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## **Menstrual Health, Menstrual Leave, and Employment Law: A Legal Analysis with Emphasis on Hungary**

### **Abstract:**

Menstrual health is the latest and most comprehensive interdisciplinary term for menstruation. This concept primarily enters labor law through the provision of menstrual leave. In the paper a brief presentation of the Hungarian national legislation on the protection of women's health at work, and a comparative research study has been conducted, drawing on international literature, that explores menstrual health and menstrual leave. Despite global recognition of menstruation as a fundamental human right and health issue, Hungarian labor legislation primarily protects women in relation to motherhood, lacking provisions for general women's reproductive health and menstruation. The study reveals instances of workplace discrimination in Hungary and internationally, underscoring the need for adequate labor law protections. Various international menstrual leave policies are discussed. Concerns about potential stigmatization and discrimination are raised, emphasizing the need for broader research on reproductive health and a comprehensive approach to women's health in labor law. The study, through a qualitative analysis of international literature and an examination of Hungarian case law, aims to advocate for the need for labor law regulation concerning menstruation, as it has a fundamental right and equal treatment perspective, nevertheless, it is linked to fair and decent working conditions, to sustainable work.

**Keywords:** menstruation, employment law, menstrual health, Hungary, menstrual leave

*“Attention to women's and girls' menstrual needs is critical for global health and gender equality.”<sup>1</sup>*

## **1. Introduction - Women as actors in the labour market and population policy**

Women's labor market conditions differ significantly from men's, with notable disparities. The particularly high inactivity rate among women with young children stands out when compared to European standards. Moreover, unskilled, retired, and increasingly younger women face considerable difficulties in finding employment. Women generally work longer hours yet receive lower compensation than men, and they are underrepresented in managerial roles. The burden of balancing professional and private life predominantly falls on women, largely due to the unequal division of domestic responsibilities and the inflexibility of work arrangements. Despite the clear directives from European commitments and the alignment with national economic and social interests to strengthen the absolute and relative position of women in the labor market, government initiatives in this area are often insufficient. Even when policies are introduced, they frequently lack sustainability and effectiveness. The absence of a strong political commitment to gender equality leads to a lack of a coherent vision, strategic planning, and coordination of policies, as well as inadequate social dialogue and institutional support necessary for their effective implementation. Women's disadvantages in the labour market are largely taken for granted in public thinking and policy, based on their biological characteristics (ability to give birth and breastfeed) and their social role (child-rearing, care of the home), and are not something that can or should be overcome. However, the relevant EU directives and certain growing social problems (feminisation of poverty, child poverty) are prompting decision-makers to do something about the issue.<sup>2</sup>

Regulating the position of women is crucial to preventing gender discrimination. In many countries, labor law protections for women are predominantly associated with their roles as mothers, such as protections against dismissal and other restrictions. Consequently, it can be inferred that policy decisions regarding women are often driven primarily by demographic factors.<sup>3</sup> Policy measures can significantly impact demographic trends. For example, enhancing family support initiatives can effectively address and potentially reverse trends of population decline.<sup>4</sup> Hence, policies affecting the status (fertility) of women are inextricably linked to the demographic issues of the country.

The reproductive processes of women are protected under social and labor laws, providing security for those affected. Nonetheless, menstruation, which is closely related to women's fertility, is currently undervalued and often overlooked in the realm of labor and social legislation,<sup>5</sup> whereas, for example, menstrual poverty, which is a threat to social security, is the focus of ongoing international action plans and programmes. Contrary to stereotypes, menstrual poverty is not only a recurring monthly problem for homeless or severely disadvantaged women but also occurs in workplaces,<sup>6</sup> schools, and universities. The consequences of the coronavirus epidemic have exacerbated this situation.<sup>7</sup>

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<sup>1</sup> Hennegan et al., 2019.

<sup>2</sup> Vajda, 2014, pp. 110–111.

<sup>3</sup> Vajda, 2014, p. 100.

<sup>4</sup> Berde and Drabancz, 2022.

<sup>5</sup> For example, in the current Hungarian legislation, there is no labour or social law benefit linked to menstruation.

<sup>6</sup> In 2022, studies focused on the economic consequences of the coronavirus epidemic on menstrual poverty in the United States. The research data revealed that 18.4 percent of respondents missed work because they lacked access to adequate hygiene products. Hunter et al., 2022; Erdey and Várnagy, 2022, p. 60.

<sup>7</sup> Erdey and Várnagy, 2022, p. 45.

Rather than examining all social and economic issues surrounding menstruation, this paper will focus on its fundamental rights and explore their implications within the realm of labor law.

## **2. Menstruation and the underlying fundamental right: menstrual health**

First, menstruation should be briefly discussed as a natural phenomenon at the heart of the research, but one that has a significant impact on the state of the menstruating person. Menstruation is not unknown to any woman of childbearing age,<sup>8</sup> however, its effects on the menstruator, severe pain, are not experienced by all menstruators. Over 80 percent of women encounter either minor or significant issues during their menstrual period. Approximately 40% of women of childbearing age report experiencing painful menstruation, with around 10% enduring such severe pain that it disrupts their daily activities.<sup>9</sup> Severe menstrual pain, or dysmenorrhoea, can affect up to one in four women, making it a problem of social importance.<sup>10</sup> Dysmenorrhoea is one of the most common gynaecological problems.<sup>11</sup> Painful menstruation can be divided into two groups. „On the basis of pathophysiology, dysmenorrhea is classified as primary dysmenorrhea (menstrual pain without organic disease) or secondary dysmenorrhea (menstrual pain associated with underlying pelvic pathology).”<sup>12</sup> In primary dysmenorrhea, there is no specific disease behind the painful menstruation and is related to the normal process of menstruation.<sup>13</sup> However, secondary dysmenorrhea can be caused by several conditions, such as endometriosis, fibroids or hormone imbalance.<sup>14</sup> In both cases, the pain can be so severe that it makes it impossible to carry out everyday activities, such as work, for days every month.<sup>15</sup> The socio-political importance of painful menstruation is therefore very high, with around 30% of women taking painkillers regularly and 20% of them requiring at least 3 hours of bed rest in some cases. It also accounts for around 11.5% of days lost from work.<sup>16</sup> In recent academic research, menstruation is also the subject of discourse based on human rights and fundamental social rights values. The related research is based on a mother concept that captures the fundamental rights dimension of menstruation, which is the issue of menstrual health.

The menstrual health has been placed on the global health, education, human rights, and gender equality agendas by grass-roots workers and activists, which has seen a growing number of international organisations, including the WHO, address the issue of menstrual health. „WHO calls for menstrual Health to be recognized, framed and addressed as a health and human rights issue, not a hygiene issue”<sup>17</sup>.<sup>18</sup> Menstrual health is considered by international organisations to have fundamental rights, human rights, and gender equality implications.

The WHO also stresses that menstrual health must be understood not only in its physical dimension but also in its psychological and social dimensions. This includes the need for the persons concerned to work in an environment where menstruation is not stigmatised and does

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<sup>8</sup> Nőgyógyászati Központ, 2021.

<sup>9</sup> László et al., 2007, p. 230.

<sup>10</sup> Földi, 2022.

<sup>11</sup> László et al., 2007, p. 230.

<sup>12</sup> Bernardi et al., 2017.

<sup>13</sup> Mediresource, 2023.

<sup>14</sup> Sáfrány, 2022.

<sup>15</sup> American College of Obstetricians and Gynecologists, 2023.

<sup>16</sup> László et al., 2007, p. 230.

<sup>17</sup> The issue of menstrual health hygiene also affects the workplace. Often workplaces do not have safe and clean conditions for the proper replacement of sanitary equipment. Erdey and Várnagy, 2022, p. 70.

<sup>18</sup> World Health Organisation, 2022.

not give rise to feelings of shame. This environment can be called a menstruation-friendly (or period-friendly) workplace, which requires several measures to be taken by employers.<sup>19</sup> Legislators can be involved in promoting menstrual health in various ways, whether by developing policies to tackle menstrual poverty or by regulating the links between menstruation and work. An important aspect of menstruation in labour law can be to ensure that a menstruator is exempted from her work obligations if complaints of painful menstruation persist and make it impossible to work. This can be reflected in labour law in the form of menstrual leave. The following lines will therefore look at some of the links between menstruation and work.

### **3. Women's health in the Hungarian labour legislation**

When talking about the situation of women, and their health at the workplace, there are basically two pieces of legislation to be dealt with in detail: the Labour Code and the Act on Occupational Safety and Health.<sup>20</sup>

Hungarian (and in general European) labour law mainly links women's health issues to having children, which is not surprising, since, in addition to the problem of gender discrimination, the Labour Code of Hungary (Act No. I of 2012 on the Labour Code) and other regulations contain provisions directly related to having children, only to promote equal opportunities (for example, the restriction on employment other than a work contract applies to a woman from pregnancy until the age of three, so the protection is not because she is a woman but because she has had a child).

The Occupational Safety and Health (Act No. XCIII of 1993, hereinafter: OSH Act), the legislator defines the phrase vulnerable group (Art. 87) as those employees who, because of their physical or mental abilities or condition, are exposed to increased risks associated with their work or who may themselves be exposed to increased risks in the course of their work. The legislation lists such categories by way of example, specifically minors, pregnant women, women who have recently given birth, women who breastfeed and are nursing mothers, the aging population, and people with reduced working capacity, which shows that women are not mentioned per se.

In general, we can see that the general rules apply to women in the Hungarian Labour Code, only the interpretation of the rules is different concerning the female nature of the employee. Thus, for example, neither men nor women may be employed in work which, because of their physical stature or development, could have adverse consequences for them, but this rule must be interpreted differently given the different organ structures of women. The types of work in which women may not be employed, or may be employed only under certain working conditions or subject to prior medical examination, are defined in various pieces of legislation, mainly in sectoral government decrees.

It should be noted briefly that the Labour Code contains several provisions that explicitly protect women, such as the obligation for the employer to exempt women from work. She must be exempted from work if her health condition does not allow her to be employed. In addition, the issue of the inter-work break can also be linked to menstruation. The Labour Code stipulates that an employee must be granted a break of 20 minutes if his working time exceeds six hours and of 25 minutes if it exceeds nine hours. The break must be granted after a minimum of three hours and a maximum of six hours of work. This means that the employer may order that the employee is entitled to a break not earlier than six hours after the start of work. It is worth noting that the right to use the toilet is derived from the right to human dignity, which, taken further, is an integral part of the exercise of the worker's right to privacy. On this basis, the EU has decided that the use of the toilet cannot be limited by the employer to the working break and

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<sup>19</sup> See Seth, 2023.

<sup>20</sup> Kudász et al., 2024.

that the time spent in the toilet is working time for which wages are paid. Of course, this cannot be misused by the employee.<sup>21</sup>

The regulation of the use of toilets is a crucial issue in the context of menstruation rules, which is illustrated by the case presented below. In Hungary, the implementation of safe and healthy working conditions, so allowing the use of toilets is essentially the responsibility of the employer. The details of this are laid down in Joint Decree No. 3/2002 (II. 8.) of the SzCsM-EüM, which sets out the minimum level of occupational safety requirements for workplaces. According to Section 19 of this Decree, workers must be provided with sufficient and adequate shower facilities if the nature of the work or other health reasons so requires. There should be separate showers for men and women or at least the separate use of showers has to be guaranteed. Shower rooms should be of sufficient size to allow all workers to clean themselves hygienically without obstruction. Showers should be provided with hot and cold running water. Only the fifth Paragraph of this Section can refer to the specific requirements of hygiene for women, but from a more distant point of view, since the legislator expresses here that showers must be equipped with facilities that enable all workers to clean themselves following hygiene requirements. Where showers are not required, a sufficient number of suitable sinks with running water (hot water if necessary) should be provided in the workplace environment so that hygiene requirements can be maintained and adequate facilities or equipment for drying hands are available. Separate restrooms with a sufficient number of toilets and hand-washing facilities must be provided for workers in the vicinity of workplaces, restrooms, changing rooms, and rooms with showers and washbasins. There is no regulation about special containers, contrary to Spanish legislation. The only gender-specific rule is that separate toilets or separate use of toilets for men and women must be provided. Finally, pregnant women and breastfeeding mothers should be able to rest in a suitable room with a bed during breaks, including during working hours if necessary for health reasons.

A brief introduction to the OSH and labour law frameworks is key to examining their impact. At this point, attention should be drawn to the unfortunate fact that women's health and safety at work are not given sufficient attention in practice. Interestingly, there are significant differences between women and men in the types of accidents at work and their probability of occurrence across the EU. This was summarised by the European Agency for Safety and Health at Work (EU-OSHA) in 2010.<sup>22</sup> The report found that the risks for working women are not sufficiently investigated. A striking example is the exposure of women to hazardous substances, which remains an unexplored area, according to the report. European surveys of working conditions over the past 20 years have shown that women workers are more often exposed to infectious substances such as hazardous waste, body fluids, or laboratory materials in the workplace and that women workers report more infectious diseases than men.<sup>23</sup> Within the exposure to hazardous substances, the handling of chemicals and infectious substances occurs mainly in the predominantly female health sector but is not unknown in other service occupations. These exposures are often overlooked. Yet, as EU law requires, it is the responsibility of the employer to include gender issues in the risk assessment.

Finally, I note that most of the recent literature approaches women's health and safety at work mainly from the perspective of stress and psychological, psychosocial health and safety, rather than from the perspective of physical conditions.

#### **4. Menstrual health and work**

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<sup>21</sup> Sáfrány, 2022.

<sup>22</sup> European Agency for Safety and Health at Work, 2014, p. 28.

<sup>23</sup> European Agency for Safety and Health at Work, 2013, p. 37.

Menstruation affects daily life, costs, and work for those who menstruate, necessitating a connection between menstrual health and labor law. This paper will highlight various issues and phenomena that examine menstruation from a work perspective.

Labor law scholars have increasingly focused on menstruation, particularly the impact of painful menstruation. Understanding the relationship between the nature of work and menstruation is crucial in this context. Extensive research has been conducted on the factors contributing to prolonged menstrual cycles. One study by Hsieh et al. (2005) found that exposure to certain chemicals, notably ethylene glycol ethers and isopropyl alcohol, was linked to extended menstrual cycles in female semiconductor fabrication workers in Taiwan. This association persisted even after accounting for other risk factors and adjusting for the timing of pregnancies. The authors acknowledged a potential limitation, suggesting that menstrual cycle characteristics might not effectively reflect changes or disruptions in hormonal function caused by occupational and environmental exposures. Nonetheless, the National Institute for Occupational Safety and Health has confirmed that women often face risks from chemical and physical exposures that can impact their pregnancies or menstrual.<sup>24</sup>

The connection between stress and painful menstruation is well established, yet the specific relationship between workplace stress and severe dysmenorrhea remains underexplored. A medical empirical study conducted in Hungary with over 400 participants examined how dysmenorrhea affects work capacity. The study revealed that 16.3% of those surveyed experienced severe dysmenorrhea that significantly impacted their daily activities. This group reported notably lower levels of job support and job security compared to matched controls.<sup>25</sup> This research examined Hungarian women nationally, but research from other nations has produced similar results. The psychosocial environment at work has also been associated with menstrual pain, but the number of studies on this is very low and the results are not consistent. The results published by Thurston and colleagues in 2000<sup>26</sup> and by Christiani and colleagues in 1995<sup>27</sup> support the hypothesis that high levels of workplace stress increase the risk of dysmenorrhoea.<sup>28</sup> From this, there is a reasonable expectation for more sustainable employers of the future to create a period-friendly working environment, as this may affect menstruators' perception of pain.

In this context, the Hungarian labour case law was primarily examined, questioning whether there is any precedent that sheds light on the labour dispute related to menstruation during work in the enforcement of Hungarian labour law. A further hypothesis behind this question is whether period-friendly workplaces have been established in Hungary. At the time of closing the manuscript, there were no closed cases in the public authority cases related to equal treatment violations in which the complainant employee had experienced discriminatory behaviour at the workplace because of the reason of menstruation. However, there is a court decision in the case-law which, *inter alia*, disposes of such a claim. It is important to present this case as it gives an idea of the controversial attitudes that menstruating people can experience from employers in today's workplace.

In the case, which was brought to a final conclusion at first instance in May 2014,<sup>29</sup> the applicant claimed that the defendant employer had applied an internal instruction to the applicant and other employees that they could only use the toilet during a break for health reasons (e.g. menstruation). Since the applicant had given permission on several occasions for certain

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<sup>24</sup> *Ibid.*, p. 222.

<sup>25</sup> László et al., 2007, p. 229.

<sup>26</sup> Thurston et al., 2000.

<sup>27</sup> Christiani, Niu and Xu, 1995.

<sup>28</sup> László et al., 2007, pp. 230–231.

<sup>29</sup> Decision No. M.135/2013/40 of the Administrative and Labour Court of Miskolc on the unlawfulness of an amendment to an employment contract.

employees, such as her co-worker who worked with one kidney, to go to the toilet more than once, the defendant also wanted to impose a disciplinary sanction on the applicant. According to the applicant, she had occasionally had heavy menstrual periods and had to change pads or tampons to stop the heavy bleeding, but this was not allowed by the employer. The defendant threatened to dismiss the employee if she did not comply with the instructions. On several occasions, the applicant alleged that she had to continue her duties in the presence of her male colleagues, soaked (inhumanly) in her clothes from the flow of menstrual fluid, because if she had not done so she could have been dismissed. On this basis, the applicant considered that the employer's conduct was also an affront to her human dignity and contrary to the principles of equal treatment and that the prejudice she suffered had subsequently caused her psychological trauma (such as panic disorder). These traumas were claimed by the applicant to have occurred as non-pecuniary damage, for which she claimed compensation from her employer. The labour court conducted extensive evidence by hearing witnesses. Each of the witnesses stated that it had happened in their presence on several occasions that the applicant had not been allowed to go to the toilet during working hours by the employer. The witness testified that he was threatened with disciplinary action and dismissal if he wanted to go to the toilet before her break for a valid reason. According to the statement of another witness, it also happened at the direction of the defendant employer that a time limit was introduced so that he could only go to the toilet when there was a break, which could not be waived. The witness evidence also revealed that the claimant concerned repeatedly asked the employer to use the toilet, but the employer only allowed her to use it during the prescribed break.

The court found, based on the unanimous testimony of several witnesses, that the applicant had not been allowed to use the toilet at the defendant's premises on several occasions, and that the applicant's claims regarding menstrual health were therefore established with legal force. This case shows that menstruation is a circumstance that needs to be adequately protected by labour law. This concerns several aspects of menstrual health, such as the proper provision of hygienic conditions by the employer, who is in any case obliged to create a safe and healthy working environment.

But this workplace climate is not unique to Hungary. One employee in America has reported being fired for not adequately managing her periods. In an other case, an international shop chain has been accused of spying on staff in Germany regarding how many times they used the toilet and accessing details on their menstrual cycles. "In these types of contexts we see the occurrence of period stigma, which although it is being challenged by activists, still clearly functions to limit opportunities for women to articulate their workplace needs, and consequently menstruation management becomes an individual project for women at work."<sup>30</sup>

However, the latest development in labour law in this context is the introduction of menstrual leave at global level. Menstrual leave is defined in the international literature as a leave that allows menstruating persons to take time off from work if they are unable to go to work because of their menstruation; it is a policy that can affect menstruating persons in a variety of ways,<sup>31</sup> including their employment status.<sup>32</sup> The concept of menstrual health, linked to international interdisciplinary research on menstruation, provides a broad context for labor rights. This framework is intertwined with sustainability goals, gender equality, and fundamental human rights,<sup>33</sup> so it defines not only the research direction but also the policy requirements.<sup>34</sup>

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<sup>30</sup> Remnant and Sang, 2019.

<sup>31</sup> Levitt and Barnack-Tavlaris suggest that this influence can take a number of forms, including potentially negative ones, as it can discriminate against women in terms of employment, wages and promotion. Levitt, Barnack-Tavlaris, 2020, pp. 561–577.

<sup>32</sup> Levitt, Barnack-Tavlaris, 2020, p. 561.

<sup>33</sup> Hennegan et al., 2019, pp. 31–38.

<sup>34</sup> Hennegan et al., 2019, p. 31.

## 5. International examples of menstrual leave

Menstrual leave was first introduced in the Soviet Union in 1922: factory workers were allowed to take 2-3 days off per month. However, this option was later withdrawn and in 2013, when it was again the subject of political debate, there was a clear minority of those who would have advocated bringing it back.<sup>35</sup>

The existing examples of menstrual leave - regulated in the legal system - should be searched basically outside of Europe. If we are searching in the legal options, Japan, South Korea, Indonesia, Taiwan and Zambia, one Chinese province<sup>36</sup> and Mexico<sup>37</sup> can be mentioned.<sup>38</sup> But these examples can be classified into two categories: one is the case of providing a day off where the option of paid and unpaid free days should be separated, while the other category is to provide the option of flexible work where the employer typically offers the option of home office for the employee in case of menstruation. Of course, international examples can also be grouped according to other aspects, such as the question of whether the employee is guaranteed benefits in the case of primary or only secondary dysmenorrhoea, and this leave can be divided into several types: paid and unpaid menstrual leave.

In Japan, legal-level protection has been guaranteed for menstruating women since 1947.<sup>39</sup> The legislation does not determine the number of possible free days, but based on the legislation, salary is also not guaranteed during this time,<sup>40</sup> since the certain employer can decide individually whether these days can be qualified as paid leave. "According to the data of the Japanese Ministry of Labour Law from 2020, 30% of the companies provide full or partial salary for the female colleagues voluntarily. At the same time, only 0.9% of women live with the option of menstrual leave."<sup>41</sup> At the same time, Dan stated that the Japanese trade unions also emphasized that menstrual leave should be provided not just in case of "painful" menstruation but in case of being symptomless as well, since the aim of menstrual leave was the protection of women's fertility.<sup>42</sup>

The next example is South-Korea where menstruating women are entitled to one day of unpaid leave in every month. The employer is obliged to give this leave, missing this is accompanied by a fine of thousands of Euros.<sup>43</sup>

According to a 2003 act, Indonesia allows for up to two days of paid leave per month related to menstruation. However, the specifics must be negotiated between the parties, and employees are required to provide prior notification. Like South Korea, the implementation of this regulation in Indonesia is often inadequate, with employers frequently failing to provide the paid leave for menstruation as mandated, and they require material proof from the employees, violating human dignity. Regarding free days, Taiwan regulates menstrual leave to the narrowest extent, since it defines it in one day monthly, but only in maximum three days in a year.<sup>44</sup> An additional point of interest is that 50% of their wage is provided for the time of menstrual leave, such as in case of sick leave.<sup>45</sup> In Africa, Zambia made one day of menstrual

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<sup>35</sup> Kálmán, 2022.

<sup>36</sup> Forster, 2016.

<sup>37</sup> Levitt and Barnack-Tavlaris, 2020, p. 569.

<sup>38</sup> Regarding the possibilities in the USA, see: Barnack-Tavlaris et al., 2019.

<sup>39</sup> Asboth, 2022.

<sup>40</sup> Dan, 1986.

<sup>41</sup> Asboth, 2022.

<sup>42</sup> Dan, 1986, p. 13.

<sup>43</sup> According to a survey made in 2018, despite the fine threatening the employers, only one-fifth of the female employees take this day off in South-Korea. Asboth, 2022.

<sup>44</sup> Asboth, 2022.

<sup>45</sup> Asboth, 2022; Matchar, 2014.



leave in a month possible in an act of 2015, moreover, it is available also in case of the lack of a medical certificate, and its prior notification by the employee is also not required based on the legislation.<sup>46</sup>

In addition to legislation, social partners are increasingly addressing the issue of menstruation. More employers are instituting policies within their organizations to provide rest time related to menstruation. For instance, Zomato, a food delivery startup in India, offers ten paid days off per year specifically for menstruation.<sup>47</sup> Also in India, a digital communication agency called Gozoop has introduced a menstrual measure based on which employees can work from home for one day a month during the period of menstruation.<sup>48</sup> This is a special approach to menstrual health since it does not make exemption from work possible, it only makes a difference between the places of work.

But similar examples can be found in Australia, England,<sup>49</sup> and France as well, where a furniture manufacturing company provides 6-10 paid free days in a year for female employees.<sup>50</sup> In England, Bex Baxter, the director of the social service company called Coexist also started a program in 2016 that made it possible for women to stay at home during menstruation. However, the employer could show further achievements over the free day as well, since it established “well-being rooms” in which both menstruating and not-menstruating workers could go during working hours to have some rest and maintain their mental health.<sup>51</sup> Despite the modernity of the program, the employees evaluated it as the degradation of the achievements of feminism, since, according to their point of view, it pushed them to a victim role, and they believed in discovering the termination of the possibility for promotion.<sup>52</sup>

Additionally, it is worth mentioning the globally acting Nike company that made part of its corporate policy in case of all of its sites and contracting companies in 2007 that female employees could take a leave in case of menstruation.<sup>53</sup>

Some employers in Hungary have implemented menstrual leave within their organizations. For example, starting in September 2022, the Council of Representatives of the VI. district of Budapest, following a proposal from the mayor, approved an additional paid day off per month for female employees experiencing dysmenorrhea, or painful menstruation, within municipal-owned companies. This decision was influenced by recent Spanish legislation, which highlighted the inadequacy of working conditions during severe menstrual pain. To qualify for this leave, employees must present medical documentation confirming their severe menstrual pain. This benefit is reviewed every two years, and a medical certificate will entitle the employee to up to 12 extra paid days off annually for the two-year period.<sup>54</sup> There is no further regulation on whether there is an upper age limit for requesting a day off.

The member states of the European Union also deal with menstrual health. This is also illustrated by a Dutch survey made in 2017 in which, based on the answers of the asked 32,000 women, those belonging to the target group have 8-9 days a year when they are unable to work productively because of menstruation.<sup>55</sup> Yet, Spain is the only EU member that has acted so far, and the Spanish government has accepted the act on menstrual leave in 2022. The legislation

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<sup>46</sup> Unfortunately, practice shows that the employer expects the prior notification of using the free day, despite the regulation. Asboth, 2022.

<sup>47</sup> Lampért, 2021.

<sup>48</sup> Levitt and Barnack-Tavlaris, 2020, p. 570.

<sup>49</sup> Morris, 2016.

<sup>50</sup> Asboth, 2022.

<sup>51</sup> Levitt and Barnack-Tavlaris, 2020, p. 570.

<sup>52</sup> Lampért, 2021.

<sup>53</sup> Menstrual Leave – die wichtigsten Infos zum Menstruationsurlaub, no date.

<sup>54</sup> Szurovecz, 2022

<sup>55</sup> Lampért, 2021.

provides a minimum of 3,<sup>56</sup> a maximum of 5 days a month to stay at home in case of severe menstrual pain, however, they need a medical certificate to do so. As a new legislation, it is worth examining the related statements as well to be able to conclude the application of the legislation. Accordingly, it should be highlighted that Rodriguez, holding the office of the minister of equal opportunities at the time of the legislation, emphasized that it should be interpreted as the employee will be entitled to leave only in case of serious health complaints.<sup>57</sup> Despite the strict rules, the Spanish social partners have raised concerns about the impact of the new legislation. Cristina Antoñanzas, deputy secretary of the Unión General de Trabajadores (UGT), one of Spain's largest trade unions, has highlighted the stigmatising effect of menstrual leave in the drafting of the legislation.<sup>58</sup> The Spanish deputy prime minister, Nadia Calviño, feared that if the proposal passes, employers will be less willing to hire women because of the three days of menstrual leave a month.<sup>59</sup>

Summarising the above examples of the legislations, the following table summarises the main points based on the available literature:

Country	Regulation	Is it paid?	Feedback
Japan	legislation does not determine the number of the possible free days	Employer can decide	30% of the companies provide full or partial salary for the female colleagues voluntarily. At the same time, only 0.9% of women live with the option of menstrual leave
South Korea	1 day / month + employer is obliged to give this leave	unpaid leave	despite the fine threatening the employers, only one-fifth of the female employees take this day off in South Korea.
Indonesia	opportunity in max. 2 days/month, but the details should be discussed by the parties + the employee's obligation of prior notification	paid leave	employers often do not ensure the paid free days associated with menstruation, and they require material proof from the employees, violating human dignity.
Taiwan	1 day/month, max. 3 days/year is possible	50% of the wage (~ sick leave)	n/A
Zambia	1 day/month is possible	n/A	No need for a medical certificate and prior notification, but still expected by the employers
Chinese province	2 day/month is possible	n/A	n/A

<sup>56</sup> Mizsur, 2022.

<sup>57</sup> Mizsur, 2022.

<sup>58</sup> Mizsur, 2022.

<sup>59</sup> Mizsur, 2022.

Spain	3-5 days/month + medical certificate is needed	Paid, but by social insurance	Trade unions: stigmatising effect (employers will be less willing to hire women)
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After the Spanish developments, several EU Member States started to address the issue, but the doubts raised in Spanish dialogue have also blocked legislative processes in other EU Member States. An example is the Italian proposal for menstrual leave, which was seen by the Parliament as a disadvantage for women workers in terms of their labour market opportunities.<sup>60</sup> Nevertheless, the German literature considers this paid leave to be forward-looking, as it promotes the right to equal treatment of menstruating women, in particular in line with gender-preferential policies.<sup>61</sup> The German solution, however, currently still applies sick leave, with the relief that the exact cause of the illness, i.e. menstruation, does not have to be indicated.<sup>62</sup> The Swiss social partners (e.g. Unia Trade Union), on the other hand, are for the time being reluctant to pursue such a legislative process, as they do not consider that leave is linked to menstruation, but to the resulting sickness, which is in fact the disease to which other existing labour and social security law instruments are linked.<sup>63</sup> Nevertheless, the fact that the Spanish legal environment already provides for a labour law benefit related to menstrual health is a good way forward for legislation in other EU Member States.

## 6. Discussion on the form and effects of menstrual leave

The Spanish legislation was the subject of conflicting views among the social partners, trade unions, political parties. The stigmatising effect of menstrual leave was raised, which in any case requires serious consideration before the creation of this legal instrument. According to civil rights organisations, a general legislative regulation would make it even more difficult for women to find work in the labour market, as an employer could use the significant number of extra paid days off guaranteed to women as an argument against a female worker in a job interview.<sup>64</sup> In addition, it is certainly a medical issue how the certifying professional has the opportunity to ascertain the regularity of the severe pain, presumably based on the employee's claim in a particular case. In the absence of further safeguards, this could lead to possible abuses, which could undermine public confidence in the usefulness of the legal instrument, reinforcing its potential stigmatising effect.<sup>65</sup> It is also not certain that leave is the best framework for this kind of rest, as it may involve a prior notification obligation, while at the same time, menstruation cannot necessarily be calculated to the day in advance for each person concerned, so the question of sick pay may also arise as a possible solution.<sup>66</sup> It is also questionable to what extent it is justified to follow the Spanish model, for example, i.e. is it justified to include only secondary dysmenorrhea in labour law protection or should primary dysmenorrhea also be protected? The author's position on this point is that it is not the cause of the pain that justifies labour law regulation, but the presence of the pain. Hence, any cause of pain justifies protection under labour law.

In Hungary, critics of the voluntary menstrual leave offered by some employers argue that, without a legal framework, such leave can be discriminatory. They contend that it may unfairly

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<sup>60</sup> Price, 2022, p. 187.

<sup>61</sup> Weisenbürger, 2022.

<sup>62</sup> Kegel, 2022.

<sup>63</sup> Woerlen, 2022.

<sup>64</sup> Sáfrány, 2022

<sup>65</sup> Szurovecz, 2022

<sup>66</sup> Remnant and Sang, 2019.

disadvantage both male workers and female workers who do not benefit from such provisions. In that connection, I consider that the menstrual leave cannot infringe on the principle of equal treatment, since the employers introducing the measure do not in principle discriminate between the sexes, do not differentiate between male and female workers, but allow the extra leave to workers who, because of their medically justified and documented menstrual pain, form an essentially homogeneous group and are therefore not in a comparable situation to other male and female employees.<sup>67</sup>

There is ongoing debate about whether allowing employees to work from home on days affected by menstruation would be an adequate alternative to menstrual leave. Csondor argues that if menstrual leave is intended to assist women experiencing significant pain and reduced ability to work, then working from home does not effectively address the issue. Remote work may not be a viable solution for those who are severely impacted by menstrual discomfort.<sup>68</sup>

In the context of Hungarian opportunities, a civil rights association also stresses that, unfortunately, despite the tendencies on the matter, many workplaces - not only in Hungary - do not allow workers to use the toilet facilities outside of breaks when necessary. In view of this, the first step in Hungarian legislation should be to focus on ensuring that workers have access to toilets on demand, and once these minimum requirements have been met, we can then start to think about institutions such as menstrual leave.<sup>69</sup> Such requirement is, based on the Labour Code, that if the employee's daily working time exceeds 6 hours, then the employee is entitled to a 20-minute break, but if exceeds 9 hours, then the employee is entitled to an additional 25-minute break, i.e. the employer is obliged to provide the employee with a total of 45 minutes of rest.

Beyond the legal and social criticisms, the benefits of menstrual leave should also be taken into account. A key advantage is the reduction of physical suffering associated with menstruation. Additionally, incorporating menstrual health into labor law can help destigmatize menstruation. This consideration is especially relevant in modern gender discussions, where the trend towards acknowledging menstrual health also encompasses issues faced by trans men.<sup>70</sup>

Addressing this issue in the future should involve a tripartite social dialogue to evaluate whether legislative measures are more effective than individual employer decisions, even when details are governed at the collective level. Before implementing legislative provisions, it is essential to investigate why a special day off for menstrual pain is needed, especially if a medical certificate already confirms a "quasi incapacity to work."<sup>71</sup> It is at this point that individual legislators should reflect on why a loss of capacity to work due to menstrual pain can be treated as incapacity for work,<sup>72</sup> which is a regulated legal institution in labour and social law and can be linked to the legal consequence of exemption from the obligation to work, as well as sick leave and sick pay. It may be a question for the particular national legal regulatory framework whether incapacity for work encompasses health conditions other than the sickness that trigger incapacity for work in such a way that they can be considered a natural phenomenon, not a pathological condition, which is the case by the primary dysmenorrhea. But one thing is absolutely certain, as highlighted by the European Agency for Safety and Health at Work: "A broader view on reproductive health is needed. As raised in 2003 by EU-OSHA, and as the

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<sup>67</sup> Csondor, 2022.

<sup>68</sup> Csondor, 2022.

<sup>69</sup> Sáfrány, 2022.

<sup>70</sup> See Chrisler et al., 2016.

<sup>71</sup> Sáfrány, 2022

<sup>72</sup> In Hungary, if an employee has health related issues and this status is verified by a doctor, then he or she is eligible for sick-leave and sick pay because of incapacity for work. In the first 15 days of incapacity for work, the employee is eligible for sick-leave. This period is covered by the employer, the amount of payment is 70% of the salary for this period of absence. When the sick-leave is over, the sick-pay period starts. The sick-pay can reach the 50 or 60% of the average monthly salary, and is paid by the social insurance. Sick Leave And Sick Pay, 2022.

'lack' of research continues to highlight, there should be a greater focus on reproductive issues with respect to overall occupational risks in the research agenda. More importantly, while there is some research on pregnant women and new mothers, there is far less research on other women's life experiences, such as hormonal effects, menstruation disorders, and menopause."<sup>73</sup> Research must therefore be linked to this task, alongside social dialogue, as there is also a backlog in this area.<sup>74</sup>

## 7. Summary

Women face significant challenges in the labor market, including high inactivity rates among mothers, lower earnings, and underrepresentation in managerial positions. Despite commitments to gender equality at both European and national levels, governments often fail to implement effective and sustainable measures to improve women's labor market position. This is compounded by societal stereotypes and a lack of political commitment to equality. Menstruation, a natural and prevalent phenomenon affecting a large portion of women, has been largely overlooked in labor and social law. Despite its socio-political importance and the impact of conditions like dysmenorrhea on women's daily lives and work, there is a need for greater recognition of menstrual health as a fundamental human rights issue. International organizations, including the WHO, advocate for a multi-dimensional approach to menstrual health, encompassing physical, psychological, and social aspects, and emphasize the importance of creating menstruation-friendly workplaces.

Legislators can play a crucial role in promoting menstrual health by developing policies to address menstrual poverty and regulating the relationship between menstruation and work, potentially through labor laws providing menstrual leave. Overall, addressing the challenges faced by women in the labor market, including those related to menstruation, requires a comprehensive and rights-based approach to achieve genuine gender equality.

A period-friendly employer promotes menstrual health, however, there are cases in Hungarian case law that demonstrate the lack of this among Hungarian employers. Furthermore, the debate over menstrual leave in Hungary highlights conflicting views and concerns. Opponents argue that voluntary menstrual leave without a legal basis could be discriminatory, while proponents argue it does not infringe on equal treatment principles. Despite concerns, the benefits of menstrual leave include reducing physical symptoms and destigmatizing menstruation. Modern gender issues highlight the importance of considering menstrual health in labor law. At the same time, when considering the specific form of legislation, it is important to be aware of the national legal framework, as it can influence the nature of labour and social insurance legislation, not to mention financing issues.

Future solutions should involve a tripartite social dialogue to decide on legislative regulation versus individual employer decisions. A broader view of reproductive health is necessary, as highlighted by the European Agency for Safety and Health at Work. Research should focus more on reproductive issues to inform policy decisions and promote social dialogue on this important topic. Nevertheless, this process is inevitable, given the fundamental rights and gender equality dimension of menstruation. At the same time, it is clear that the way in which menstruation is regulated is not only up to the legislator, since menstruation also involves social taboos. „In order for menstrual leave policies to be fully beneficial to menstruators' well-being, cultural beliefs about and attitudes toward menstruation must change.”<sup>75</sup>

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<sup>73</sup> European Agency for Safety and Health at Work, 2013, p. 48.

<sup>74</sup> Highlighting the message of the EU, „ore research is needed to explore the links, if any, between reproductive cycling (e.g. menstrual phase, reproductive status) and neurohormonal arousal and the connection with blood pressure, heart rate and other biological pathways that lead from stress to CVD”. European Agency for Safety and Health at Work, 2013, p. 222

<sup>75</sup> Levitt and Barnack-Tavlaris, 2020, p. 570.



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