<ul style="list-style-type: none"> One year (women can prolong the leave up to two years)

Application Conformity

Application conformity is searching for the possibility of realization in order to increase the effect of legislation in the sense of operating the law. The possibility of realization means the possibility of acceptance as legislation and of substantial enforcement (Hong 2006; Lim 2007; Y. Park 2007).

The parental leave system had the aim of encouraging men to share the burden of family responsibilities. As the system developed, this aim was stressed. Commenting on the parental leave system proposed by Representative Yangja Joo on November 28, 1994, the Environment and Labor Committee Examination Report said parental leave for fathers is desirable for nuclear families because of the challenges families face due to industrialization and urbanization. It also said that continuous government and business-sector support are needed in order to maintain the system. This could be inter-

25. Referred to the Deliberation Report of the bills proposed by Representative Myong Shin on June 29, 2007, by Representative Seongkwon Lee on May 28, 2007, and by Seungjo Yang on September 26, 2006.

preted as confirming the possibility of realization.²⁶

There are some exceptional clauses related to the introduction of the “papa quota” system, because there are many difficulties in discovering firms that fail to provide parental leave for male employees.²⁷

Assessment and Alternatives

Effectiveness

During revision of the parental leave clauses, advocates for women and labor and advocates for the business sector voiced immensely different points of view. The business sector, which opposed the enactment and revision of the clauses, was dissatisfied with the legislation but reluctantly accepted it. Therefore, employees continue to have some uncertainty about returning to work after taking parental leave (Ryu 2003).

In order to supplement the current system, a measure to grant incentives to companies should be considered. The government should make an effort to increase subsidies for hiring substitute staff. The current subsidy is only 0.2 million to 0.3 million won per substitute hired to replace a female employee while she is on leave to give birth. Measures such as increasing the subsidy to a certain percentage of the wage, or reducing the corporate tax on wages paid to substitutes, could be considered (Samsung Economic Research Institute 2006).

Problems related to substitute staff need to be addressed as well.²⁸ It is difficult to recruit substitutes, and even when they are hired, there is a gap in business operations until they adapt to the company’s work process. In the case of small and medium-sized companies, the operations for which an employee is responsible are comprehensive and require cooperation with other divisions, so that a substitute worker can have difficulties managing them. In the case of business operations related to a production process, it is hard to enforce a part-time or flexible working system. Therefore, a network such as the Substitute Labor Bank System²⁹ should be established, and vocational

26. Referred to the Examination Report of the bill proposed by Representative Yangja Joo on November 28, 1994.

27. Referred to the Deliberation Report of the bill proposed by Representative Hyongjoo Kim on October 31, 2006.

28. In response to a 2004 survey by the Korea Labor Institute on handling the business gap caused by parental leave, 62.5 percent of firms surveyed replied that they did not use substitute workers and divided additional work within the division or changed positions within the company, and 34.5 percent said that they hired substitute workers (Lee et al. 2004).

29. The Substitute Labor Bank System for Women provides female workers to substitute during female employees’ maternity or parental leave. The Ministry of Labor has recently

training should be encouraged to promote substitute workers' skills (Ministry of Labor 2008).

Efficiency

One of the reasons parental leave is often not applied for is the small size of the parental leave allowance. To operate the system as it was intended, it is necessary to ensure the return of the workers who take parental leave. Since the enactment of this legislation, parental leave and leave allowance have been increasing. According to the Ministry of Labor, parental leave allowance was set to be increased from 0.5 million won to 0.6 million won in 2010, and more people will be eligible (Ministry of Labor 2008). The financial resources needed annually should be estimated based on the trend of parental leave. Plans for sharing the financial burden between the sectors are needed as well. Representative Yangsoo Oh proposed a bill to make a basis for sharing the burden of parental leave costs between the government and local autonomous entities, but it was not passed because there was no concrete plan to raise finances for the local autonomous entities.³⁰

Estimation of parental-leave-related costs and a clear plan for raising funds for it should be conducted. This is indispensable because it helps ensure systematic and transparent fund-raising and accountability to the people who share the cost burden.

Application Conformity

As discussed above, one of the problems of parental leave is that the leave allowance is small. This is undesirable, because the aims of parental leave are to encourage men to share family responsibilities and to promote gender equality. As Representative Yangja Joo proposed on November 28, 1994, male workers can apply for parental leave as well. However, as seen above, there have been very few parental leave requests by male workers.

For this reason, a papa quota system is needed.³¹ In 1993, Norway introduced such a system to promote male participation. Since then, Sweden (1995), Denmark (1999), and Italy (2000) have introduced similar systems, and men's use of parental leave is continuously increasing (Jang 2006; Jang et al. 1993). Yet more discussion is needed

improved this network. In the past, a consultant had to intervene in the process of matching substitute staff through the Ministry of Labor's online employment portal, Worknet (www.worknet.go.kr). Now employees or companies in need of substitute staff can search the website themselves.

30. Referred to the Deliberation Report on the bill proposed by Representative Yangsoo Oh on November 6, 1997.

31. Referred to the bill proposed by Representative Hyongjoo Kim on October 31, 2006.

on the cost of implementation and on ways to monitor and enforce the granting of parental leave to male employees.

CONCLUSION

This study evaluated the parental leave system of the Equal Employment and Work-Family Compatibility Act and related acts by looking at the legislation process and the law itself in order to identify problems and find ways to overcome them. The criteria selected for evaluation were legal parsimony, effectiveness, efficiency, application conformity, and legal accordance.

As the evaluation showed, considerable problems are occurring in the expansion of the parental leave system. Lack of consent during the enactment and revision process, deactivation of paternal parental leave, and an increase in financial burden could work against the enforcement and maintenance of the parental leave system.

Considering the fact that consultation with the business sector was inharmonious, spontaneous cooperation from the business sector (such as the improvement of the paternity leave system) is unlikely unless incentives are offered. The possibility of systematic opposition from the business sector should be kept in mind. Therefore, in-depth discussion is needed in order to strengthen cooperation between the government, the business sector, and civil society for the establishment of reasonable parental leave by considering work-family compatibility and the burden on the business sector and the government.

This study has analyzed an evaluation of a specific legislative process. Other cases could be analyzed in the same way. The significance of this study is the implication that better legislation is possible if the institutionalization of evaluation of law is realized in the legislative process.

Two limitations to the study exist. First, some evaluation criteria, such as side effects, were not discussed. This was because we narrowed the scope of discussion to the legislation process of the National Assembly and excluded criteria that were not discussed there. Second, in order to sustain objectivity, we limited our analysis of the discussion in the National Assembly to Deliberation Reports, Examination Reports, and Minutes. There might be other types of discussions in the National Assembly that were not sufficiently considered. We look forward to further studies that overcome these problems.

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