Employment Discrimination against Women: The Israeli Experience

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Within the last twenty-five years, personnel practices and trade union policies in the United States have been influenced by civil rights legislation prohibiting sexual discrimination in employment. Similar developments have been occurring in European countries and Israel. The analysis of these foreign developments provides a basis for evaluating the effectiveness of American efforts in the area of equal employment opportunity. In the following articles, the authors focus on employment discrimination against women in Israel as a framework for comparing American policies. In addition, the Israeli experience should be of interest to American and foreign firms that have been extending their operations to Israel.

Introduction

Israel has often been perceived as a society in which women are afforded social, political, and economic equality. The presence of women in Israeli armed forces, the position of political leadership they have gained (most significantly illustrated by the prime ministership of Golda Meir), and the pioneering tasks they assumed in the founding and shaping of Kibbutz life have reinforced this notion.

Critics have recently contended that the liberation of Israeli women is basically a myth and that serious obstacles remain to their achieving full equality.[1] One area, however, that has not received sufficient critical attention is the absence of equal employment opportunities for Israeli women. This article will focus on the occupational segregation of women in Israel as well as the sources and kinds of employment discrimination present in Israeli society. It will also assess current proposals to

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combat and remedy sexually discriminatory employment practices.

In Israel, as in many other industrialized countries, the prevalence of sex segregation in the labor market is a disturbing fact of life. While data reveal the growing numbers of women in the Israeli economy (their labor force participation rate rose from 26.5 percent in 1955 to 31.6 percent in 1975, and the proportion of women in the total civilian labor force increased from 24.5 percent in 1955 to 33.5 percent in 1975),[2] their participation in various occupations remains segregated.

Occupational Segregation

Occupational segregation has been defined as "the disproportionate representation of one social category in an occupation, relative to the proportion of that category in the labor force."[3] A study based on data from the 1972 Israel Population Census—the only study in Israel to provide analysis of the sex composition, education, and income of 360 occupations—reveals dramatic evidence of occupational segregation. This study showed that 75.1 percent of the female labor force were employed in female occupations while 78.9 percent of the males were employed in male occupations, and only 13.1 percent of each sex worked in occupations predominantly composed of the other sex. Relative to their proportion in the labor force, women were disproportionately concentrated among clerical workers, service workers, and such professions as nursing, teaching, and social work. The primary tasks performed and the skills required in most of the female occupations exhibited two major characteristics:

1. The great majority are extensions of traditional female roles in the home, namely, cooking, cleaning, sewing, caring for children, and serving the welfare needs of others. The influence of this traditional pattern is evident even within professions. For example, women comprise 23 percent of the medical specialists in Israel, yet they form 46 percent of the pediatricians.[4]
2. Other occupations are those requiring manual dexterity and patience (considered to be specifically female attributes), such as typists, computer key punchers, office

Table 1

Predominantly Female Occupations in Israel

Occupation	Percentage of Women in Occupation
Kindergarten teacher assistants	99
Kindergarten teachers	98
Noncertified nursemaids	97
Domestics and cooks	97
Cosmeticians	94
Bookkeeping machine operators	94
Dental assistants	93
Keypunch operators	92
Secretaries, stenographers, and typists	91
Registered nurses	91
Practical nurses and midwives	86
Women hairdressers	86
Teachers in special education	86
Sewers (in factory)	85
Therapists	80
Primary schoolteachers	77
Social workers	77
Psychologists	76
Food service workers	76
Chambermaids	75
Technicians in the life sciences	75
Library attendants	75
Telephone and telegraph operators	73
Stewards	71
Other medical technicians	71
Draftsmen	70
Kitchen workers in institutions	70

Source: Adapted from. Dafna A. Izraeli. "Sex Structure of Occupations." 6 *Soc Work and Occupations* 414 (1979).

machine operators and electronic components assemblers.[5] (See Table 1.)

While men were generally distributed evenly among the occupational categories, women were underrepresented in occupations that:

1. Require expenditure of considerable muscular energy and/or are performed under dangerous or difficult conditions such as intense dust or heat;
2. Are associated with the traditional male mechanical-technical crafts, particularly those in the engineering family; and
3. Require supervising or controlling the work of others—that is, managerial occupations at all levels, particularly when the subordinates are men (only 7.4 percent of the managers were women in 1972).

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The Israeli government, although ideologically committed to social equality, has not intervened to alter the segregative structure of occupations even within the ranks of government employees. Despite the heavy concentration of women in the civil service (42 percent of those employed by government), in 1977 women occupied only 8 percent of the positions in the top third of the civil service classification jobs. At the same time, women disproportionately occupied 61 percent of the lower third of the civil service classification jobs.

The rapid process of industrialization and the shortage of male workers in Israel have created employment opportunities for women outside the home. Nevertheless, these conditions have not been a major force in eliminating the relevance of sex as a basis for work allocation. Although the dearth of women in many occupations is undoubtedly due to diverse factors, including the job preferences of women themselves, employment discrimination is a strong phenomenon in Israeli society.

Employment Practices that Reinforce Segregation

Discrimination in Hiring

In Israel, as in the United States, employees will utilize a variety of formal and informal approaches in seeking work. A large number will apply directly to employers without suggestions or referrals from anyone. Others may ask friends if they know of jobs, either where they work or elsewhere. Applicants may also answer local newspaper ads or check with the state or local employment service.[6] These latter sources of job referral in Israel have been manipulated by employers as a means of restricting employment opportunities for women.

Employers in Israel continue to be dominated by perceptions that certain jobs and occupations should be filled by either men or women. Newspaper advertisements for job vacancies reflect this attitude. For low-paying jobs such as typists, telephone operators, switchboard operators, receptionists, secretaries, laboratory technicians and others, employers frequently will specify that they are seeking female candidates.[7]

In advertising job vacancies, employers at times categorize their jobs into three groups: those considered male-only jobs, those considered female-only jobs, and a third group in which both men and women will be considered. For example, an insurance company sought only a man for the position of accoun-

Aside from reinforcing occupational segregation by promoting sexually segregated training courses, the employment service supports discriminatory hiring practices in the way it responds to employers who request only female or male applicants. It is not unusual for a local employment service office to provide an employer with the names of only male applicants for a given job vacancy, if that's what the employer asks for.[13] Indeed, for jobs involving unskilled labor the employment service actually maintains separate lists of men and women registrants, apparently reflecting the notion that in unskilled jobs, neither sex can substitute for each other's labor.

Ironically, the statute establishing the employment service contains one of the few legal prohibitions against sex discrimination in employment. The Employment Service Law of 1959 provides that when sending a person to a job, the labor office is not "to discriminate against the person because of his age, sex, race, religion, ethnic group . . . and the person requiring an employee shall not refuse to engage a person for work on account of any of these." At the same time, the prohibition against sex discrimination is not absolute. The law allows that discrimination is not recognized if the "nature of the task . . . prevents a person's being sent to or engaged for some particular work." This qualification is very similar to the bona fide occupational qualification (BFOQ) exception found in Title VII of the Civil Rights Act of 1964.[14] In that statute, however, the courts have narrowly interpreted the scope of the exemption. For sex to be a BFOQ in the United States, employers must overcome the general presumption that sex is not a relevant qualification for most job opportunities. Indeed, for sex to be considered a BFOQ, the courts have imposed on the employer the nearly impossible burden of proving that all, or substantially all, members of the opposite sex are not capable of performing a given job.[15] This evidentiary burden obligates all employers to consider men and women, not on the basis of physical attributes or stereotypes but on the basis of individual abilities to perform a job. On the surface, the qualification built into the 1959 employment service law in Israel also is very narrow. In practice, however, employers have been allowed to broadly define a BFOQ exception to justify excluding women and giving preference to men in a wide variety of professions and occupations.

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Stereotyped Perceptions at Work: The Case of Egged

As in the United States, the Israeli woman's effort to gain equal employment opportunity has been hindered by prevailing notions that women lack the necessary physical strength to perform a job, have too short a work life to justify their being trained, and have family responsibilities that will interfere with job performance in many occupations. These sentiments have been responsible for completely excluding Israeli women from the position of permanent bus driver in Egged.

Egged, the country's largest public transport cooperative, has primary responsibility for providing city and intercity transportation services in Israel. It operates several thousand buses and employs approximately 3,500 members and another 1,200 hired employees. The members of the cooperative enjoy better benefits and are afforded much greater job security than hired workers. While not an officially written principle of the cooperative, Egged's policy has been to exclude women from becoming members. Indeed, until recently no woman could even be hired as an employee on a nonmember basis. It wasn't until after the 1973 Arab-Israeli war, when the induction of men into the armed forces created an acute shortage of bus drivers, that Egged succumbed to government pressure and began employing women bus drivers in limited numbers. Currently, however, only ten women have been given permanent tenure in Egged and they are employed on a part-time basis. Another several hundred have been afforded some training to allow them to take over during emergencies.

To date, Egged refuses to modify its policy of excluding women from becoming members in the cooperative or employing them on a full-time basis even as nonmembers. Underlying its resistance are stereotyped perceptions concerning: (1) a female's inability to provide emergency maintenance service for buses they operate; (2) fears for a woman's security when working at night; and (3) concern that a woman with child-care responsibilities will not be able to work the 5 A.M.-to-2 P.M. shift.[16] While these concerns may certainly be true for some women, they operate to exclude all women—single, divorced, and married, with children and without—from the opportunity to be employed as a bus driver. It is somewhat ironic that while Egged will agree to employ women under stressful and dangerous wartime conditions, it refuses to extend to them the same privilege in peacetime.

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Joint Union-Employer Discrimination

Although employers usually bear the greater responsibility for discrimination in job opportunities because of their control over hiring and promotions, unions, too, are guilty of sex discrimination. In Israel, unions have at times been willing participants in blatant acts of sexually discriminatory employment practices. Throughout the early 1970s, contracts between El Al, the Israeli national airline, and the Union For Flight Attendants provided for sexually segregated seniority lists for stewards and stewardesses. The position of purser was found only on the seniority list maintained for the male stewards. As a result, stewardesses were always excluded from consideration when an opening occurred in the purser position. Additionally, management was given the contractual right to dismiss stewardesses who gave birth or married and had less than four years' seniority.[17]

More significantly, Israeli unions have played a pervasive role in establishing and maintaining sexually discriminatory pay conditions. For decades, collective bargaining agreements in Israeli industry have contained sexually segregated wage progression lines whereby women have received less than men while performing the same duties. For example, a 1957 agreement in the textile industry allowed employers not only to pay women less than men per day of work, but also reserved for men alone additional pay increments based on the number of dependents. (See Table 2.)

To rectify such practices, the Knesset passed an equal pay statute in 1964, which provided that "an employer will pay a working woman the same wage that he pays a working man for the same work."[18] Recognizing that the "same work" standard easily allowed an employer and union to conceal sex-based discrimination in pay, the Knesset amended the law in 1974 to require equal pay for men and women engaged in basically equal work.[19] Despite this amendment, sexually discriminatory pay conditions have persisted. For example, the 1976–1978 national agreement in the food industry allowed disparate wages for men and women who were performing exactly the same tasks.[20]

Unions and employers frequently have been more sophisticated in their efforts to conceal inequality. In circumstances where men and women perform work closely related in skills or functionally integrated in terms of the production process used,

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Table 2

Segregated Pay Schedules in the Textile Industry in Israel (1957)

DAILY WAGE OF MALE UNSKILLED PRODUCTION WORKERS

Length of Service	Unmarried	Married	Married & 1 Dependent	Married & 2 Dependents	Married & 3 Dependents	Married & 4 Dependents
Date of hire	7.105 Lirot	7.308 Lirot	7.408 Lirot	7.508 Lirot	7.607 Lirot	7.706 Lirot
After 6 months	7.235	7.432	7.532	7.631	7.731	7.831
After 12 months	7.360	7.565	7.664	7.764	7.863	7.963
After 18 months	7.620	7.819	7.918	7.998	8.057	8.116
After 2 years	7.719	7.918	7.998	8.507	8.116	8.175
After 3 years	7.819	7.998	8.057	8.116	8.175	8.234
After 4 years	7.918	8.057	8.116	8.175	8.234	8.294
After 5 years	7.998	8.116	8.175	8.234	8.294	8.353
After 6 years	8.057	8.175	8.234	8.294	8.353	8.412

DAILY WAGE OF FEMALE UNSKILLED PRODUCTION WORKERS

Length of Service	Daily Wage
Date of hire	6.535 Lirot
After 6 months	6.745
After 12 months	6.975
After 18 months	7.285
After 2 years	7.382
After 3 years	7.482
After 4 years	7.582
After 5 years	7.682
After 6 years	7.782

Source: J. Yanai Tabb, Yosef Ami, and Gil Shaal, *Labour Relations in Israel* (Tel Aviv: Dvir, 1961) (Hebrew) p. 423

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Table 3

Segregated Progression Lines in the Metal and Electronics Industry in Israel (1974)

SKILLED PRODUCTION WORKERS[1]

Hourly Wage	Steps within Progression Line
13.00 Lirot	Entry Level[2]
13.65	Step 1
14.29	Step 2
14.95	Step 3
15.70	Step 4
16.46	Step 5
17.32	Step 6

SIMPLE OR UNSKILLED PRODUCTION WORKERS[3]

Hourly Wage	Length of Service
10.38 Lirot	Entry level
11.45	After 6 months
12.27	After 12 months

Source: *The 1974 Collective Bargaining Agreement in the Metal and Electronics Industry* (Hebrew)
1. Traditionally male jobs.
2. Residency of between six months and two years is required within each step before skilled production workers can advance to a higher level.
3. Traditionally female jobs

their jobs would normally and properly constitute a single unit for purposes of seniority and advancement within the progression line. Thus, in many manufacturing plants, work units are composed by grouping together functionally related jobs in an orderly line of increasing skill. Advancement is then made step by step on the basis of an employee's length of service on a given job within the progression line.

However, this frequently was not the case in Israel. For example, in the electrical industry, women were deliberately placed in jobs entitled simple production work. These jobs provided them limited promotional opportunities, although there was little difference between the actual duties they performed and the duties performed by men in the bottom-level jobs of the progression line for skilled production workers.[21] (See Table 3.) Although the nature of the work was the same, men received substantially higher wages, and, by being placed in the skilled level progression line, had the exclusive opportunity to progress to higher-level jobs.

Under pressure from women trade union members, the Histadrut, the Israeli Federation of Labor, began to modify sexually

discriminatory pay scales in 1972. By 1979 the Histadrut successfully eliminated the last traces of sexually discriminatory pay provisions from collective bargaining agreements negotiated on a national level.[22] While the Histadrut is apparently committed to achieving equal employment opportunity, that same degree of commitment is not shared by its constituent bodies, particularly the local workers' committees that operate in the plant.

The Elite case reflects the disinclination of local worker committees to eliminate traditional practices that have benefited male employees. In 1972, following a prolonged strike in which equal pay for women was an issue, management and workers agreed that a complete job analysis would be implemented in all three Elite plants, beginning with the newest one in Nazareth. An independent team of experts from the Israeli Productivity Institute was called in to carry out the project. Their study revealed that the basic wage given to a worker was influenced by the sex of the person who filled the job. In every case where both men and women performed work of essentially equal value, women received a lower wage than men. Wage discrimination began at entry level in the factory. The discrimination was masked by having women and men do superficially different tasks. The greatest discrepancy in the earnings of men and women, however, resulted from the way in which jobs were allocated. Ninety-six percent of the female industrial workers and fifty-eight percent of the males were located in the five lowest levels of the pay scale. As a result, the experts recommended substantial pay increases for affected female workers in order to achieve wage parity. While the Nazareth plant acted on the recommendations of the study, resistance from the male-dominated workers' committees blocked its implementation in other Elite facilities.[23]

Sex-based wage disparities not only exist in private sector firms. The Israeli Civil Service is the largest single employer of women. It employs 7.6 percent of the total female labor force, excluding teachers and principals. That figure rises to approximately 21 percent when teachers and principals at all levels below university are included. Efroni, in comparing the earnings of a random sample of 1,700 men and women in the civil service, considered a large number of variables believed to influence a person's human capital. These include formal education, types of education, total years of work, professional expe-

rience, and additional training. She also examined the influence of ethnic origin, marital status, and number and age of children. She found that when all these variables were held constant, women's average earnings were only 78 percent that of men. The fact that women receive a lower rate of return for the same labor market characteristics suggests the existence of discrimination.[24]

The denial of equal promotion opportunities and the restriction of women in lower-level civil service jobs were factors underlying the inferior wages they received. An additional mechanism noted by Efroni was the unequal allocation of fringe benefits such as overtime payments, telephone, car, and educational allowances that in Israel may constitute up to 50 percent of one's actual earnings. Efroni found that women in the civil service received on the average 14 percent of the car allowance and 28 percent of the overtime payments received by men holding the same kind of job and rank.

Statutory Discrimination

In 1964 the Knesset passed the Employment of Women Law, which affords working women specific rights, yet simultaneously imposes certain limitations on their employment opportunities. In this regard, Israel is not unlike many Western European countries and the United States, which have had a long tradition of statutory legislation designed to protect the health and safety of working women. For example, the United Kingdom has a Factories Act which stipulates that female factory workers over eighteen may not work more than nine hours in one day or forty-eight in a week. In addition, women may not start working before 7 A.M. nor later than 8 P.M. Italy, Germany and France all have passed statutes limiting night work for women as well.[25]

The 1964 Employment of Women Law in Israel prohibits women from working between midnight and 6 A.M. in industry, service, and commercial jobs, and between midnight and 5 A.M. in agriculture.[26] The statute does set forth certain exceptions:

> A. (1) in State services which the Minister of Labour has specified in regulations after satisfying himself that night work in such services by a female worker is essential to the State and is not likely to be especially prejudicial to the health of a female·

(2) in places where sick persons or invalids are tended, in convalescent homes and in institutions for the care of old people or children;

(3) in newspaper work, except the printing of newspapers;

(4) in restaurants and hotels and in public entertainments within the meaning of the Public Entertainments Ordinance, 1935;

(5) in work directly connected with the care of animals;

(6) in managerial tasks, or tasks requiring an especial measure of personal trustworthiness, not involving manual work;

(7) where the conditions and circumstances of the work do not permit the employer any control of the time at which the work is done;

(8) in aviation and maritime services;

(9) in travel or tourist agencies at airports, seaports or international conferences.

B. (1) The employment of a female worker at night is permitted where the work was interrupted in the ordinary hours by reason of an accident or unforseen event and the interruption is not the category of recurrent interruptions.

While many exceptions have been built into the statute, women are still barred from working at night in several areas of employment. Night work for women is prohibited, for example, in the automobile, rubber, oil refinery, food-processing, and textiles industries. Women are also prohibited from working at night in the post office and in banks.

The statute provides exceptions to the prohibition on night work in certain circumstances. For example, the employment of women at night may be permitted by the Ministry of Labour where the following conditions are met:

(1) in a period in which a state of emergency exists in the state by virtue of a declaration under section 9 (a) of the Law and Administration Ordinance, 5708-1948, and at a time when, in his opinion, the requirements of essential supplies and services so demand;

(2) in production processes involving material likely to deteriorate rapidly, if night work is required to prevent certain deterioration of the material.

(3) The Minister of Labour may permit the employment of a female worker at night in a place where work is done in three shifts if in his opinion the non-issue of the permit might impair employment opportunities for women and the night work is not likely to be particularly harmful to the health of a female worker.

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(4) The Minister of Labour may temporarily permit the employment of a female worker at night in a place where the work is done in three shifts and a temporary unusual pressure of work prevails.

In the last decade, in both Europe and the United States, the belief is growing that bans on night work are outmoded and unfairly restrictive to women, and that they serve as vehicles of discrimination rather than instruments of protection. In the United States, Title VII has helped eliminate restrictions against women working at night.[27] In Italy, exceptions to prohibitions against night work have been allowed in collective bargaining agreements, while in England the ban on night work is restricted to factories.[28] This ferment against bans on night work has also occurred in Israel. Medical research has demonstrated that women who have been granted permission to work nights in industrial plant situations do not face a greater probability of illness or disability than women employed by day.[29] Some women may simply prefer working at night; others with family responsibilities may prefer night work so that they can care for their children during the day. Still others are attracted by the pay differential of up to 50 percent that comes with night work.[30]

As a rule, employers in Israel have not sought to employ women at night. There is so much bureaucracy involved in applying for a license, renewing it, submitting reports, and dealing with governmental inspections that employers are deterred from seeking one.[31] Additionally, under Ministry of Labour regulations, employers who want to employ women at night must bear the extra costs of providing them with an adequate place to rest, a warm beverage during recess, transportation when no regular transportation is available, and a twelve-hour-break between one work day and the next.[32] Some employers never apply for an exemption permitting women to work nights because they assume their request will not be given sympathetic consideration. The situation is exacerbated by the fact that women cannot, on their own initiative, obtain permission to work at night. They must ask the employer to seek a governmental license if their request for night work is to get appropriate consideration.Thus, the reluctance of employers to approach the Ministry of Labour for such licenses, coupled with the inability of women to take the initiative in obtaining gov-

ernmental permission to work at night, have kept women from night work, even where it might be permitted by statutory exception.

Pregnancy and Maternity Benefits

In affording preferred rights to females who become mothers while employed, Israel again follows the European tradition. As early as 1919 the International Labour Organization (ILO) adopted convention number three on the Employment of Women Before and After Childbirth. Under the code, females would not be permitted to work during the six weeks following childbirth. In addition, they would be entitled to pregnancy leave six weeks before childbirth, as long as they provided a medical certificate indicating that the baby was due within six weeks. Furthermore, the employee would be entitled to receive benefits while on leave.[33]

The European Social Charter of 1961 provides female employees even greater protection. Article 8 states that the contracting parties undertake

> (1) To provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before childbirth up to a total of at least 12 weeks;
> (2) To consider it unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;
> (3) To provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

The United States experience is quite different. Under the 1978 Pregnancy Discrimination Act, an employer is under no obligation to provide pregnancy and childbirth leave to female employees. An employer's obligation is to provide its workers with equal treatment. Thus, pregnancy is to be treated like any other disability with regard to sick pay, leave, and hospitalization benefits.[34] A female who is unable to work because of pregnancy must be treated in the same manner as a person disabled by any other physical condition or illness. An employer who allows employees on sick leave to receive a certain number of weeks' salary based on seniority must grant a similar salary continuation to the female employee disabled because of preg-

nancy.[35] Likewise, there is no legal obligation to provide a woman with a leave of absence for childbearing purposes after the pregnancy disability period is over and she is able to return to work. The employer would have to do so only if it provided an equivalent leave of absence to the male employee who, after recovering from an illness, sought additional time off although he was physically able to return to work.[36]

In Israel, pregnancy and child care benefits afforded female employees are incorporated into the Employment of Women Law and are among the most extensive found in Western democracies. Israeli employers are required to grant twelve weeks' paid maternity leave, of which "six weeks or less as the worker may wish shall be before the estimated date of delivery, and the remainder after delivery."[37] During this twelve-week period, the employer is legally barred from employing the expectant mother and she is legally barred from working for any other employer.

In addition, the Employment of Women Law states that a pregnant woman is entitled to utilize sick pay benefits to cover leaves:

> (1) During the months of her pregnancy if and to the extent that a physician certifies that her condition, as determined by her pregnancy, so requires.
> (2) From the expiration of the maternity leave until the expiration of six months from that date if and to the extent that the physician certifies that her condition, as resulting from her childbirth, so requires.

When her paid leave expires, the female employee is entitled to a nonpaid maternity leave of absence of up to one year, beginning the seventh week after childbirth. Following delivery, the female employee is entitled to be reemployed within four weeks after she requests reinstatement. Employers are specifically barred from terminating female workers because of pregnancy or childbirth. On the other hand, the female employee is entitled to one hour off from work, in one or two breaks, for the purpose of nursing her child. Finally, the woman who decides to resign following childbirth is entitled to severance payments.[38]

While the Israeli statute can be viewed as progressive legislation in that it requires an employer to grant a woman paid maternity leave, it also has questionable implications. The mandatory nature of the twelve-week leave has been criticized

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for its negative impact on employment opportunity for women. Lately, there has been a shift in expert medical opinion regarding the normal activity of women in the later stages of pregnancy and following childbirth.[39] Some women may not need or desire the full twelve weeks. For them the statute may become an unnecessary punitive measure interfering with their desire to work. For this reason, modifying the statute to make the leave dependent on the needs and desires of the working mother would be appropriate.

It can also be argued that the statute has a negative impact on equal employment opportunity for men. Equal employment opportunity mandates that men disabled because of illness be granted similar benefits to those the expectant mother receives. Male employees who have exhausted sick leave benefits and still are unable to return to work should be entitled to a period of nonpaid leave proportionate to their length of service, although no more than the twelve months granted female employees following delivery. While the additional time off from work is designed to allow the working woman to care for her child and thus fulfill a social responsibility in raising a family, an equally compelling societal concern is the job security of employees temporarily disabled from work.

Furthermore, granting a twelve-month leave of absence to only women for purposes of child care may unfairly penalize households where the man assumes that responsibility. Under the present law, if adequate child-care facilities are unavailable, the woman is compelled to take off from work, since she alone has the statutory right to child care leave. From an egalitarian standpoint, it would be best to give both parents the option to decide which one should care for the child. Swedish law, for example, allows either father or mother to stay home for child-care purposes.[40]

In Israel, the extension of twelve weeks' paid maternity leave, reduction in the nursing mother's work day from eight to seven hours, and severance payments to female employees who resign are all benefits imposing substantial costs on a firm. Thus, some employers may see an economic disincentive in hiring and promoting female employees. As a result, women, including those not intending to become mothers, may find themselves excluded from job opportunities. This problem could be mitigated by shifting the economic burden of these

benefits from the particular firm to the citizenry at large through some type of public social insurance scheme, as is done in Sweden.

Proposals for Change

The problem of sexually discriminatory employment practices has been the subject of much public debate in Israel. Pressure for change has led to the introduction of a bill by Knesset member Sara Doron prohibiting employer discrimination based on sex, marital status, or parenthood. The bill applies to hiring practices, promotion, training, and all other conditions of employment affecting workers and job applicants.[41] Additionally, advertisements for job openings or entry into training programs could not contain preferences based on sex.

To enforce the ban on sex discrimination, the proposed statute authorizes the minister of labor and welfare to establish an Office of Chief Inspector. This office would be responsible for investigating charges of employment discrimination. It would also be empowered to make findings on the merit of the charges and to resolve complaints of employment discrimination through conciliation efforts culminating in written settlement agreements. If conciliation fails, the complainant could seek relief by suing in regional labor courts that are empowered to impose monetary damages on employers found guilty of discrimination.

The Doron proposal is certainly a positive step towards eliminating sexually discriminatory employment practices. The bill, however, does contain serious limitations. One major weakness is the government's lack of independent enforcement authority over recalcitrant employers. There is already much historical precedent that settlement efforts frequently fail if the government's remedial authority is limited to efforts at voluntary compliance. Between 1964 and 1972, the Equal Employment Opportunity Commission's (EEOC) remedial authority under Title VII was similarly limited to informal methods of conciliation, persuasion, and mediation. During this period, the Commission executed settlement agreements in less than 25 percent of the cases in which the company and/or union had violated the statute.[42] Discriminatory employment practices in the United States and in Israel often involve long-held and

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deeply rooted policies that are supported by incumbent employees who benefit from discrimination against others. Thus, these employees may resist substantial changes in personnel policy. Similarly, unions and employers may resent the considerable political and economic costs these changes impose on them. As a result, the parties involved are likely to reject settlement efforts unless they face the risk of serious sanctions.

The Israeli bill does give charging parties direct access to the courts. To the extent that numerous lawsuits will be filed, a firm's willingness to settle will increase. Yet the threat of litigation initiated by charging parties alone may be more theoretical than real. Again, American experience is instructive. For example, the EEOC has reported that private lawsuits were initiated in less than 10 percent of all cases that did not result in settlements. Lack of funds, fear of employer retaliation, and ignorance of one's statutory rights contributed to the low rate of privately initiated lawsuits in civil rights cases.[43] In Israel, only one privately initiated lawsuit alleging a violation of the Equal Pay Act was filed within the last decade. In the face of widespread discrimination over pay, this fact demonstrates that abuses which the law is designed to correct may well continue if the burden of legal compliance is thrust solely on individuals.[44] Given the low probability of privately initiated lawsuits, it becomes critical for the government to have independent enforcement authority, as it represents the primary means by which discriminatory employment practices will be challenged and remedied. Additionally, this enforcement authority will enhance the Israeli government's conciliation efforts, since it puts greater pressure on respondents to settle in order to avoid the risks of governmental prosecution in court.

Another deficiency in the Doron Bill is that exceptions to the prohibitions on sex discrimination are so general that they frustrate efforts to achieve equal employment opportunity. For example, sex discrimination does not include: (1) "special protection afforded women under existing laws, or in collective bargaining agreements which are designed to protect a woman's health or safety;" and (2) "any benefits afforded women by law or contract associated with the woman's pregnancy, motherhood or separation from work." The effect of these provisions is to maintain the unjustified restrictions on night work for women. Furthermore, the restrictions imposed on pregnant women in the work force also remain.

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Perhaps far more serious is the possible use of the collective bargaining exemption to immunize sexually discriminatory employment conditions. Assume, for example, that in a particular plant heavy lifting of thirty pounds or more is required in a maintenance classification, and that studies indicate most women in the plant are unable to lift such weights. To protect female workers, the local workers' committee and management negotiate an agreement whereby the maintenance position is classified as male-only. Since this restriction is a contractual one and designed to protect a woman's health, it would seem to be clothed with immunity under the Doron proposal (although for some women able and willing to lift the requisite weight it remains a punitive barrier to their employment opportunities).

Another critical weakness in the law is its failure to specify that labor unions and workers' committees are covered by its prohibitions. As indicated earlier, unions and workers' committees have in the past been responsible for flagrant acts of employment discrimination. To suggest that only employers and their agents are responsible, and therefore should be subject to the act's coverage, represents a serious oversimplification of reality. Workers' committees have the responsibility to represent employees by handling grievances at the plant level. Local labor councils, normally established along geographical lines usually coextensive with a town or city urban area, are responsible for negotiating plant agreements, while the national unions that represent workers in the particular occupation or industrial groups negotiate company or industry-wide agreements. It is critical for these structural units of the Histadrut to be covered under any civil rights statute to assure female employees adequate and fair representation within the plant and to prevent negotiation of sexually discriminatory contractual provisions.

Finally, the remedies available to the labor courts are inadequate. A singular omission is the court's inability to go beyond an award of monetary damages to the discriminatee. This deficiency is fatal for two reasons: (1) It fails to make whole the discriminatee for her losses; and (2) it does not correct the discriminatory practice underlying the complaint. For example, take the situation where female employees have been turned down for employment because of the company and/or union's nepotic standard of always giving preferences to the sons and nephews of current employees. In this instance, a female

worker who is a victim of discrimination can be made whole only if she were provided with a job opportunity. In general, the power of the courts to order the instatement, reinstatement, or promotion of a female employee or job applicant is a critically necessary enforcement mechanism. The reason is that the woman's presence on the job forcefully communicates to other female workers that their statutory rights of equal employment opportunity will be protected. As a result, they have an added incentive to aggressively pursue their rights. Furthermore, when we recognize that the occupational segregation of women in the labor force is the major barrier to equal employment opportunity confronting Israeli women, it becomes obvious that a court order providing for a woman's reinstatement is a far more effective remedy towards achieving the goal of equal employment than would be an award of damages.

Additionally, the courts should possess the full authority to order whatever affirmative action is necessary to correct the discriminatory practices that give rise to the initial complaint. In the above hypothetical case, the hiring of a single female worker denied employment does not prevent the employer and/or union from rejecting other female applicants by applying eligibility standards that are openly discriminating. In effect, a single charging party may represent a class of aggrieved workers that has not filed charges. Consequently, it is incumbent on the court not only to make whole charging parties but to design remedies whereby all similarly situated individuals will not be discriminated against in the future. This can be achieved only if the courts have full authority to require unions and employers to terminate discriminatory policies.

Conclusion

Sexually discriminatory employment practices permeate the Israeli economic fabric. As a result, women have more limited career choices, fewer promotional opportunities, and inferior wages and fringe benefits. These practices have been fostered unilaterally by employers, bilaterally with unions in collective bargaining agreements, and by the government itself in its role as employer and enforcer of protective labor statutes.

Few would claim that these practices are part of a deliberate or malicious effort to subject women to an inferior economic

status in Israeli society. Rather, Israel, like the United States and other Western European countries, has been influenced by a cultural ethos that promoted the image of women as a physically weaker sex primarily concerned with the socio-biological function of motherhood and child care. Given this view, it is not surprising that by law and custom, women who sought employment would be limited to career paths that would appear to be extensions of traditional female roles in the home, require traditionally female attributes, and be free of risks to their physical safety or health.

More and more, Israeli women have been challenging notions that biological or psychological considerations justfy the discriminatory treatment they sustain in the job market. The ferment for equality in job opportunities has led to the introduction of the Doron Bill, which would make it illegal for employers, private or public, to discriminate on the basis of sex. In this effort, Israel is following the pattern of the United States and such European countries as England, France, and Italy, which have enacted new statutes or amended old ones to prohibit sexual discrimination in employment.[45]

At the same time, Israeli legislators should consider adopting an enforcement model that will not only identify problems of discrimination but offer discriminatees viable opportunities for relief. A weak statute carries the risk of creating only the illusion, and not the reality, that women's rights will be protected.

NOTES

1. See, e.g., Lesley Hazleton, *Israeli Women* (New York: Simon and Schuster, 1977); Shulamit Aloni, *Women as Human Beings* (Jerusalem: Keter, 1976) (Hebrew). Earlier scholarly studies noting the occupational segregation of women include: Dorit D. Padan-Eisenstad, "Are Israeli Women Really Equal? Trends and Patterns of Israeli Women's Labor Force Participation: A Comparative Analysis," 35 *J. Marriage and Fam.* 538 (1973); and Judith B. Agassi, "The Unequal Occupational Distribution of Women in Israel," 2 *J. Women in Culture and Soc'y* 888 (1977). For an in-depth examination of the status of women in Israel, see Office of the Prime Minister, *Report of the Commission on the Status of Women in Israel* (Jerusalem, 1978) (Hebrew).

2. The data are derived from the Israel Central Bureau of Statistics, *Statistical Yearbook* (1975) and *Labor Force Survey* (1976).

3. This section is based in part on analysis of data in Dafna A. Izraeli, "Sex Structure of Occupations," 6 *Soc. Work and Occupations* 404 (1979).

4. *Histadrut Refu'i Medical Guide 1973–1974* (Tel Aviv, 1974) (Hebrew).

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5. For example, Ta'as, Israel's military industries will only employ women in the manufacture of detonators because "only women have the necessary delicacy of touch and patience for the job." Vol. 1, *Labor News from Israel* (Washington, D.C., January 1977), p. 1.

6. In the United States, approximately 30% of the unemployed job seekers obtain assistance from private and public employment agencies, 14% seek help from friends and relatives, and 30% place or respond to employment ads. See U.S. Department of Labor and U.S. Department of Health, Education and Welfare, *Employment and Training Report of the President* (Washington, D.C.: G.P.O., 1979), p. 276.

7. *Maariv*, Nov. 7, 1980, pp. 50–51; *Maariv*, Jan. 9, 1981, pp. 47–49.

8. In the Hebrew language, noun forms for persons in an occupation can be masculine or feminine depending on whether the person is male or female. Furthermore, the male form theoretically includes women as well. However, an employer's desire to recruit only males by using the male form of an occupation in advertising job vacancies is evident when the same employer specifically requests females only to fill traditionally female occupations.

9. See note 7, *supra*. The Ministry of Defense advertisement employed the term *gever*, which in the Hebrew language is defined as males.

10. *Jerusalem Post*, Jan. 8, 1981, p. 3.

11. The Employment Service Law of 1959, § 32(a), *Labour Laws* (Jerusalem: Israel Ministry of Labor and Social Affairs, 1978), p. 16.

12. "Forecast of Skilled Training Courses—Tel Aviv Area," mimeographed (Employment Exchange, Ministry of Work and Welfare, July 1979) (Hebrew).

13. Interview with Zohar Karti, chief, Division for the Training and Employment of Women, Ministry of Labor and Welfare (Tel Aviv, January 1981).

14. 42 U.S.C. § 2000e-2(e) (1972).

15. *Weeks v. Southern Bell Telephone and Telegraph Co.*, 408 F.2d 228 (5th Cir. 1969).

16. Interview with Egged officials (Tel Aviv, January 1981).

17. *Edna Chazin v. El-Al and Flight Cabin Attendants' Workers Committee, Decisions of the Labor Courts*, no. 3-25, vol. 4, pp. 365–81 (1973) (Hebrew).

18. Israel Information Center, *Women in Israel* (1975), p. 31.

19. Male and Female Workers' Law, 1964, § 1, note 11, *supra*, p. 76.

20. *Collective Bargaining Agreement in the Bakery Industry No. 7028-70 Between the Israel Federation of Labor (Histadrut) and National Union of Bakery Workers and Association of Bakeries* (1970) (Hebrew), p. 85. Here the discrimination was partially masked by the elimination of separate female and male designations in the agreement and by the use of separate wage tables that in fact were segregated by sex. Interview with Aliza Tamir, member, Executive Council, Israel Federation of Labor (Histadrut) (Tel Aviv, January 1981).

21. *Collective Bargaining in the Electrical and Electronic Sector Between the Israel Employers' Association and Israeli Federation of Labor and National Union of Metal, Electrical and Electronics Workers* (1974) (Hebrew), p. 10.

22. Interview with Zohar Karti, note 13, *supra*.

23. The problem of sexually disparate wages persisted in Elite until 1978, when the National Labour Court found Elite and the Workers' Committee guilty of violating the 1974 Equal Pay Act. See *Elite Corp., Decisions of the Labor Courts*, no. 3-71, vol. 9, pp. 255–75 (1978) (Hebrew).

24. Linda Efroni, *Promotional Opportunities and Wages in the Gov-*

ernmental Sector: Are Women Discriminated Against? (Hebrew University of Jerusalem: Institute of Work and Welfare Research, 1980) (Hebrew), p. 41.

25. Folke Schmidt, ed., *Discrimination in Employment* (Uppsala: Almguist and Wiksell International, 1978), pp. 127–28.

26. Employment of Women Law, 1964, §§ 2(a)-2(b), note 11, *supra*, p. 67.

27. See, e.g., *Kuber* v. *Westinghouse Electronic Co.*, 480 F.2d 240 (3rd Cir. 1973); *Williams* v. *General Foods Corp.*, 492 F.2d (7th Cir. 1974).

28. In December 1977 the Italian government reduced the prohibition of night work for women to cover only the period from midnight to 6:00 A.M., and allowed this prohibition to be reduced further by collective bargaining. T. I. Treu, "Italy," in *International Encyclopedia for Labor Law and Industrial Relations*, ed. Roger Blampain (Deventer, the Netherlands: Klower, 1978), p. 41.

29. K. Dror and P. Hoffman, *Influence of Night Shift Work on the Health of Women Employed in Industry* (Tel Aviv University: Center for Industrial Hygiene, 1977) (Hebrew), p. 40.

30. Rivkah Bar Josef and Linda Efroni, *Employment of Women in Night Shift Industry* (Hebrew University of Jerusalem: Institute of Work and Welfare Research, 1977) (Hebrew), pp. 7-10.

31. Ruth Ben Israel, "Equal Employment Opportunities for Women," *Tel Aviv University Studies in Law* (1978), p. 163.

32. Menchem Goldberg and Joseph Hausmann, *Labor Law* (Tel Aviv: Sadan, 1978) (Hebrew), p. 302.

33. Schmidt, note 25, *supra*, pp. 168–69.

34. Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat. 2076 (1978).

35. See in general EEOC's "Questions and Answers on Pregnancy Discrimination," an appendix to 29 C.F.R. § 1604 (1979), and specifically EEOC responses to questions 2 and 18.

36. See, e.g., *Danielson* v. *Bd. of Higher Educ.*, 358 F. Supp. 22 (S.D.N.Y. 1972); *Martin V. Dann*, 10 FEP 499 (D.D.C. 1975). For further discussion of pregnant employees' rights in the United States, see Howard Edelman, "Pregnant Employees' Rights to Sick Leave and Child Care Leave: When Can They Choose Both?" 8 *EEO Today* 251 (Autumn 1981).

37. Employment of Women Law, 1964, § 5 (b), note 11, *supra*, p. 69.

38. Severance Pay Law, 1963, §§ 1(a), 7, note 11, *supra*, pp. 174, 176.

39. Ralph C. Benson, *Handbook of Obstetrics and Gynecology* (Los Altos, California: Lange Medical Publications, 1971), pp. 109, 209. See also Wm. J. Curran, "Equal Protection of the Law: Pregnant School Teachers," 285 *New England J. Med.* 33 (1971).

40. Schmidt, note 25, *supra*, pp. 174–75.

41. *Proposed Law on Equal Employment Opportunity*, §§ 1, 2. This proposal is commonly known as the Doron Bill after Sarah Doron, a member of the Knesset from the Liberal Party that is part of the coalition supporting the Begin government. The Doron Bill was first presented to the Knesset on January 9, 1978. The Doron Bill examined here represents a December 1980 version that incorporates some modifications suggested by representatives of the Ministry of Labour.

42. Benjamin W. Wolkinson, *Blacks, Unions, and the EEOC* (Lexington, Mass: D.C. Heath & Co., 1975), p. 99.

43. Ibid., pp. 129–32.

44. This one instance involved successful litigation against the Elite Corporation, in 1978; see note 23, *supra*.

45. Schmidt, note 25, *supra*, pp. 158, 180–81.