

## Maternity Leave: The Law, and Practices in Fiji's Garment Industry

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### **Abstract**

*In 2005, the then Government tabled the Employment Relations Bill (ERB) in the Parliament. This Bill proposed fundamental changes to labour relations in Fiji. One change concerned the provision of maternity leave. Employers in the powerful garment industry opposed the amendment on this, claiming that the proposed maternity leave allowances would destroy the competitiveness of the industry. The Parliament commissioned an independent study on the costs of the proposed amendments to the maternity leave pay. This paper summarises the results of the study and shows that the amendment produced a negligible impact on the cost of the industry.*

### **Introduction**

In early industrialising societies, the child-bearing and child-rearing activities and function of females tended to see females as ill-suited to sustained industrial work. Such perceptions began to gradually change as maturing societies, in their collective wisdom,

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<sup>1</sup> This paper is based on the report by the Fiji Institute of Applied Studies for the Fiji House of Representatives, Parliamentary Sector Committee on Economic Services, to aid in its deliberations on the Employment Relations Bill. The Committee had commissioned the Institute, led by the author, to do this report on account of serious objections which many employers in the garment industry had on the provisions on maternity leave. The Sector Committee had endorsed the provisions on maternity leave most of which finally appeared in the *Employment Relations Promulgation, 2007*. The Sector Committee documents are matters of public record.

began to make provision to ensure compatibility of child-bearing and child-rearing functions of females and female participation in the workforce on an equal basis. Maternity leave provisions in work contracts as well as in national and/or regional labour legislations began to provide concrete form ensuring such compatibility.

In Fiji, current labour laws, and more so individual collective agreements between employers and unions, make provision for maternity leave. Maternity leaves, however, have a financial impact on employers.

One standard view, however, is that firms with a relatively higher proportion of female employees would tend to, *ceteris paribus*, have a greater outlay of expenditure relative to firms with a lower proportion of female employees. This may be seen as a basis for a competitive disadvantage. Whether, however, expenditure attributed solely to maternity leaves is a net drain on the firm has still not been examined in Fiji's context. Nor has there been any thorough study of maternity leave in Fiji.

This study examines the law on maternity leave, as well as the practices surrounding maternity leave in Fiji's garment industry.

In 2006, the garment industry accounted for 6.8% of all formal employment in the country; it also comprised 45% of the manufacturing sector output, and at \$250m per annum, 26% of all exports of goods. Another significance of the industry is that it employs the largest proportion of female workers in the country. In 2006, of the 9,000 workers which the garment industry employed, 83% were females. Because the industry is export-oriented, the industry is regarded as more cost-sensitive than industries which cater for the domestic market. This raises the attention of policy makers to any element of the industry which has an impact on industry costs. Payment of maternity leave is one cost element of the industry which policy makers are aware of.

Little is known publicly on maternity leave practices and the financial and productivity impacts of maternity leave provisions in Fiji's garment industry. This paper fills this gap.

### **Maternity Leave Provisions in Labour Laws: Fiji's Constitution**

The Constitution (1997) of the country makes two important provisions on work and labour relations. The first, provided for in clause 24 of the Constitution, is that a person must not be held in slavery or servitude, or be required to perform forced labour. The second

provision, contained in clause 33 of the Constitution, provides for fair labour practices. It allows for workers and employers to form trade unions and employers' organisations, and to bargain collectively. C33(3) provides the right to every person of fair labour practices, including humane treatment and proper working conditions.

The issue of maternity leave falls within the realm of fair labour practices, humane treatment of workers, and proper working conditions. The specific details of what constitutes fair labour practices, humane treatment, and proper working conditions are matters left for legislation and subsidiary legislation.

### **Background: The 42-day plus 42-day Provision**

Until 2007, labour relations, including provisions on maternity leave, were regulated by the *Employment Act*. Succeeding the *Employment Ordinance*, this legislation made specific provisions on maternity leave. It allowed for female employee's right to abstain from work before and after confinements as well as payment of allowances during these periods. Key features of the Act were:

- provision of a right to abstain from work before and after confinement;
- provision for payment of a maternity allowance;
- conditions for the entitlement of a maternity allowance;
- restriction on dismissal of female workers during the maternity period, and
- employer obligation to keep a register of maternity allowance payments.

The right to a maternity leave was provided by clause 74(1) of the Act:

Where a female employed in any undertaking expects to be confined, she shall, subject to furnishing her employer with a certificate from a registered medical practitioner or registered nurse specifying the possible date of confinement, be entitled to abstain from work for a period of forty-two consecutive days... before, and for a further period of forty-two consecutive days... immediately after her confinement and shall, subject to the, provisions of this, Act, be entitled to an allowance... in respect of such abstention from work:

The leave and allowance payment provisions, however, were

only applicable for workers who worked for four months before the birth of a child, or for not less than one hundred and fifty days during the nine months preceding an applicant's confinement. Clause 74(2) stated that every female

at any time during the four months immediately preceding her confinement was employed by an employer by whom she had been employed for a period of, or periods amounting in the aggregate to, not less than one hundred and fifty days during the nine months preceding her confinement shall be entitled, in respect of the pre-confinement allowance period and the post-confinement allowance period, to receive from such employer a maternity allowance of one dollar fifty cents per day payable at such intervals as relates to the intervals at which the wages of the female were normally paid by the employer.

This provision was amended in 1991 and the allowance quantum raised to \$5 per day (*Employment Act (Amendment) Decree 1991*). Since November 1991, therefore, workers on maternity leave had been entitled to an allowance of \$210 before delivery and \$210 after delivery for all child births while employed. The burden of payment of the allowance was on the employer(s).

The legislation prevented employees from claiming maternity allowance from more than one employer. It also provided for an employer to claim a contribution from another (previous) employer of the person the proportion to the allowance as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement. In all cases, the allowances were only claimable for days during the period the employee was not at work; there was no entitlement for days on which the employee worked during the pre-confinement or post-confinement period except for 7 days immediately preceding her confinement, irrespective of whether she worked or not. For post-confinement period, if the employee worked on any one day, her entitlement to a post-confinement allowance for all remaining days after the day she worked ceased.

The legislation also made provision for the payment dates of the allowances. For the pre-confinement period, the allowance was to be paid by the employer within seven days from the date upon which the employer knew or had notice of the confinement. The post-confinement allowance was to be paid within seven days from

the expiration of the post-confinement allowance period.

The legislation also made provision for the payment of the allowances to nominees or personal representatives of the employee in cases of death of the employee from any cause before her confinement. The maximum payment for pre-confinement period in case of death was for a period of forty-two days. If the death occurred after confinement, the allowance was to be paid to the day preceding the day of her death.

Employees, however, were required to inform the employer of their pregnancies. An employee who abstained from work because she expected to be confined within forty-two days, was required to, within seven days from the date upon which she abstained from work, notify her employer of her expected confinement. On failure to do this she lost upto 7 days of her pre-confinement allowance. An employee who had been confined was required to inform her employer within fourteen days of her confinement of the confinement. A failure to do this, terminated any right to maternity allowance in respect of the post-confinement allowance period. Notices could be given in writing or verbally. A labour officer or a labour inspector could also give notice on behalf of any female employee to her employer.

An employee who intended to resign from her job within four months of the confinement period was required to inform the employer about her pregnancy. A failure to do so terminated the entitlement of the employee.

Employers were restricted from terminating workers who remained absent from work after the maternity leave as a result of illness certified by a registered medical practitioner as arising from her pregnancy and which rendered her unfit for work until such absence exceeded 3 months including the maternity leave.

The right of the female to maternity leave was preserved even in cases where she was dismissed with wages in lieu of notice at any time during the four months immediately preceding her confinement.

Employers were also required to keep a register showing all maternity leave payments made to females.

### **Employment Relations Bill**

The Employment Relations Bill (ERBP) proposed changes to maternity leave conditions. The stated aim of the proposed changes

was to 'protect women and to ensure that they are not disadvantaged when taking maternity leave' (s100).

### ***Period of Maternity Leave***

While the basic period of leave remains 84 consecutive days, the ERB did not specify the way the 84 days was to be divided between pre-confinement and post-confinement. The 42-day before and 42-day after provision, has been repealed. Under the ERB, the woman may proceed on maternity leave at any time before or after confinement provided that if she continued to work during the pre-confinement period she was required to produce a medical certificate certifying that she is fit to work during that period.

It is believed that employees prefer a longer period after confinement to recover as well as to take care of their babies. Under the previous legislation, the maternity allowance in respect of the post-confinement allowance period was to be paid by the employer within seven days from the expiration of the post-confinement allowance period (c75(2)). While provision is made in the ERB for the employee to nominate someone else to receive an employee's maternity leave allowances, unless the employee so nominated someone, she is required to herself pick her allowance. This means that she would have to return to her job on the 43<sup>rd</sup> day after delivery. Where females do not do so, they forfeit their post-confinement allowances. Actual practice in the garment industry in 2006 revealed that in numerous cases, females picked up pre-confinement allowances but not the post-confinement allowances.

The ERB condition, therefore, is stated to better reflect the needs of the employees in terms of child delivery and post-delivery maternal and child health conditions.

The ERB provision, however, required that the 84-days of leave entitlement be consecutive days. While this may appear to be more flexible, in practice it may not be so. Maternity related absences of single days - for example a medical checkup - are covered as a paid leave, unless the employee takes this day off as an annual leave entitlement. Other than this, single day maternity related pre-delivery absences, when the employee could still be medically fit to work for days closer to child delivery, would result in pay forfeiture. Employees can not accumulate maternity leave days.

### ***Maternity Allowances***

The second major difference in the ERB provisions was in the rate of allowances. The ERB provided for the allowance at full rate of pay which the employee would be receiving had she been at work. The earlier allowance was a minimum of \$5 per day; employees and/or trade unions could, however, negotiate a better allowance rate than \$5/day.

The ERB was clear that the allowance is the wage. The ERB, however, was not clear on whether the payment for maternity leave was an 'allowance' or a 'wage'. For wage payments, superannuation deductions are required. However, for allowances, superannuation deductions and contributions are not necessary. Section 101(2) of the ERB stated: 'All maternity leave shall be paid at the rate of pay the woman would have received if she had been at work.' There was a need for clarity on this aspect of the proposal. This has been done in the Employment Relations Promulgation.

### ***Maternity Leave Payments***

The third difference is that the procedure for division of maternity leave payments in cases of more than one employer for an employee is streamlined. Under the older legislation, where there were more than one employer from whom the female would be entitled to claim maternity allowance, the employer who paid the maternity allowance was entitled to recover from such other employer or employers, as a civil debt, 'a contribution which shall bear the same proportion to the amount of the maternity allowance paid to the female, as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement bears to the total number of days on which she worked during the said period' (c.74(3)). The ERB provision placed the burden of determining the payment of wages by different employers on the Chief Executive Officer of the Labour Ministry. This may prevent lengthy litigation by one employer of another.

### ***Protection against Disadvantage***

The fourth difference is that the ERB clearly protected the employment rank, seniority and pay of the employee on maternity leave. Clause 101(7) stated that a woman who returns to her em-

ployment after maternity leave 'must be appointed to the same or equivalent position held prior to proceedings on maternity leave, without any loss of salary, wages, benefits and seniority', or 'may be appointed to a higher position'. The earlier provision did not so protect the employee, leaving to the employer the possibility of demoting the employee returning from maternity leave, which may or may not be related to productivity.

### ***Protection against Termination***

Fifth, the ERB aimed to streamline the restrictions on termination of employees due to pregnancy or maternity. In particular, clause 104 stated that no woman could be terminated from employment on the ground of pregnancy, and further, that if a termination of a female employee did occur, the burden of disproving that the termination was related to that condition rested with the employer.

The earlier law disallowed any termination of employment, on any ground, of an employee already on maternity leave if the notice of the termination expired during the leave period (c79). The ERB did not contain any such provision, thereby enabling employers to terminate employees on maternity leave as long as the terminations were not related to her pregnancy. A confusing clause in the ERB, however, was 104(3), which stated:

If a woman remains absent from her work up to 3 months after her maternity leave expires, as a result of illness (certified by a registered medical practitioner) arising out of her pregnancy or the birth of her child that renders her unfit for work, her employer may give her notice of termination.

The jumbled drafting was taken care of; the provision as it stands in the ERP, reads:

If, after three months from the expiration of her maternity leave, a woman remains absent from work, as a result of illness (certified by a registered medical practitioner) arising out of her pregnancy or the birth of her child rendering her unfit for work, her employer may give her notice of termination.

### ***Leave Computation period***

Under the earlier provision, if an employee was terminated

from employment with wages in lieu of any termination notice 120 days before her confinement (i.e. 78 days before the scheduled pre-confinement leave), her period of employment was deemed to include the period when a termination notice would have expired had one been given.

The ERB contained no such provision. But it did contain a provision on the computation period in case an employee were terminated for absences after the maternity leave. Noting the confusion which the provision on termination for absences after maternity leave could give rise to, if any termination was effected then the computation of her employment period would be to the end of her maternity leave.

### ***Register of Allowances***

The ERB made no provision for the maintenance of a register of allowances paid to workers on maternity leave. Whether this was on account of the fact that full pay would be paid for maternity leave, thereby the wages register to incorporate this, is not clear. The assumption, however, may be faulty as evidences until 2006 showed that there were significant cases of maternity leave allowance payments which were less than the statutory minimum. It must, however, be noted that one reason for the payments then to be lower than the statutory minimum of \$420 per leave was the need for employees to comply with onerous conditions of information and reporting to be entitled to the full allowances. The ERB eliminated such onerous reporting requirements, and provided for full payments on the submission by the employee to the employer of a certificate from a registered medical practitioner or registered nurse specifying the possible date of birth.

There, nonetheless, had been until ERP, cases of clear breaches of the law, rather than simply strict adherence of procedures. Workers' employments were being terminated on account of pregnancies, and employers outrightly refused to pay maternity allowances. In many cases employees had not taken these matters up with the authorities on account of their lack of awareness of their rights to maternity leaves.<sup>2</sup>

<sup>2</sup> Results from this research show that 82% of all female employees were pregnant sometime or the other while working for other employers. Of these employees, 85% did not apply for maternity leave.

### ***Contracting Out***

Finally, both, the earlier provision (c80) and the ERB (c105), prohibited any contracting out of the provisions of maternity leave by any private arrangement.

### ***Controversy***

The major objection of the employers to the revised provisions of maternity leave was on account of the increased rate of maternity leave allowances. The single most important ground for objection to the full-pay for all child birth provision was that this would raise business costs, thereby making products more expensive and thus less competitive. The latter, it was proposed by employers, would be specifically problematic for export-oriented industries like the garment industry.

While a larger maternity allowance would certainly raise the cost to business, the issue was whether the additional expense was such that the organization would price itself out of business. For this, employers did not provide any satisfactory data when they made their objections to the government when the maternity leave provisions was being discussed; nor did they provide any data when the Parliament began deliberating on the Bill. The garment industry objection to maternity leave provisions, risked being transmitted as an objection to the whole new proposed labour legislation, thereby preventing the ERB from enactment in 2006. The Parliament Sector Committee on Economics Services, which was required under the Parliamentary procedures, to examine the ERB in 2005-6, had expressed serious concern on this, and was itself on the verge of division without any firm data on the impact of the provisions on industry competitiveness. The Committee, then decided to commission an independent study on this, which would guide its deliberations on the matter.

### ***The Garment Industry: Background***

Fiji's garment industry began its growth in 1988 when the then interim regime announced a 13-year tax free incentive package for the industry. The tax free package, the preferential export markets of Australia and New Zealand under the South Pacific Area Regional Trade and Economic Cooperation Agreement (SPARTECA), and

Fiji's relatively large access quota to the US markets under the Multi-Fibre Agreement, combined with the government's low wage policy, created a conducive environment for the garment industry to grow and flourish. Between 1988 and 2004, a total of 299 garment factories were given tax free status by the Fiji Trades and Investment Board. Of this, 147 were located in the Suva-Nausori corridor with the balance in other parts of the country. At its peak the industry employed 18,000 workers, and had an export earning of \$333m (in year 2000).

By the early part of this decade, the industry began suffering from the twin problems of US market quota closure, and the opening up of the Chinese economy to foreign operations. Numerous factories closed down.

The industry contained three categories of manufacturers. There were those which established themselves in Fiji to take advantage of Fiji's access to the US under the MFA quota. Big name factories, like Ghimli, employing thousands of workers, established themselves in Fiji to benefit from Fiji's unmet quota. Asian owned companies dominated this category of operators. With the end to this access, these factories closed operations and moved out.

The second category of operators, largely coming out of Australasia, and some local operators, targeted the Australasian markets under SPARTECA. Many such operators were sub-contractors of Australian or international companies, producing items under their parent brand names. With the freeing of the international trading regimes and the rise to prominence of the Chinese manufacturing industries, Fiji became relatively less competitive than China and other Asian producing nations. In Fiji, those relying on large scale orders of bulk produced items, found themselves priced out. Some factories in Fiji closed for this reason, as their customers began focusing on sourcing garments from China and other Asian nations. However, numerous significant niche markets in Australia and NZ remained; many operators began to focus on small-run niche markets. Such operations have continued to expand and flourish in the country.

The third category of operators, largely local in origin, is that which began operations before the commencement of the 1988 garment boom. They started by supplying the local markets, and later expanded to supply the Australasian markets. These operations, however, are relatively smaller ones, employing upto to one hundred workers. These operators continue to operate, particularly supplying

the niche markets (like uniforms) both locally and in Australasia.

In 2006, there were 32 factories operational in the country, employing approximately 9,000 workers. Four factories employed over 500 workers, 15 employed between 100 and 500 workers, and the rest employed less than 100 workers. 83% of the garment industry workforce was female.

Given the essentially female workforce, the law on maternity leave was closely monitored by employers. The Textile Clothing and Footwear (TCF) Council of Fiji, in its submission to the Parliamentary Sector Committee on Economic Services, categorically stated that the ERB provisions on maternity leave and other leaves will raise labour costs in the industry (Submission to the PSCES).

### TCF Council Position on Maternity Leave

The TCF Council specifically picked the following 5 elements as leading to high labour costs:

- maternity leave
- sick leave
- bereavement leave
- liberty to join any trade union, and
- contract employment

Table 1 provides the details on the leave conditions in the Employment Act and the ERB.

**Table 1: Leave Conditions**

	<b>Employment Act</b>	<b>ERB Proposal</b>
Maternity Leave	\$5 per day for 84 days	Full pay for 84 days
Annual Leave	10 days paid leave	10 days paid leave
Bereavement Leave	None	3 days paid leave
Sick Leave	5 days paid leave	10 days paid leave
Public Holidays	12 days paid leave	12 days paid leave

The industry, however, did not provide any figure to back up its specific objection to each of the leave provisions proposed. Collectively, however, the TCF Council gave a hypothetical case of a worker hired on day 1:

If I hired a worker today and she gets pregnant and is due to deliver in October. By the end of the year, she would

have taken 10 days paid annual leave, plus 12 public holidays. 3 days bereavement leave, 10 paid sick leave days and then goes on maternity leave for 84 days. In total 119 days = 23.8 weeks = more than 6 months.... I will have to pay her for 6 months for doing nothing. Why? (TCF Council, 2005).

One garment factory employer stated that some females could abuse the system by becoming pregnant each year. Thus, for each pregnancy, she will technically have to be paid full year's pay for 6 month's work.

**Industry Management Views on ERB Provisions**

The views of industry managers on the ERB proposals were firm and unified. Operators were generally opposed to the proposed amendments, arguing that the amendments would lead to a devastating impact on the garment industry as Fiji's competitiveness would be reduced causing a movement of buyers to other countries, notably China. They proposed that the best solution would be for the government to exempt the garment industry from these provisions since the industry was a highly cost sensitive one which employed predominantly female labour. If an exemption were not possible, they proposed options of a rate of \$7.50 per day as maternity allowance, or for a sharing of the maternity leave payments with employers being responsible for 50% of the full wage payments and the workers being responsible for the other 50% through their superannuation contributions.

**Incidence of Maternity Leave**

To establish the incidence of maternity leave regimes, a survey of the garment industry was conducted. This survey received cooperation from the industry, as it was officially sanctioned by the Parliament. Data from 5 garment factories was sought, and a total of 226 employees were interviewed. Appendix I provides the survey methodology.

Results show that employees on maternity leave is a very small proportion of total female workforce. Of all the *females* employed in the garment industry, on average between 2002 and 2005, 3.3% were on maternity leave for some time during a typical year. The to-

tal number of workers on maternity leave was, on average, 2.7% of total workforce.

**Maternity Leave Allowances**

Maternity leave imposes two types of costs on employers: a direct cost and an indirect cost. Direct costs on employers is the allowance they need to pay to workers on maternity leave. The rate in 2006 was \$420 per worker. All employers in the sample stated that they paid the statutory rates. However, actual payment records show that payments were rarely at the statutory rates. This was more so for post-confinement than for pre-confinement leaves.

Of 22 workers who proceeded on maternity leave during 2005 in one factory whose payment records were examined, only 12 (i.e. 54%) received the full pre-confinement rate of \$210. For post confinement leave, only 4 out of the 22 (18%) workers received the full statutory rate. Interestingly, not a single worker who proceeded on maternity leave in 2005 received the full pre and post confinement maternity leave allowance. Equally of significance is the fact that not a single worker received no allowance at all, with all of them receiving some quantum of pre and/or post confinement allowances. 64% received between a half and three quarters of the statutory allowances, while 36% received between 75% and 98% of the allowance, which was the highest proportion of allowance received.

In practice, the actual maternity leave allowance paid was 66% of the statutory rate. Table 2 provides the details on the payments.

**Table 2: Maternity Allowance Payments Practices\***

	Pre-Confinement	Post Confinement	Total allowance (\$420)
Full Allowance	54.5	18.2	0
75%-99% of allowance	13.6	31.8	36
50%-74% of Allowance	13.6	9.1	64
25%-49% of Allowance	0.0	13.6	0
1%-24% of Allowance	4.5	0.0	0
No allowance	13.6	27.3	0
Proportion of total statutory allowances paid**			66.2
* This is % of all females on maternity leave.			
** This is the ratio of the allowances actually paid to the total allowances if paid at the rate of \$5/day for 84 days.			

Employers adhered strictly to the conditions under which allowances were to be paid. The Employment Act stated that workers who worked on any day during the 42 days prior to delivery are not entitled to receive any allowance on the day worked and prior to that day, whether the person worked prior to that day or not. Similar restrictions applied for post confinement allowances; if a worker returned to her job before the 42 days were over, she lost her entitlement to the allowances for days after she returned to work, even if this return were a temporary one of a single day.

The \$5/day rate for the allowances was not a liveable allowance for a person who was on maternity leave in 2006. At the garment industry wage level, unless the worker on maternity leave had a family income support, it would have been impossible for her to survive on the maternity leave allowance only. For this reason, some workers proceeded to maternity leave somewhat later than their entitlement allowed, and return some time earlier than the expiry of 42 days. The 55% of the workers who were paid less than the statutory rate for the post-confinement allowances, early return to their jobs was a strong possibility.

Workers who did not receive any pre-confinement allowances were largely on account of them not following the procedures. Section 77 of the Employment Act stated:

(1) A female who is about to leave her employment and who knows or has reason to believe that she will be confined within four months from the date upon which she leaves, shall before leaving her employment, notify her employer of her pregnancy and, if she fails to do so, she shall not be entitled to receive any maternity allowance under this Part from such employer.

(2) A female who abstains from work because she expects to be confined within forty-two days, shall within seven days from the date upon which she abstains from work notify her employer of her expected confinement and, if she fails to do so, she shall not be entitled to the maternity allowance in respect of the pre-confinement allowance period to the extent of seven days.

Of the female workers interviewed, only 54% knew of maternity leave conditions. But their awareness was mostly limited to the rate of the allowance rather than the details on procedures to claim these allowances. The failure of females to follow the procedures

given above, therefore, is attributed to the lack of awareness of females on maternity leave provisions.

Workers not receiving any post-confinement allowances – 27% in total – either did not return to their jobs to claim their allowances or did not nominate anyone else to collect their allowances, or did not inform their employer of their confinement. These factors, again, are explained by a lack of awareness of the workers to their rights to maternity leave. Under the law whether a female returned to work after confinement or not, she was still entitled to a maternity leave; all that the Employment Acts stated was that the post-confinement allowance was to be paid within seven days from the expiration of the post-confinement allowance period. The only condition under which workers could lose this entitlement was if they did not inform the employer within 14 days of their confinement of their confinement. S77(3) of the Employment Act stated that a female who ‘has been confined shall within fourteen days of her confinement notify her employer thereof and, if she fails to do so, she shall not be entitled to the maternity allowance in respect of the post-confinement allowance period’.

### Cost of Maternity Leave

The actual cost of maternity leave allowances on garment manufacturers is a small proportion of the total cost of production. On the basis of extrapolation from the survey to industry, Table 3 shows the cost of maternity leave if all workers proceeding on maternity leaves in the industry were given the full statutory rate of allowance of \$5 per day for 84 days, and the estimated actuals for the industry.

Table 3: Maternity Leave Cost: Wage Bill, Sales, Profits (%)

	Statutory Basis			Estimated Actuals		
	Wages	Sales	Profits	Wages	Sales	Profits
2005	0.366	0.055	0.229	0.243	0.037	0.152
2004	0.256	0.046	0.183	0.169	0.031	0.121
2003	0.231	0.044	0.184	0.153	0.029	0.122
2002	0.256	0.044	0.164	0.170	0.029	0.109
Average	0.222	0.038	0.152	0.147	0.025	0.101

(Data Source: Industry survey)

In terms of the statutory requirements, maternity leave costs accounted for, on average, less than 0.22% of total wage bill in the garment industry. If compared to total profits, the maternity leave costs were no more than 0.152% (that is, less than 1/6<sup>th</sup> of 1%) of gross profits. Compared to total sales, these costs were less than 0.04%. When one looks at the actual maternity allowances paid, the figures fall to, on average, 0.15% of total wages bill, 0.03% of total sales and 0.1% (that is, 1/10<sup>th</sup> of 1%) of total profits.

**Maternity Leave Costs under ERB Provisions**

The ERB proposed maternity leaves to be paid at the rate at which the workers are normally paid their wages. Wages in the garment industry are regulated by the Garment Industry Wages Council. The regulated wages in 2006 were \$1.25 per hour for learners and \$1.48 for all other category of workers. Overtime rate was to be paid at the rate of time and a half for the first 4 hours and double time thereafter.

Survey data shows that actual wages paid in the industry ranged from \$0.95 per hour to over \$4 per hour. However, the majority of the workers (74%) earned less than \$1.75 per hour. One prominent garment manufacturer confirmed that minimum wages were not paid in 70% of the garment factories. He also stated that Labour Ministry officials did not carry out thorough inspections of garment factories, and where they did, sooner than later they succumbed to incentives given by manufacturers to produce positive reports. He added that this was a wide practice in the country.

Interviewer responses from workers tended to confirm that the labour inspectorate system did not work. In one large factory, workers claimed that workers are given maternity leave only after they serve one full year in employment. This was in breach of the Employment Act.

The weighted average wage rate in the industry in February 2006 was \$1.63 per hour. This rate is used to calculate the total maternity leave costs, had normal wages been paid to those on maternity leave. This would produce the maternity leave costs for the current year. At a wage rate of \$1.63 per hour, workers would earn \$14.67 per day. For 84 days, the total sum paid for each worker on maternity leave would be \$1,232.28. This compares with the current rate of \$420 per worker. For the years prior to 2006, wage rates were lower; the rates used in this calculation for the years 2002-

2005 have been the 2006 rates adjusted downward by the growth rate in the total wages bill for the industry.

On the basis of actual employees on maternity leave as estimated from the survey, 2.7% of all workers in the industry were expected to be on maternity leave sometime or the other during the year. For an industry with 9,000 employees, this worked to 243 employees. At the average 2006 wage rate of \$1.63, or \$1,232 as maternity leave pay per worker if the ERB provisions were adopted, the total liability for 2006 is estimated at \$299,376. Including statutory contributions, the liability stands at \$326,320 per annum. This compares with an estimated \$102,060 to be paid under the older maternity leave provisions. The additional burden on the \$250m garment industry from the amended provisions on maternity leave, therefore, is \$224,260 per annum.

In relative terms, results, as presented in Table 4, show that if the proposed maternity leave regime were prevalent from 2002, and if the workers were paid for the full 84 days, maternity leave costs in the industry would be, on average, 0.64% (i.e. 2/3<sup>rd</sup> of 1%) of the total wages bill, 0.11% of total sales revenue, and 0.44% of total industry profits.

Table 4: Maternity Leave Costs under ERP Regime – Industry Costs: Wage Bill, Sales and Profits (%)

	Wage Bill	Sales	Gross Profits
2005	1.157	0.175	0.725
2004	0.770	0.139	0.551
2003	0.616	0.116	0.490
2002	0.661	0.113	0.423
Average	0.641	0.109	0.438

**Indirect Effect of Maternity Leave on Business**

Worker absences burden businesses. Maternity leaves cost businesses in two ways - first, there is a cost of re-training/multi-skilling workers who are to replace workers on maternity leave, and second, there is a loss of production.

In the garment industry, where most jobs are routine and relatively easily doable by workers with some training, multi-skilling factory floor workers is not an expensive affair. All the factories vis-

ited indicated that they aimed to multi-skill workers so that absenteeism would not cause undue hardships and production losses.

In quantitative terms, the cost of retraining is estimated by the industry to comprise 18% of the annual maternity leave costs under the older maternity regime. This is approximately \$20,000 per annum for the industry.

Loss of production is more difficult to estimate. The industry has provided an estimate for this, but there is a huge variation in the estimates (from \$0 for one multi-million dollar turnover factory, to \$120,000 for another similar company). More research in this area is needed.

From the maternity leave regime perspective, however, this is a non-issue, as the same costs would hold under any maternity leave regime.

There, however, was a predominant view amongst the garment industry ownership that a full-pay maternity leave for all child births would give rise to a greater incidence of maternity leaves and thus greater disruptions to production. Owners stated categorically that the ERB provisions would have a negative impact on work ethics/culture, and cause a significant increase in pregnancy incidences, which would lead not only to added maternity leave cost burden on the employers, but also added indirect costs. One employer stated that this will increase maternity leave costs by 30 to 40%, thereby further reducing the competitiveness of the industry.

Employee responses, however, are not fully supportive of the above view. Female workers were asked whether they wished to have more children because of a prospective new maternity leave regime. 68% had negative responses while 26% wished to have more children. However, of those who wished to have more children, 59% wanted only one additional child, 33% wanted 2 additional children, and 7% wanted to have 3 additional children than what they had.

While there are different indicators on whether the incidence of pregnancy/child-bearing would rise after the change in the maternity leave regime, a general starting point for a discussion on this would be the impact of an income-incentive on the decision to have children. An acceptable conclusion is that the income effect is positive. But what could be disputed is the size of this effect.

One approach would be to examine the industries where there already have been full-pay maternity leave provisions – for example in the teaching service, public service, and in certain statutory bod-

ies. The clearest indicator of expected trend, though by no means certain, would be the proportion of the total workforce in each sector which has taken maternity leave. If the ratios are roughly the same as the garment industry ratio, then a significant increase in the incidence of maternity leave can not be expected, as parents (mothers) would see a positive income effect being offset by a counteracting substitution effect. If, however, there is a substantial difference, with the incidence being higher in sectors with already full-pay maternity leave provisions, then one could expect a similar trend in the garment industry. The need to conduct comparative studies of the incidence of maternity leaves in different sectors of the economy was counteracted by the marginal direct cost impact of the full-pay maternity leave regime for the garment industry.

## Conclusion

This paper has examined the provisions on Maternity Leave in two sets of laws in Fiji – one which applied until 2007 and one which was proposed to replace it (and which did actually replace it in 2007). The former, contained in the Employment Act, provided for paid maternity leave of 84 days per pregnancy of a working woman, with 42 days to be taken prior to child birth and 42 days after child birth. These 84 days were to be on the basis of an allowance paid for by the employer, which was to be a minimum of \$5 per day. In 2005, the government proposed to amend the law by eliminating the 42-day+42-day leave takeup periods, but maintaining the 84 day total leave period, and requiring the employer to pay the actual wage the employee earned to the employee for upto 3 children. Employers in the powerful garment industry objected to the maternity leave pay, claiming that the new leave pay regime would destroy the competitiveness of the industry. This paper examined the costs of maternity leave under the two labour regimes.

The results, based on actual maternity leave data from industry for the period 2002-2005, showed that the difference in costs was a meagre \$224,000 per annum, which an industry worth over \$250m could easily absorb. In relative terms, if the workers were paid for the full 84 days, maternity leave costs in the industry would, on average, be 0.64% (i.e. 2/3<sup>rd</sup> of 1%) of the total wages bill, 0.11% of total sales revenue, and 0.44% of total industry profits.

### Appendix I: Survey Method

Five garment factories were approached to provide data on maternity leave. Of these, management in four factories provided most of the data sought on maternity leave, while for another, promises were continuously made to provide the data, which were not submitted to the last week of February 2006 when data analysis work began. Formal questionnaires were used to get data. In addition, a total of 226 workers were interviewed using structured questionnaires; sample details are given in Table A.

Table A: Survey Details

Employees	No of Factories in Sample	Positive & Credible responses	Employees Interviewed
>1000	1	Partial (80%)	28
500-1000	1	Yes	85
300-499	2	Yes	74
100-299	0	-	0
<100	1	Partial	39
Total			226

Employees were selected on the basis of names picked randomly from the list of female employees supplied to the researchers by the management. This sample list was provided to the management of the factories, who announced the names of the interviewees to be present at the space provided for the interviews. In one factory, workers were picked from the factory floor and interviewed on the factory floor itself while they continued to sit on their workstations.

Overall, the selected employers co-operated fully, provided the employee lists and made the employees accessible to the interviewers. This was partly because of the encouragement from the TCF Council to provide information to the team. Between 6 and 10 interviewers, which comprised 5 graduates and 5 senior university students, interviewed the employees in each factory. Only in one factory, were workers coached by a senior HR staff to not to reveal too much information or information which was factual. This took place immediately prior to the interviews being conducted as the HR staff moved through the factory alerting the workers of the interviews; workers interviewed informed the interviewers of this. This factory's employee interviews were re-checked to ensure lack of bias; the pattern found in this factory was similar to the responses in other factories, thereby ruling out the fear factor in providing responses. Overall, however, five questionnaires were excluded from the

analysis. This was for those employees who appeared to be unduly scared during the interview (a fact which the interviewers were asked to note), provision of incredible responses and lack of complete responses. The low rejection rate is explained by the fact that all the interviewers were thoroughly trained in the process.

While the sampled factories co-operated willingly in terms of giving access to their workers, co-operation in terms of provision of relevant data was not as widespread. One major source of resistance was on account of the view that it is the Ministry of Labour's responsibility to inspect the records of employers, and that in these inspections, they collate information on maternity leaves and allowances paid. In the same breadth, however, the manufacturer claimed that the labour inspectorate system was not functioning well.

Under the Employment Act, employers had to maintain a Register of all maternity allowances and other payments to females related to maternity (s81). Employers do maintain records of females on maternity leaves. However, for most factories, the advent of IT systems has meant that such records are in electronic forms. All employers in the sample maintained electronic records. However, none contained any hardcopy record of allowances paid, with the signatures of the recipients. S81(2) allows for electronic records. However, the purpose of record keeping is defeated since in electronic records entries can be amended without leaving obvious traces for the untrained eyes/inspectors without good IT backgrounds.

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