

Guarantee the right to work of women with disabilities in the view of the liberal feminists theory and some implications for Vietnam

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ABSTRACT

Protecting the vulnerable has become a widespread trend around the world in order to contribute to the development of a more compassionate and equal society. People with disabilities in Vietnam nowadays are adequately equipped with policy instruments and legal frameworks to protect their workplace rights (from Politburo Resolutions to legal documents). However, it appears that the legislators have overlooked an object: a disabled woman. When there is no clear distinction between the rights and obligations of men and women with disabilities, this is reflected in legal papers and practices. Women with disabilities face discrimination not just because of their gender, but also because of their handicap status, therefore their work rights are far fewer than those of men with disabilities. The authors will examine the characteristics and implications of feminist legal theory and liberal feminist theory, as well as the process of developing these ideas, based on feminist legal theory and liberal feminist theory. Furthermore, the authors examine the impact of ideas on the global feminist movement, as well as their impact on the formulation and building of laws for female workers with disabilities in Vietnam. Simultaneously, the authors will show that there is no difference in the rules guaranteeing the right to work between female and male workers with disabilities, implying that the number of female workers employed and the regulations protecting them at work are still insufficient. On the basis of some US and UK regulations and case precedents regarding the 'right to work' of female employees with disabilities, the authors will make some additional proposals and recommendations to the Vietnamese labor law in order to further protect the working rights of female workers with disabilities.

Key words: employment right, feminism legal theory, women with disability

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INTRODUCTION

The Political Report of the 12th Central Committee of the Communist Party of Vietnam at the 13th National Party Congress, set out the requirements to improve the quality of female human resources to meet the requirements of sustainable development of the country; completing and well implementing laws and policies related to women, children and gender equality as well as promoting the potentials, strengths and spirit of ownership, aspirations to raise of all classes of women, etc. It can be seen that the Party and the Government of Vietnam have been constantly promoting the capacity of women. Women today have asserted themselves in many ways and are increasingly participating in many fields such as politics, economics, etc. One of the equal rights of women that has been mentioned a lot in recent years in Vietnam and around the world is “the right to participate in labor relations”. Vietnam’s labor laws now have provisions to protect women’s rights and ensure equal rights between men and women in labor relations. We cannot deny that these efforts are the result of the feminist movement

around the world and also in Vietnam. However, there is an object that legislators and researchers do not seem to have properly and comprehensively paid attention to, which is “the rights of women with disabilities to work”. In addition, the current laws do not differentiate the specific rights for female employees with disabilities from those of male employees with disabilities. Therefore, we have to have specific provisions in the labor laws for women with disabilities, because in terms of living and working, female employees with disabilities are facing twice as many obstacles as other ordinary women.

In this article, the authors will try to find out what feminist legal theory is and its impact on the formation and development of Vietnamese law in ensuring the rights of disabled female employees. Simultaneously, the authors analyze a number of labor law provisions as well as the current practice in Vietnam to demonstrate that the rights of female employees with disabilities are not clearly differentiated from those of male employees with disabilities. From there, to propose solutions to improve the labor law to protect the working rights of women with disabilities.

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METHODS AND LITERATURE REVIEW

This article is based solely on a critical review and analysis of secondary literature on feminist legal theory as well as liberal feminism legal theory and women with disabilities, such as Lawson G (1995), Cynthia Grant Bowman, Elizabeth M. Schneider (1998), Leslie Bender (1988), Arthur O'Reilly (2003), Patterson S (2014), Sim FG (1999), Fasciglione M. (2015), Miethlich, B., & Šlahor, L. (2018), etc.

In addition, the authors use the comparative law method to clarify the concepts of disability and regulations of the UK and the United States to propose and make improvements to Vietnam's labor legislation on women with disabilities.

RESULTS

Firstly, female employees with disabilities have less rights than ordinary employees and male employees with disabilities. Female employees with disabilities who have been physically disadvantaged require specific policies to assist them in obtaining better jobs, vocational training, maternity benefits, and other labour regulations.

Secondly, general and specific measures to improve the rights of female employees with disabilities must be implemented. The importance of the employees' representative organisation and the state management agency system on labour is highlighted in particular. Female employees with disabilities require extra attention from trade union representative organisations, who must swiftly reflect on and suggest solutions to preserve their interests. In addition, state authorities must increase oversight and prosecute acts of discrimination or failure to ensure that individuals with disabilities are treated fairly in the workplace.

Thirdly, it is critical to ensure the rights of female employees with disabilities in legal documents as soon as possible, such as the recognition of women's rights in the Constitution, Labor Code, and Law on People with Disabilities.

DISCUSSION

WHAT IS FEMINIST LEGAL THEORY?

According to the Oxford Dictionary, feminism is the belief and aim that women should have the same rights and opportunities as men; the struggle to achieve this aim¹. Feminist theory has been studied and applied for a long time, in many different fields, including politics, economy, labor, marriage and family, and other social fields. All research on feminism

goes to the same goal of finding the causes of inequality in the construction of gender, society and the solution to the problem of gender equality.

Feminism is a social movement whose primary goal is equality between women and men. In many times and places in the past, it has been insisted that women and men have similar abilities, and attempts have been made to improve the social status of all women, as well as the social status of all women and men. However, as an organized movement, feminism arose in the nineteenth century in Europe and America in response to the vast inequalities between the legal status of female and male citizens in different industrialized Western countries².

Feminist legal theory is intertwined with feminist social theories. There are many various perspectives on the nature of "feminist legal theory" when it comes to understanding it.

The subject of gender in law has been highlighted by feminist legal theory, and the variety of feminist legal theories that have evolved continues to deepen our understanding of the complicated link between gender and law³. However, it is vital to recognize how feminist legal theory arose from practice, as well as how fresh theoretical insights established by litigators and academics continue to influence practice. Indeed, feminist legal theory, in its broadest sense, has served as an intellectual framework for debating and arguing about concerns of equality since its inception in law reform practice, and it continues to resonate in both practice and the wider world.

According to Gary Lawson, "...feminist legal theory is the study of the relationship between women and the law"⁴, which means the feminist legal theory is defined as anyone who examines women and the law in any way, regardless of approach or opinion.

Another definition of feminist legal theory focuses on methodology⁴. In this view, feminist legal theory is, at least in part, the use of a unique analytic approach, much like law and economics might be described methodologically as the systematic application of rational choice theories to legal problems. Of course, women who characterize their business in part or entirely in terms of technique do not always, and do not have to, agree on the nature of that method; the "method" approach describes a category of definitions that can support a wide range of more particular definitions. However, if a method (or collection of methods) is proposed as constitutive of the feminist legal endeavor, the same questions that must be asked of any method in any field must be asked of it: is it coherent, understandable, and a fruitful tool of inquiry? At the very least, the answer to the last question

is contingent on what it means for a legal analytical instrument to be “fruitful”, an issue that some feminist academics have addressed directly⁴. In the most general sense, one might define feminist legal theory as that subset of ideas involving women and the law that is concerned with improving the condition or status of women⁵. Work on women and the law that produces a specific set of concrete normative conclusions on specific policy concerns, such as abortion, affirmative action, and so on, is referred to as a feminist legal theory.

Feminist legal theory, according to the authors, is the foundation for the creation and execution of women’s legislation. More particularly, establishing the foundation for essential human rights and obligations between men and women in all aspects of life and society in a fair, equitable, and non-discriminatory manner. Feminist legal theory is also a type of legal scholarship that focuses on issues of gender equality.

WOMEN’S RIGHTS UNDER THE VIEW OF THE LIBERAL FEMINISTS THEORY AND SOME PROVISIONS OF THE CURRENT LABOUR LAW OF VIETNAM

Liberal feminism theory and its impact on Vietnamese labor law

Liberal feminism promotes the emancipation of women in the field of labor

Feminism is a socio-political movement that began in the late 17th century. Women have always declared and battled to enhance their rights and status in society, so feminism has a long history. Its origins can be traced back to the French Revolution, which was considered the first wave of feminism in the fight for rights and legal equality at the time. Following that, feminist movements such as contemporary feminism, liberal feminism, radical feminism, and so on spawned the second and third feminist waves⁶. The belief that only white men deserved to be full citizens had to be debunked by early liberal feminists⁷.

Individuals, using their own strengths and the democratic process, can help women and men become more equal in the eyes of the law, society, and the workplace, according to liberal feminism. Liberal feminists use available resources and techniques to advocate for change through uniting women into larger groups that can speak more effectively, lobbying legislators, and raising awareness of concerns. As a result, they differ with Marxist or socialist feminists, who believe that the democratic process must be altered⁸. Compared to other feminisms, liberal feminism focuses more on issues such as equality in the workplace, education, and women’s political rights.

Liberal feminism, according to Alison Jaggar’s “Feminist Politics and Human Nature”, is a “theory and work that focuses more on issues such women equality in the workplace, in education, and in political rights”. Liberal feminism also considers how one’s personal life affects or improves public equality. Gender equality in the public domain, such as equal access to school, equal pay, ending employment sex segregation, and better working conditions, is the core goal of liberal feminism. From this perspective, legal changes would enable these objectives to be realized⁹.

Liberal feminism maintains that gender differences are not grounded on biology, and thus that women and men are not so dissimilar—their common humanity outweighs their procreative disparities¹⁰. Women and men should not be treated differently under the law if they are not different. Their active focus has been on visible forms of gender discrimination, such as gendered job markets and inequitable salary scales, as well as promoting women to positions of responsibility in the workplace, government, and cultural institutions. Liberal feminist politics adapted key civil rights tools, such as anti-discrimination legislation and affirmative action, to combat gender inequalities, particularly in the workplace.

Liberal feminists of the eighteenth, nineteenth, and early twentieth centuries asserted women’s ability and right to participate in public life, at least through the suffrage, examined the institution of marriage and the legal framework of divorce and property laws, and challenged the practices of denying women access to the same quality education as men and to the professions. Liberal feminists sought to end the treatment of women as legal dependents on their husbands or fathers. Through examination of laws and practices, liberal feminists, including Mary Astell (1666–1731), Mary Wollstonecraft (1759–99), Harriet Taylor (1807–58), John Stuart Mill (1806–73), Elizabeth Cady Stanton (1815–1902), and Virginia Woolf (1882–1941) drew on the liberal tradition’s value of equality and individual freedom to argue that, just as social status at birth was no longer a legitimate basis on which to discriminate among men as liberals argued, so also sex at birth was no longer a legitimate basis on which to discriminate against women¹¹.

By the 18th century, it was widely assumed that women were treated unequally in the eyes of the law. Mary Wortley Montagu and the Marquis of Condorcet were two philosophers of the time who advocated for women’s education. These philosophers tend to advocate liberal feminism. Many liberal philosophers, such as Jeremy Bentham, advocate for

equal rights for women in all aspects of life, including employment.

Liberal feminism has influenced movements for women's equality in labor and the formation of organizations to protect the rights of women at work in many parts of the world, specifically:

Women's labor movements in Europe and North America gave birth to International Women's Day on March 8th in the nineteenth century. The Lowell Female Labor Reform Association was founded in 1844 and only required 10 hours of work per day. The initiatives of the association helped to improve working conditions in the textile sector. The Seneca Falls Convention in 1848 was the first to declare American women's suffrage.

Many women's organizations arose between the end of the nineteenth century and the beginning of the twentieth century, the first of which was the International Council of Women, founded in 1888 with the goal of bringing together all women's organizations to claim equal rights, including the right to participate in political and social life. These groups were first exclusively available in Western Europe and North America, but they rapidly spread to other parts of the world¹².

Women's rights were once again championed by liberal feminism in the mid-nineteenth century. Betty Friedan, the leading representative of the liberal feminism movement in the National Organization for Women (NOW), first endorsed it in 1966. One of Liberal Feminism's key goals is to establish gender equality in the workplace. The advent of radical feminism, on the other hand, drew the attention of the younger generation, gaining prominence in the 1960s and 1970s¹³.

Women's rights movements have emerged in a number of nations, one after the other, and have made some progress in demanding equal rights for women in the workplace and other areas. The United Nations' declaration of International Women's Day on March 8th, the formation of the International Labor Organization (ILO), and the International Women's Organization are examples of these accomplishments (UN Women)... One of these organizations' missions is to ensure that women are treated equally to men in all parts of life.

Managers, researchers, and lawmakers began to pay more attention to a disadvantaged group in modern society - female employees with disabilities - as a result of the feminist movements' early interest in female employees in general. People with disabilities (PWDs) in general face difficulties in entering the

open labor market, but, seen from a gender perspective, men with disabilities are almost twice as likely to have jobs than women with disabilities. When women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision-making¹⁴.

Occupational rehabilitation, or labor from those returning from the battlefield, sparked first interest in injured employees. Beginning in the 1600s, North American colonists felt a responsibility to provide for the well-being of troops who, after being wounded in wars with Native Americans, needed help securing housing, finding and maintaining jobs, and completely assimilating back into society¹⁵. Similar to the tale of the Soldiers Rehabilitation Act (Smith-Sears Act), which was passed in the United States in 1918. It became law and regulation, promoting the occupational rehabilitation and return to civilian work of handicapped veterans of the US military¹⁶.

We cannot observe that liberal feminism is an individualistic version of feminist theory that focuses on ensuring that women have the same legal and political rights as men in the workplace, education, and political rights¹⁰. However, there was no autonomous feminist movement of crippled female employees during different times of feminist movements, and the primary interest in disabled employees came from males - those who become disabled as a result of the war. Countries, on the other hand, have recognized the importance of female employees with impairments in society since the eighteenth century. Women with impairments in the workplace should be forgotten for women to make a constructive contribution to society. Inequalities in society might be exacerbated by stigma and a refusal to welcome female employees with impairments.

The impact of liberal feminism on the perception and construction of Vietnamese labor laws

Feminist movements in the world, especially liberal feminism, has had a strong impact on awareness and law-making in Vietnam. From the wave of world feminism, feminist movements in Vietnam developed strongly in the early twentieth century.

Before Vietnam became a French colony, with an autocratic monarchy political system and Confucian ideology as the pedestal for the government, the Vietnamese people were just "subjects" of the Emperor.

Women are completely deprived of any economic, political and cultural rights. Therefore, ideas about feminism and equality between men and women are very strange concepts. The influence of democratic thought movements in the world through the “tân thu” along with the appearance of the press, for the first time, Vietnamese people have access to new ideas and have the opportunity to express their concerns, their views on social, cultural and political issues¹⁷.

During this period, the women's liberation movement in all fields was not carried out through manual revolutions like in the West, but through the reform of Confucian thought - respecting men over women with literary and artistic works such as “Vấn đề phụ nữ” by Nguyen Thi Kim Anh or “Nam nữ bình quyền” by Dang Van Bay, etc. As the nature of liberal feminism is a gradual change in women's outward awareness and actions with the aim of raising the value of women on par with men in all aspects. The result of these reform movements was a great change in the ideology and perception of Vietnamese women. Women began to participate in political activities and participate in production, becoming an indispensable labor force in society.

In the 1930s, along with the birth of the Communist Party of Vietnam, the issue of feminism was associated with ethnic issues and class issues. Starting from this period, women were not only allowed to participate in labor, but also participate in politics. In the past, according to the Confucian thought of the feudal society in Vietnam, women mainly stayed at home to take care of children and do housework.

President Hồ Chí Minh emphasized the necessity of women's liberation in all fields. In the 1946 Constitution, the first Constitution of the Socialist Republic of Vietnam affirmed in Article 9 “Women have equal rights with men in all respects”, marking the success in the liberation of women, affirming the role of women in the family, in society and in labor. To the 1959 Constitution, continue to affirm the equal rights of women in the labor field in more detail, specifically, Article 24, Chapter 3 of the Constitution stipulates: Women in the Democratic Republic of Vietnam enjoy equal rights with men in all spheres of political, economic, cultural, social, and domestic life. For equal work, women enjoy equal pay with men. The state ensures that women workers and office employees have fully paid periods of leave before and after childbirth¹⁸. This spirit is continued to be recognized in the 1980 Constitutions, 1992 Constitutions and 2013 Constitutions.

To concretize gender equality and women's rights at work, specialized Law documents were promulgated

in turn, such as the 2006 Law on Gender Equality, the Labor Code 1994. At the same time, expanding the subjects of concern, focusing on the field of labor, including employees with disabilities (Law on Persons with Disabilities 2010). Besides, Vietnam has also become a member of many international organizations upholding human rights and gender equality at work. Up to now, Vietnam has joined 25 international Labor Conventions.

However, up to now, Vietnamese law only stops at building equal rights between men and women in labor, especially despite mentioning disabled employees, the difference between female disabled employees and male disabled employees has not been found. Based on the ideology of liberal feminism - one of the foundations of the formation of contemporary feminist legal theory, female employees with disabilities are also an object of concern and recognition of their rights both de jure and de facto.

Regulations on the rights of disabled female employees according to current Vietnamese labor law

In Vietnam, the state protects human rights in the areas of economy, culture, society, politics, and employment in particular; everyone is treated equally regardless of gender, religion, ethnicity, or other factors¹⁹. The State also guarantees PWDs the same rights as everyone else under the Constitution, legal documents, and by-laws. The state prioritizes providing opportunities for persons with disabilities to learn the culture and obtain vocational training (¹⁹, Art 61(3)).

Aside from the right to vote, one of the areas in which the state is most engaged is labor, which expresses gender equality pretty strongly. The content of gender equality in the workplace is defined in Article 13 of the Law on Gender Equality of 2006, which includes:

1. Man and woman are equal in terms of qualifications and age in recruitment, are treated equally in the workplace regarding work, payment and bonus, social insurance, labor conditions and other working conditions.
2. Man and woman are equal in terms of qualifications and age in promotion or appointment to hold titles in the title-standard professions.

The legal framework in Vietnam to protect employees with disabilities specifies the common object as “employees with disabilities”, with no clear differentiation between male and female employees with disabilities, and just “disabled employees” as the subject. The Labor Code 2019, the Law on People with Disabilities 2010, the Law on Gender Equality 2006, the Law on

Corporate Income Tax, the Law on Vocational Education 2014, and the Prime Minister's Decision No. 1190/QĐ-TTg are all current documents relating to employees with disabilities.

We can observe from the above normative documents that PWDs are given some of the following basic rights: are entitled to the same vocational counselling, selection, and training as other people, based on their ability and capacity, as well as occupational rehabilitation, a job, and being recruited, arranged, and working in a manner that is appropriate to their health and characteristics; The state has rules on unemployment insurance and incentives for employees to start their own businesses, as well as helping enterprises who employ a large number of PWDs. Disabled employees who have worked for an employer for a full year are entitled to 14 days of annual leave and are paid in accordance with the labor contract²⁰; the employer must conduct a health check-up for PWD employees at least once every six months (²⁰, Art 159(1);²¹); employees who are PWDs with work capacity reduction of at least 51%, serious or very serious disabilities, must not be required to work overtime or work at night unless otherwise agreed by the employees, etc. The Prime Minister's Decision No. 1190/QĐ-TTg, issued August 5, 2020, approving the Program to Assist People with Disabilities for the period 2021-2030, describes the Program's major operations, which identifies particular initiatives to assist women with impairments, including: Communication, education, and lobbying to promote knowledge of welfare policies in society for disadvantaged women at all levels, sectors, and communities; coordinating activities to share experiences and connect women in need to access resources in order to assist underprivileged women in gaining access to social security policies; Improving the capacity of staff to perform the task of supporting disadvantaged women; Reviewing and evaluating current models in order to establish and build a model of integrated communication and advocacy to support disadvantaged women in the community; Creating a model of self-reliant disabled women.

In addition to the above-mentioned normative documents, other legal documents such as the Law on Legal Aid 2017 and the Law on Corporate Income Tax provide care and support to employees and employers with disabilities... Income from production and commercial activities of goods and services of enterprises shall be free from tax if the enterprise employs 30% or more PWDs in a year and has an average number of employees of twenty or more in a year, excluding enterprises in the domains of finance and real estate²². Businesses receive funds to improve working

conditions and create environments that are accessible to PWDs; preferential loans; priority leasing of land, ground, and water surface; and exempted or reduced rents for land, premises, and water surface used in production and business²³.

To reaffirm Vietnam's commitment to ensuring that disabled employees are integrated, vocationally trained, and placed in occupations that are appropriate for their abilities and capabilities; If there is no discrimination in the workplace, the government not only has legislation in place to support the adoption of laws and action plans, but it also signs and joins international treaties on human rights and disability rights, such as: Convention on the Elimination of All Forms of Discrimination against Women 1979, ILO Convention No. 159 on Occupational Rehabilitation and Employment for Persons with Disabilities 1983⁴; Convention on the Rights of Persons with Disabilities 2006 (CRPD).

If women have been and are guaranteed by law the basic rights to be equal to men at work under normal physical conditions, it is vital to give attention to female employees who are impaired. According to "feminist legal theory", female employees with disabilities should have the same working rights and conditions as male employees with disabilities, as well as other topics.

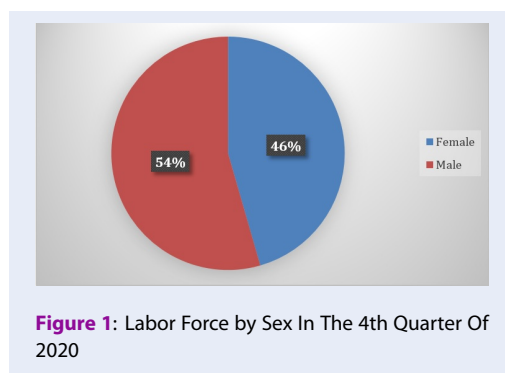
Through analyzing the above-mentioned legal provisions on the rights of PWDs, the author finds that Vietnam has no separate laws for women with disabilities in general and for working women with disabilities in particular (even the Constitution of Vietnam also has not clearly specified regulations for this person, except The Prime Minister's Decision No. 1190/QĐ-TTg, issued August 5, 2020, accepting the Program to Assist People with Disabilities for the period 2021 – 2030). We should admit that women with and without disabilities are facing multiple and intersectional discrimination, compared to men with and without disabilities and this is due to lack of or an insufficient number of specific measures taken to promote the education and employment of women with disabilities including the a lack of a disability-rights and perspectives in policies promoting gender equality; and a lack of or the insufficient number of specific measures to promote the education and employment of women with disabilities.

⁴This Convention compels member states to establish, alter, or abolish laws and regulations that contribute to inequity in the rights of disabled workers, but these laws and regulations must be appropriate to the circumstances, customs, and fundamental principles of national law. The Convention also outlines activities and policies for the establishment of employment and vocational rehabilitation support services for people with disabilities at the national level.

PRACTICE ON GUARANTEEING THE RIGHTS TO WORK OF WOMEN WITH DISABILITIES AND SUGGESTIONS FOR VIETNAM

The current situation on guaranteeing the rights to work of women with disabilities

According to a report by the General Statistics Office, Vietnam's population in 2020 is estimated at 97.58 million people, an increase of 1.098 million people. Of which, accounting for 63.2%; male population with 48.59 million people, accounting for 49.8%; female population 48.99 million, accounting for 50.2%²⁴.



From the Figure 1 above, it can be seen that the country's labor force aged 15 and over in the fourth quarter of 2020 was estimated at 48.8 million people. In 2020, the labor force aged 15 and over is 54.6 million people, down 1.2 million people compared to 2019. Besides, the female labor force of working age reached 22.2 million people, accounting for 45.5% of the labor force in the working age. age of the country. The labor force participation rate of women is 68.9%, 11.3 percentage points lower than that of men (80.2%)²⁵. According to an ILO report, Vietnam loses around 3% of its GDP as a result of not utilizing PWDs in the labor market²⁶.

According to the World Health Organization (WHO), the world's population of PWDs is estimated to be around 1 billion²⁷. PWDs make up roughly 6.225,519 people in Vietnam (7.06 percent of the population)²⁸, with 58 percent of women and 42 percent of men²⁹. Around 40% of PWDs are of working age and yet capable of working; nevertheless, only 30% have jobs, earning revenue for themselves, their families, and society (women's employment rate is 20.1 percent, compared to 31.5 percent for women without disabilities). That indicates that around two million PWDs who are able to work but have yet to do so do not have or do not have a job that matches their abilities.

Suggestion for Vietnam on guaranteeing the rights to work of women with disabilities

Work, like work for everyone else, is essential to a disabled woman's sense of social integration and psychological well-being because it provides her with an income and the means to be financially self-sufficient; it boosts her self-esteem by allowing her to play a role in society; and it improves her self-esteem by allowing her to participate in society; provides opportunities for social contacts, to interact with others, and to find her identity as part of a broader community; provides her with opportunities to learn new skills and develop new competencies; brings her respect from society because she is perceived to be more independent, contributing to the lives of others as a taxpayer, colleague, and friend; provides opportunities for social contacts, to interact with others, and to find her identity as part of a broader community³⁰.

A review of the definition of disability and improved professionalism, as well as the skills of judges in adjudication, identifying types of discrimination and double discrimination

Some communities, unaware of the origins of disability, think that it is a retribution for past misdeeds by the crippled person, his or her family, or ancestors. In Vietnam, a person with disabilities means a person who is impaired in one or more body parts or suffers functional decline manifested in the form of disability which causes difficulties to his/her work, daily life and study such as Physical disability; Sensory disability; Visual disability; Mental and psychiatric disability; Intellectual disability; Other disabilities³¹. In particular, mobility impairment means partial or total loss of the mobility of the head, the neck, the lower or upper limbs, or the body, that restricts dexterity. Sensory disability means partial or total loss of the hearing or speaking function or both hearing and speaking functions; or the function to pronounce words and sentences clearly, leading to limited communication or information exchange in words. Visual disability means partial or total loss of sight and senses of light, colors, images and objects in normal light and environment. Mental disability means a disorder of senses, memory, feeling, thought and act control manifested abnormal speech or acts. Intellectual disability means partial or total loss of perception and mind manifested in the slowness or inability to think, analyze objects, phenomena or solve problems. Other disability means partial or total loss of bodily functions causing difficulties in work and daily-life activities and learning not being specified in Clauses 1,2,



3, 4 and 5 of Article 2 of Decree No.28/2012/NĐ-CP on Detailing and Guiding a Number of Articles of The Law on The Disabled. As we can see, Law on Person with Disabilities 2010 and Decree No.28/2012/NĐ-CP stipulate and guide in detail what a person with a disability is, but the author believes that our law is going in the direction of listing and because of this, it has led to an incomplete understanding of disability. One question is whether diabetes, epilepsy, hemophilia, spina bifida, psychological disorders, irritable bowel syndrome, chronic anxiety syndrome, etc. is a form of disability? In Article 2(6) of Decree 28/2012/ND-CP, the legislators regulated what is so-called another disability, so can the above diseases be classified as other disabilities or not? This has not been explained and confirmed by anyone.

In the UK, the Equality Act 2010 defines a person as disabled if he or she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. The employment tribunal *M T Tiquin v Abbey National plc*³² stated that irritable bowel syndrome was a long-term disability that had a significant negative impact^b. And through a lot of UK case law, we were

^bA hired T to work as a mortgage advisor. Her position was moved to client advisor, which she found to be quite stressful. Irritable bowel syndrome returned as a result of this. Her new bosses would not let her use the restroom or take a drink at work. Her symptoms worsened to the point where she was eventually rejected. She claimed she was discriminated against because of her disabilities. Her complaint succeeded.

able to determine that other long-term health conditions can also be classified as a disability and that any unfair treatment of those people is considered discriminatory, for example, chronic anxiety syndrome in *Chief Constable of South Yorkshire Police v Jelic* UK/EAT/0491/09/CEA; bipolar affective disorder in *Aylott v Stockton-on-Tees Borough Council* [2010] EWCA Civ 910; an allergy in *Wade v Sheffield Hallam University* [2013]³³; etc. The CDC’s National Center on Birth Defects and Developmental Disabilities of the US provide information on certain disability-related health conditions: Attention-Deficit / Hyperactivity Disorder (ADHD), Autism, Cerebral Palsy, Deep Vein Thrombosis (DVT) (Blood Clots), Duchenne/Becker Muscular Dystrophy, Fetal Alcohol Spectrum Disorders (FASD), Fragile X Syndrome, Hemophilia, Kernicterus, Sickle Cell Disease, Spina Bifida, Thalassemia, Tourette Syndrome, Traumatic Brain Injury, Vision Impairment, Von Willebrand Disease, etc.³⁴

A question arises when a person who is suffering from the above diseases such as epilepsy, psychological disorders, persistent delusional disorder, is then cured; will they still be considered a disabled person because those diseases or impairments are likely to recur? This problem in Vietnam has not been mentioned and there is still a huge gap. Meanwhile, in the United Kingdom, the conclusion of The Court of Appeal in *Richmond Adult Community College v McDougall* [2008]³⁵ stated that the decision as to the

likelihood of recurrence must be based on the evidence available at the time of the employer's actions. And on the facts, there was no evidence at the time of the decision that M's condition was likely to recur. The tribunal should only consider the evidence available at the relevant time³⁶.

It can be seen that the listing of common forms of disabilities makes us lack the understanding of the disability and creates many gaps in the application of the law in a trial encounter. In addition, such regulation contributes to making it easy for employers to get caught up in violating regulations on anti-discrimination against PWDs because they simply understand a disability as a form of defect on physical and psychological health that ignores the diseases and syndromes within each person. So we must also understand that disabilities can be hidden such as epilepsy, diabetes; or associated with developmental conditions that become apparent during childhood (for example, autism spectrum disorder and attention-deficit/hyperactivity disorder or ADHD); the result of the mother's exposure during pregnancy to infections (for example, rubella) or substances, such as alcohol or cigarettes, etc.

Besides, the forms of discrimination are very diverse, for example, the managers refused to allow M T Tiquin free access to the toilets or to have a drink at her workplace because of T's irritable bowel syndrome when she was rearranged another position (mortgage advisor to customer advisor)³², Woman Terminated as a Result of Breast Cancer Diagnosis because her company feared the recovery time would result in too much time off³⁷ ... Therefore, the judges need to further hone their adjudication skills as well as strongly judge those acts as discriminatory treatment of PWDs.

Include provisions on the protection of women with disabilities into the constitution

According to the current data of World Bank (illustrated by Figure 2), 71 of the 176 economies worldwide (including Vietnam) have a constitutional clause that ensures equal rights for disabled people. Women with impairments, on the other hand, are not included in any of the analyzed constitutions. Other than the constitution, 138 economies have a law that covers the rights of PWDs, according to the study. Only 35 of the assessed economies, or one-fourth of the total, officially recognize and safeguard the rights of disabled women in their legal system³⁸.

Because the constitution is a country's core law, including clauses protecting the rights of disabled

women will provide them (who have been discriminated against in various ways, including gender, disability, poverty, ethnicity, etc.) with yet another tool to protect themselves. Furthermore, the constitution's provisions on the rights of disabled women will assist countries inefficiently, de facto and de jure in implementing their international commitments.

Role of representative organizations of employees

Representative organizations of employees (trade unions, the internal employee organization in an enterprise), representative organizations of employers are subjects that play an important role in the development of public policy and the best practices on diverse and complex inequality. In the past, however, their work on these issues has often focused solely on discriminatory grounds. Their only basic focus is institutionalized in the organization's structure and mission, and only addresses a specific discriminatory group, rather than multiple discriminatory groups (two or more). Typically, in Vietnam, trade unions use finance to organize activities on gender and gender equality³⁹. The emergence of concerns about multiple discriminations has affected the strategies of representative organizations of employees (trade unions, the internal employee organization in an enterprise), and representative organizations of employers. Currently, Vietnam's Labor Code 2019 (effective from January 1, 2021) has had many amendments and supplements to be consistent with international commitments such as specific regulations, strict more closely on female employees and gender equality or employee representative organizations at the grassroots. In particular, the law allows employees to set up their representative organization in the enterprise along with the Trade Union. However, the representative organization of employees at the enterprise is waiting for the Government's guidance on the organization; principles and modes of operation... so female employees with disabilities have the right to hope for an organization that can raise their voices and protect them from discrimination in terms of gender but also about disability in the workplace in the future.

Strengthen vocational training for women with disabilities

Enterprises need to further strengthen vocational training for women with disabilities in the locality where they conduct business, diversify forms and methods of vocational training, and thereby arrange jobs suitable to the types and classification, health, competence of women with disabilities, and local and business economic conditions. Enterprises should

continue to propagandize and create a favorable environment for women with disabilities to access and benefit from the enterprises policies on vocational training and job creation for women with disabilities. Strengthening the connection between enterprises and state agencies, humanitarian and charity organizations, etc. to pay attention, share, and join hands to help women with disabilities in choosing a career, learning a job and creating jobs. Women with disabilities have many types of disabilities and are special subjects, so vocational training must have its curriculum and training methods. Teachers/Trainers must be equipped with skills appropriate to the subjects they teach and facilities in vocational training must be designed to suit each type of disability. In the current information technology boom, vocational training for women with disabilities should not stop at mere crafts. Depending on the disability status of each person, vocational training should be expanded to modern occupations such as computer engineering, programming, electronics, etc. to meet the needs of society. After being trained by the enterprises themselves, women with disabilities will become confident in their abilities; at the same time, businesses will also have a highly skilled labor force to meet their recruitment needs and positions. If the business only does charity every year as an annual activity, it will not guarantee the life of women with disabilities in the locality. Therefore, vocational training and suitable job placement for women with disabilities after training are especially important because “give a man a fish and you feed him for a day, teach him how to fish and you feed him for a lifetime”, as the saying goes.

Quota systems

Regulations for recruitment, employment and vocational training for disabled employees in enterprises and organizations are only encouraged by the State, not compulsory. For example, in Italy, cosmetic company L'Oréal has the policy to ensure they employ PWDs in at least 2% of positions within the company or in 2007, Walgreens, a chain of pharmacies in the United States, opened a new distribution center where more than 40% of their labor force has some disabilities, including autism⁴⁰. Meanwhile, in Japan, “Promotion of the Employment of Persons with Disabilities Law - Law No. 123 of 25 July 1960” stipulates that each enterprise must receive 1.8% of their labor force as PWDs. As a result, businesses that do not meet that required figure will be fined according to regulations. In Germany, companies with more than 20 employees must have the number of disabled employees at 5% of the total number of employees. Meanwhile, this

figure in South Africa, Turkey is 2% and 3%, respectively. Like Japan, in China, companies that do not meet the target of 1.5% of a disabled employee must pay a fee to the “Disabled Persons’ Employment Security Fund” — which supports training and job placement services for PWDs. It can be seen that the policies and regulations of countries around the world on the quota systems only provide general provisions on PWDs, but do not focus on specific women with disabilities. Therefore, the employer’s policy on creating jobs for employees with disabilities in the future should be regulated, amended and supplemented in the direction of “compulsory” rather than encouraging as a present. This means that agencies, organizations and enterprises (starting with state agencies, state-owned enterprises) must recruit a certain percentage of PWDs as well as trained women with disabilities — in other words, Vietnam should apply a “quota system” to businesses when they recruit and has appropriate sanctions against agencies, organizations and businesses that do not comply with employment laws such as paying fines, paying fees to the social security fund, etc.

Internships

Internships and other employment opportunities are also important for female graduates with disabilities to get started quickly⁴¹. Enterprises can create conditions for students with disabilities to practice at positions that are suitable to their competence so that they can start working quickly without having to undergo a long training process after graduating. This measure also contributes to helping women with disabilities get used to the working environment, overcome their sense of inferiority to integrate into social life, and at the same time remove barriers, stigma and deep-rooted prejudices of ordinary employees with interns with disabilities. Thereby promoting workplace productivity and unity within the enterprise. Enterprises can cooperate with disability organizations, rehabilitation institutions or local universities to participate or organize job fairs to expand the audience exposed to recruitment information, including women with disabilities. At the same time, they can clearly demonstrate their social commitment and signal that they are ready to train and recruit women with disabilities to work.

Burden of proof

A person who believes she has been wronged as a result of discrimination on disabilities may be required to show proof to support their claim. It may be easy to get such proof without trouble in some instances.

However, in most circumstances involving a conduct that is suspected rather than proven, gathering credible proof may be impossible. Many countries (especially adversarial procedure countries) have shifted the burden of proof away from the person bringing the claim to court in order to address this risk. Once the burden of proof has been shifted to the person who is accused of discriminating against the complaint, evidence in the form of a reasonable non-discriminatory justification for the treatment must be presented.

Special regimes

Employees are entitled to a 6-month leave before and after giving birth under the female maternity regime, according to Article 34(1) of the Law on Social Insurance 2014. A female employee who has had twins or more children is entitled to one month of supplementary leave beginning with the second child. We can see that this legislation applies to both normal and disabled working women, with no distinction made between the two. When it comes to taking care of their young children, however, women with impairments confront more challenges in daily life, and their health is also compromised. Therefore, female disabled employees need more time to recover before returning to work. The author proposes to increase the maternity leave period for female employees from 6 months to 7 or 8 months and she is entitled to an additional leave of 2 months for each infant from the second.

Authors are witnessing how working from home is conceivable for female impaired employees (particularly during the Covid-19 pandemic) and how working from home makes work more accessible⁴². For female impaired employees, getting dressed and ready for work can take much longer, adding hours to their days. Commuting can be stressful, confusing, and even dangerous at times. These additional pressures are reduced when you work from home. Additionally, working from home enables female employees with impairments to better care for themselves, their children, and their families. Furthermore, working from home will assist women in overcoming guilt and avoiding discrimination from coworkers, customers, and bosses. They can then increase their work productivity by being in a good mood and working in a healthy setting. Employees who work from home have the freedom to arrange medical or physiotherapist appointments without affecting their work. To do so, the government and businesses must work together to develop conditions and occupations that allow disabled women to work from home with flexible hours and enough social security coverage. Finally,

society will not be deprived of this plentiful supply of skilled labor.

According to Article 137(4) the 2019 Labor Code, a female employee shall be entitled to a 30-minute break in every working day during her menstruation period; a female employee nursing a child under 12 months of age shall be entitled to 60 minutes breaks in every working day with full salary as stipulated in the employment contract. The authors argue that this amount of time is insufficient for a disabled female employee. We all know that female employee with disabilities have numerous challenges in their daily lives, particularly during their menstrual period and while breastfeeding a kid under the age of one year. As a result, the lawmaker specifies that the break time between working hours is insufficient for female employees with disabilities. As a result, the authors recommend that female employees with impairments get 45 minutes of rest during their menstrual period and 75 minutes of rest while breastfeeding a kid under the age of 12 months.

Several studies have looked into the employment and income inequalities faced by disabled persons, and the findings are very consistent across countries. Wage disparities between disabled persons and non-disabled people are common, and the pay disparity grows as the severity of the health condition worsens. Handicapped persons may be discriminated against, according to certain theories, either because of negative sentiments toward disabled people or because employers may infer an impaired job applicant's competence based on the perceived average ability of disabled people.

CONCLUSION

Feminist legal theory has a long and illustrious history of construction and growth. Since the first feminist movements in the seventeenth century, women have been able to break free from their economic dependence on males by entering the labor market rather than simply doing the job. Giving birth and caring for one's family is a natural responsibility that has been associated with society for centuries. And, rather than focusing on the disadvantaged group of female employees, the government is increasingly focusing on female employees who are disabled, a group of women that requires more attention in the policy and legislative process.

Feminist legal theory has had a positive impact on the enactment and revision of laws. Despite the fact that there is explicit legislation on gender equality and disability concerns, there are still practical constraints in

defending the legal rights of disabled female employees. Part of this is due to a lack of clarity in the definition of a disabled person. Furthermore, the function of labor protection organizations in defending female employees with impairments has been ineffective. Many formal policies provide employers the option of refusing to hire women with disabilities or hiring them but paying them less than men or employees without impairments. More specific counseling for female employees with impairments is needed in order to establish conditions for them to feel more confident and capable of participating in effective labor relations. Furthermore, labor protection organizations must play a greater role in training, supporting, and defending female employees with disabilities in the labor market. Female employees with impairments require sufficient professional and social preparation in order to confidently promote equality for themselves.

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CONFLICT OF INTEREST

The author declares that he has no conflicts of interest.

AUTHORS' CONTRIBUTION

- Tran Nguyen Quang Ha is responsible for the content: Ideation for the article; Abstract, Introduction; Regulations on the rights of disabled female employees according to current Vietnamese labor law; Practice on guaranteeing the rights to work of women with disabilities and suggestions for Vietnam; translation and editing format of the research article.

- Tran Kieu Nhi is responsible for the content: Definition of feminist legal theory; Liberal feminism theory and its impact on Vietnamese labor law; Conclusion.

REFERENCES

- Oxford Learner's Dictionaries. [Online]. [cited 2021 Sep 6]; Available from: <https://www.oxfordlearnersdictionaries.com/definition/english/feminism?q=feminism>.
- Lorber J. Sự Đa Dạng Của Những Chủ Nghĩa Nữ Quyền Và Những Đóng Góp Vào Sự Bình Đẳng Giới. *trangdocsach*. [Online]. 2013 [cited 2021 Jul 23]; Available from: <https://trangdocsach.wordpress.com/2013/05/31/su-da-dang-cua-nhung-chu-nghia-nu-quyen/>.
- Cynthia Grant Bowman, Elizabeth M. Schneider. Feminist Legal Theory, Feminist Lawmaking, And The Legal Profession. *Fordham Law Review*. 1998Nov;67(2):249-72;.
- Lawson G. What Is Feminist Legal Theory: Panel I–Feminist Legal Theories. *HARV.J.L & PUB. POL'Y*. 1995;18(2):325-30;.
- Leslie B. A Lawyer's Primer on Feminist Theory and Tort, 38J. *LEGAL. ED.* 3, 5 (1988);.
- Sự khác biệt giữa nữ quyền cấp tiến và tự do. *Sainte Anastasie*. [Online]. [cited 2021 Sep 5]; Available from: <https://vi.sainte-anastasie.org/articles/psicologa-social-diferencia-entre-feminismo-radical-y-liberal.html>.
- Purwarno P, Mardhatillah S, Suhendi A. Liberal feminism in Ika Natassa's novel *Critical Eleven*. *KnE Social Sciences*. 2021;. p. 559-81;.
- Serva C. Liberal Feminism: Definition & Theory. *Study.com | Take Online Courses. Earn College Credit. Research Schools, Degrees & Careers*. [Online]. 2015 [cited 2021 Oct 3]; Available from: <https://study.com/academy/lesson/liberal-feminism-definition-theory-quiz.html>.
- Lewis JJ. What is liberal feminism?. *ThoughtCo. ThoughtCo*. [Online] 2021 [cited 2021 Oct 3]; Available from: <https://www.thoughtco.com/liberal-feminism-3529177>.
- Purwarno P, Mardhatillah S, Suhendi A. Liberal feminism in Ika Natassa's novel *Critical Eleven*. *KnE Social Sciences*. 2021;. p. 559-81;.
- Ackerly BA. Feminist theory: Liberal. *International Encyclopedia of the Social & Behavioral Sciences*. Pergamon. [Online]. 2002 [cited 2021 Sep 27]; Available from: <https://www.sciencedirect.com/science/article/pii/B0080430767039462#>!
- Lịch sử phong trào nữ quyền thế giới. *Phụ nữ Việt Nam*. [Online]. 2016 [cited 2021 Sep 4]; Available from: <https://phunuvietnam.vn/lich-su-phong-trao-nu-quyen-the-gioi-7285.htm>.
- Sự khác biệt giữa nữ quyền cấp tiến và tự do. *Sainte Anastasie*. [Online]. [cited 2021 Sep 5]; Available from: <https://vi.sainte-anastasie.org/articles/psicologa-social-diferencia-entre-feminismo-radical-y-liberal.html>.
- Arthur O'Reilly. "Employment Barriers for Women with Disabilities" in "The Right to Decent Work of Persons with Disabilities" IFP/Skills Working, Paper No. 14. *International Labour Organization* 2003;.
- Patterson S. A Historical Overview of Disability and Employment in the United States, 1600 to 1950. *The Review of Disability Studies*. [Online] [cited 2021 Sep 4]; Available from: <https://www.rdsjournal.org/index.php/journal/article/view/117/385>.
- Disability History Timeline. *Rehabilitation Research & Training Center on Independent Living Management - Temple University*. [Online] 2002 [cited 2021 Sep 4]; Available from: <http://isc.temple.edu/neighbor/ds/disabilityrightstimeline.htm>.
- Chi DTV. Nhận thức về nữ quyền ở Việt Nam nửa đầu thế kỷ XX. [Online]. 2015 [cited 2021 Sep 27]; Available from: <http://chuyencuachi.blogspot.com/2015/10/nhan-thuc-ve-nu-quyen-o-viet-nam-nua-au.html>.
- HCM City University of Law. *Constitution of the Socialist Republic of Vietnam - 1959*. [Online]. 2011 [cited 2021 Oct 3]; Available from: http://web.hcmulaw.edu.vn/humanrights_en/index.php?option=com_content&view=article&id=50%3Aconstitution-of-the-socialist-republic-of-vietnam-1959&catid=28%3Aconstitution-of-vn&Itemid=44.
- National Assembly, *The Vietnamese Constitution*, Ha Noi, 2013, Art 16;.
- National Assembly, *Labor Code*, Ha Noi, 2019, Art 113(1)(b);.
- National Assembly, *Law on Occupational Safety and Health*, Ha Noi, 2015, Art 21(1);.
- National Assembly, *Law on Corporate Income Tax*, Ha Noi, 2014, Art 4(5);.
- Government, *Decree 28/2012/NĐ-CP*, Ha Noi, 2012, Clause a, c, d, đ Art 9;.
- Baodientuvtv. *Hết Năm 2020, dân số Việt Nam Là bao Nhiêu?*. *BAO DIEN TU VTV*. [serial online] 2020 [cited 2021 Jul 28]; Available from: <https://vtv.vn/xa-hoi/het-nam-2020-dan-so-viet-nam-la-bao-nhieu-20201227164252118.htm>.

25. Tổng cục Thống kê. Thông cáo báo chí tình hình lao động việc làm quý IV và năm 2020. [Online]. [cited 2021 Jul 28]; Available from: <https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2021/01/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iv-va-nam-2020/>.
26. Anh N. Bảo đảm quyền lao động bình đẳng cho người khuyết tật. Báo Nhân Dân. [serial online] 2019 [cited 2021 Jul 28]; Available from: <https://nhandan.vn/cung-suy-ngam/bao-dam-quyen-lao-dong-binh-dang-cho-nguoi-khuyet-tat-354037/>.
27. WHO, World Report On Disability 2011 (December 2011) 29;.
28. TCTK. Điều Tra Quốc Gia Người Khuyết Tật 2016 (VDS2016), Báo Cáo Cuối Cùng. Hà Nội, Việt Nam: Tổng Cục Thống Kê. 2016;.
29. Anh N. Bảo đảm quyền lao động bình đẳng cho người khuyết tật. Báo Nhân Dân. [serial online] 2019 [cited 2021 Jul 28]; Available from: <https://nhandan.vn/cung-suy-ngam/bao-dam-quyen-lao-dong-binh-dang-cho-nguoi-khuyet-tat-354037/>.
30. Sim FG, ILO. Integrating women and girls with disabilities into mainstream vocational training: a practical guide. [Online]. 1999 Jan [cited 2021 Aug 12]; Available from: https://www.ilo.org/wcmsp5/groups/public/-/ed_emp/-/ifp_skills/documents/publication/wcms_107918.pdf.
31. National Assembly, Law on Person with Disabilities, Ha Noi, 2010, Art 2(1) and Art 3;.
32. Case law: MT Tiquin v Abbey National plc [1999] ET/2400947/98;.
33. Case law: Wade v Sheffield Hallam University [2013] UKEAT 0194/12/1504;.
34. Centers for Disease Control and Prevention. Disability and health overview. [Online]. 2020 [cited 2021 Aug 12]; Available from: <https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html>.
35. Case law: Richmond Adult Community College v McDougall [2008] EWCA Civ 4 CA;.
36. LawTeacher. Richmond Adult Community College v McDougall. [Online]. 2013 November [Cited 12 August 2021]; Available from: <https://www.lawteacher.net/cases/richmond-college-v-mcdougall.php?vref=1>.
37. Case law: EEOC v. B. F. (Saul Co., Saul Hospitality Group, and Saul Property Company);.
38. World Bank. The Rights of Women with Disabilities. [Online]. [cited 2021 Jul 28]; Available from: <https://thedocs.worldbank.org/en/doc/517421606767152867-0050022020/original/WBL2020DisabilityTopicNote.pdf>.
39. National Assembly, Law on Trade Union, Ha Noi, 2012, Art 27(2)(g);.
40. Fasciglione M. Corporate social responsibility and the right to employment of persons with disabilities. Protecting the Rights of People with Autism in the Fields of Education and Employment. 2015. p. 171-93;.
41. Miethlich, B., Šlahor, L. CBU International Conference. In: Employment of persons with disabilities as a corporate social responsibility initiative: Necessity and variants of implementation. 2018. p. 350-5;.
42. Stengel G. Working from home opens the door to employing people with disabilities. Forbes. Forbes Magazine [serial online] 2020 [cited 2021 Sep 26]; Available from: <https://www.forbes.com/sites/geristengel/2020/04/20/working-from-home-opens-the-door-to-employing-people-with-disabilities/?sh=7c98c65f14bf>.

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TÓM TẮT

Có thể nói, bảo vệ những người yếu thế đã trở thành một xu hướng chung trên thế giới nhằm góp phần xây dựng một xã hội nhân văn và bình đẳng, trong nhóm đối tượng người yếu thế, không thể bỏ qua người khuyết tật. Ở Việt Nam hiện nay, người khuyết tật ở đang được trang bị đầy đủ các công cụ chính sách và khung pháp lý trong việc bảo vệ quyền lao động của họ (từ Nghị quyết của bộ chính trị đến các văn bản luật). Tuy nhiên, dường như các nhà làm luật đã bỏ quên một đối tượng đó là người phụ nữ khuyết tật. Điều này được thể hiện qua các văn bản pháp lý và thực tiễn áp dụng khi chưa có sự phân biệt về quyền và nghĩa vụ của người khuyết tật là nam giới và nữ giới một cách rõ ràng. Phụ nữ khuyết tật không chỉ bị phân biệt đối xử về giới mà còn bị phân biệt về tình trạng khuyết tật, vì thế quyền làm việc của phụ nữ khuyết tật bị hạn chế rất nhiều so với những người đàn ông khuyết tật. Dựa trên lý thuyết pháp luật nữ quyền và lý thuyết nữ quyền tự do, các tác giả sẽ phân tích những khía cạnh và nội hàm cũng như quá trình hình thành các học thuyết này. Bên cạnh đó, các tác giả cũng đánh giá sự ảnh hưởng của các học thuyết đến phong trào nữ quyền trên thế giới và sự tác động của chúng đối với việc xây dựng và phát triển luật pháp cho lao động nữ khuyết tật ở Việt Nam. Đồng thời, tác giả sẽ đi chứng minh rằng chưa có sự biệt trong các quy định bảo vệ quyền làm việc giữa người lao động nữ khuyết tật và lao động nam khuyết tật vì thế trên thực tế số lượng lao động nữ có việc làm và các quy định bảo vệ họ trong lao động vẫn chưa được hoàn chỉnh. Trên cơ sở lý thuyết pháp luật nữ quyền tự do, nhóm tác giả sẽ đưa ra một số đề xuất và kiến nghị bổ sung vào pháp luật lao động Việt Nam nhằm bảo vệ hơn nữa quyền làm việc của lao động nữ khuyết tật trên cơ sở một số quy định và án lệ của Mỹ và Vương quốc Anh về 'quyền làm việc' của nữ nhân viên khuyết tật.

Từ khóa: quyền lao động, lý thuyết pháp lý nữ quyền, phụ nữ khuyết tật

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