

**HO CHI MINH NATIONAL ACADEMY OF POLITCS**

**PHAM VAN ANH**

**IMPROVING THE LAW ON EMPLOYMENT OF  
FEMALE WORKERS IN VIETNAM  
AT PRESENT**

**SUMMARY OF THE PHD THESIS**

**SPECIALISM: THEORY AND HISTORY OF STATE AND LAW**

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## FORWARD

### 1. The urgency of the topic

Women, women's liberation, and ensuring women's employment, equality, and development opportunities are always current issues with profound theoretical and practical significance. Women are an important force in the labor market, contributing to the socio-economic development and progress of the world in general and Vietnam in particular. In countries around the world and in Vietnam, issues related to women, women's liberation, and comprehensive development of women have always received special attention, including promoting and ensuring basic human rights for women, ensuring gender equality between women and men in all fields, including politics, economics, society, culture, education, labor, employment, ... Accordingly, after many centuries, women's rights have been recognized, respected, protected, and guaranteed in many countries, including Vietnam.

In the context of strong digital transformation taking place in Vietnam, the employment of female workers needs more attention from the policies and regimes of the State. However, the laws on female employment still have many limitations and have not really kept up with the changes of the digital age. The current regulations related to female employment are still scattered in many legal documents with uneven enforcement, making implementation and enforcement difficult. This reduces the effectiveness of protecting the rights and interests of female workers, especially in the context of increasingly complex labor disputes due to the impact of digital transformation and changes in the labor model.

Based on the urgent theoretical and practical needs mentioned above, the researcher decided to choose the topic "*Improving the laws on female employment in Vietnam today*" as the topic of the doctoral thesis. The thesis contributes to improving the legal framework and policies on female employment in Vietnam in the context of strong digital transformation in the labor sector taking place today.

### 2. Objectives and research tasks of the thesis

#### 2.1. Research objectives

The research objective of the thesis is to clarify the theoretical issues of improving the laws on female employment, evaluate the current situation of improving the laws on female employment in Vietnam, based on which to present viewpoints and propose solutions to improve the laws on female employment in Vietnam in the near future.

#### 2.2. Research tasks

The thesis sets out the following research tasks:

Firstly, evaluate the overall situation of related research on the topic conducted in Vietnam and abroad.

Secondly, analyze and clarify the theoretical issues of improving the laws on female employment in Vietnam based on the analytical frameworks applied in research on female employment; analyze and clarify the position, role, and conditions for ensuring the improvement of the laws on female employment in Vietnam.

Thirdly, the thesis aims to evaluate the influencing factors and current legal situation regarding female employment in Vietnam based on the synthesis of materials and sociological surveys.

Fourthly, It also aims to identify the limitations and causes of these legal restrictions. Furthermore, the thesis presents different perspectives and proposes solutions to improve the legal framework for female employment in Vietnam in the future.

### **3. Object and scope of research**

#### **3.1. Object of research**

The object of research of the thesis is the laws on employment of female workers in Vietnam, specifically the legal regulations governing the employment relationship of female workers in the formal sector in Vietnam, including aspects such as recruitment, utilization, termination of labor contracts, handling violations, and resolution of disputes related to female workers. The next object of research for the thesis is international legal documents of the ILO and statistical reports from various agencies and departments.

The thesis focuses on analyzing and evaluating the current situation of regulations and statistical reports from various agencies and departments, while proposing solutions to improve the laws to ensure stable and sustainable employment for female workers, as well as eliminate gender inequalities that female workers face in the labor market.

#### **3.2. Scope of research**

- Scope of research content: The thesis focuses on researching the improvement of laws on employment of female workers in Vietnam in the current formal sector. The formal sector is the sector where entities are required to register their business, register their activities, fulfill tax declaration obligations, and provide social welfare benefits for workers. Female workers working in the formal sector will be provided with labor contracts by employers.

- Scope of research space: The doctoral thesis researches the completion of the legal framework for female labor employment in Vietnam.

- Scope of research time: In accordance with the field of State Theory and Law, the doctoral thesis researches the history of construction and promulgation of laws on female labor employment in Vietnam from 1945 to the present.

### **4. Theoretical basis and research methods**

#### **4.1. Theoretical basis**

The thesis is researched based on the dialectical materialism and historical materialism of Marxism-Leninism and the thoughts of Ho Chi Minh on the state and law; the viewpoints, orientations, and policies of the Party and the State in the cause of innovation and the construction of a socialist rule-of-law state.

#### **4.2. Research methods**

To fulfill the research tasks of the thesis, the researcher focuses on using the following specific research methods:

- Documentary Research method:
- Legal analysis method
- Synthesis method

- Comparative legal method
- Evidence-based research method
- Scientific forecasting method
- Survey method through questionnaires

In addition to traditional research methods, the thesis utilizes an interdisciplinary and cross-disciplinary approach to law (between legal disciplines and between international law and Vietnamese law), while also employing a human rights-based approach in analyzing and interpreting issues related to women's employment in Vietnam today.

## **5. New scientific contributions of the thesis**

### **5.1. Theoretical contributions**

- The thesis clearly defines fundamental concepts related to the legal aspects of women's employment, such as employment, labor rights, gender equality in labor, and special protection for women workers.

- The thesis proposes specific criteria for evaluating the level of completeness of the legal framework on women's employment.

- The thesis conducts in-depth analysis of current legal regulations related to women's employment, identifying limitations and shortcomings in protecting their rights and interests.

- In the context of Vietnam's deep integration into the global economy and digital transformation, the thesis evaluates the impact of these factors on the legal framework for women's employment.

- The thesis not only contributes academically but also provides a solid theoretical basis for policymakers in constructing and improving legal documents and policies related to women's employment.

### **5.2. Practical contributions**

At a certain level, the thesis provides accurate and reliable information about the situation, legal regulations, and policies related to female employment. It helps provide scientific evidence and proof for policy decisions, while proposing solutions and recommendations to improve employment conditions and protect the rights of female workers in society. For policymakers and managers, the thesis is an important source of information to better understand the situation and issues in this field, thereby making appropriate decisions and guidance. Additionally, the thesis also has value in raising awareness and knowledge about the rights and issues related to female labor. It can support employers and women who are working or will work in Vietnam in understanding their rights and responsibilities, learning about the policies and legal regulations applicable to them, and thus participating in labor relations more confidently and effectively.

## **6. Scientific and practical significance of the thesis**

### **6.1. Scientific significance**

The thesis has profound scientific significance, contributing to providing scientific evidence for the construction and improvement of laws on female employment, as well as mechanisms to ensure and promote employment in general and for female workers in particular in the context of the current digital transformation and the fourth industrial revolution.

## **6.2. Practical significance**

The thesis aims to clarify the current situation of legal regulations on female employment, analyze the results of implementation, limitations, and causes of current issues. By applying modern research methods such as qualitative analysis, online surveys, and comparative studies, the thesis proposes practical and feasible solutions. These solutions not only meet practical requirements but also align with the trends of technological development and digital transformation in labor management. The objective is to provide a scientific basis for planning and implementing policies and laws to enhance the effectiveness and efficiency of female employment and overall labor employment at both central and local levels in the modern context of Vietnam.

## **7. Structure of the thesis**

In addition to the introduction, conclusion, appendix, and reference list, the thesis is structured into 4 chapters:

**Chapter 1:** Overview of relevant research on the thesis topic.

**Chapter 2:** Theoretical foundation for improving the legal framework on female employment

**Chapter 3:** Development process and current status of legal regulations on female employment in Vietnam

**Chapter 4:** Perspectives and solutions for improving the legal framework on female employment in Vietnam

## **Chapter 1 OVERVIEW OF RELEVANT RESEARCH ON THE THESIS TOPIC**

### **1.1. RESEARCH WORKS RELATED TO THE THESIS TOPIC**

#### **1.1.1. Research work on the theoretical aspects of improving the legal framework on female employment**

- The reference book "*Rights at Work: An assessment of the Declaration's technical cooperation in select countries*" by Colin Fenwich and Thomas Kring.

- The reference book "*Gender and Law: Theory, Doctrine, Commentary*" by Katharine T. Bartlett, Deborah L. Rhode, Joanna L. Grossman, Deborah L. Brake, Frank Rudy Cooper.

The doctoral thesis "*The legal framework on employment security in Vietnam - Law and practice*" by Doan Xuan Truong.

- The master's thesis "*Female labor and gender equality issues in the 2019 Labor Code*" by Phan Thi Phuong.

#### **1.1.2. Research works related to the current legal situation of female employment in Vietnam**

- The reference book "*Commentary on the new points of the 2019 Labor Code*" (2019) co-edited by Assoc. Prof. Dr. Tran Thi Thuy Lam and Dr. Do Thi Dung.

- The master's thesis in Law "*Rights of female workers according to Vietnamese labor law in comparison with Japanese law*" (2015).

### **1.1.3. Research works related to perspectives and solutions to ensure the improvement of the legal framework on female employment in Vietnam.**

- Thesis "*The Law on Occupational Support for Minority Women, through the Practice in Dak Lak Province*" by author Bui Thi Phuong Thao (2022).

- Master's thesis in Law: *Rights of Female Workers in Industrial Zones in Vietnam - Analysis from the Practice of Some Industrial Zones in Hanoi* (2015).

## **1.2. EVALUATION OF RELATED RESEARCH WORKS TO THE THESIS TOPIC AND ISSUES FOR FURTHER RESEARCH IN THE THESIS**

### **1.2.1. General evaluation of research works related to the thesis topic**

Domestic and international research works have fundamentally presented important points related to female labor employment, specifically:

*Firstly*, in terms of theoretical aspects

*Secondly*, in terms of practical aspects, the current legal situation in Vietnam regarding female labor employment

*Thirdly*, in terms of perspectives and solutions

However, the research works that the researcher has referred to still have some limitations, as follows:

*Firstly*, there are not many research works focusing on female labor employment.

*Secondly*, there are not many research works on female labor employment in the 2019 Labor Code.

*However*, many studies focus on specific aspects of the law without an overall connection, resulting in a lack of a comprehensive picture of the female labor law system, making it difficult to propose interdisciplinary and coherent legal reforms.

*Fourthly*, some studies have not fully compared and contrasted the relevant labor laws, leading to the omission of shortcomings or contradictions between current regulations.

*Fifthly*, the studies have not directly pointed out the limitations in applying international standards to Vietnamese law.

*Sixthly*, the studies lack emphasis on the enforcement aspect of the law.

### **1.3.2. The continuing research issues**

The thesis will continue to research the following issues regarding the theory, current situation, and recommendations for improving the labor laws for female workers in Vietnam:

*First*, in terms of theoretical aspects:

*Second*, in terms of practical aspects.

*Third*, on the subject of belief systems and solutions:

## **1.3. RESEARCH HYPOTHESIS, RESEARCH QUESTIONS, AND ANALYTICAL FRAMEWORK**

### **1.3.1. Research hypothesis**

The thesis is built and researched based on the following research hypotheses:

*Firstly*, Vietnam has established a principled legal framework regarding the employment of women, which is integrated into the regulations of the labor and employment legal system.

*Secondly*, some countries around the world have developed their own specific and detailed legal frameworks regarding the employment of women.

### **1.3.2. Research questions**

To clarify the research topic of the thesis, the researcher poses and addresses the following research questions:

*Firstly*, what is the position and role of the law in ensuring women's employment? What are the standards and conditions for the law to fulfill its role in ensuring and protecting women's employment?

*Secondly*, what are the positive aspects and limitations of Vietnam's legal regulations regarding women's employment?

*Thirdly*, what experiences can Vietnam learn from and refer to in the development, issuance, and implementation of policies and laws regarding women's employment from other countries?

*Fourthly*, what are the solutions to improve the legal regulations on female employment? What measures can be taken to enhance the implementation and application of the laws on female employment?

### **1.3.3. Analytical framework**

In the thesis, the researcher uses three analytical frameworks, including (i) gender equality in labor relations, (ii) labor rights, and (iii) protection of labor employment.

## **CHAPTER 1 SUMMARY**

In chapter 1 of the thesis, the researcher conducted research on the following issues:

*Firstly*, provide an overview of the research situation in Vietnam and abroad related to improving the laws on female employment and make comments and evaluations on the referenced research topics. Accordingly, there are not many research works focusing on the issue of female employment. Especially, there are not many research works on female employment in the post-pandemic period of Covid-19 and in the context of the fourth industrial revolution and the digital age.

*Secondly*, present the research hypothesis, research questions, and analytical framework. In this section, the researcher presents the research hypothesis based on assumptions and theories. The research questions are posed to understand and address specific issues related to women's employment. The analytical framework is provided to establish a framework for data collection and analysis in the research. These sections help shape and define the scope of the study, while also providing relevant theoretical foundations and knowledge for further research.



## Chapter 2

### THEORETICAL BASIS OF LABOR EMPLOYMENT LEGISLATION FOR FEMALE WORKERS

#### 2.1. CONCEPT, CHARACTERISTICS, AND ROLE OF LABOR EMPLOYMENT LEGISLATION FOR FEMALE WORKERS

##### 2.1.1. Concept of labor employment legislation for female workers

###### *\* Concept of female labor*

According to the perspective of Marx, the laborer is someone who legally uses their own or others' means of production to produce products with use value [8, p.41].

Currently, the labor laws of Vietnam, including the Labor Code 2019 (abbreviated as LC 2019), do not specifically define the concept of female labor. In Article 3, Clause 1 of the LC, it recognizes the laborer as "*a person who works for the employer under an agreement, receives wages, and is subject to the management, direction, and supervision of the employer.*" Furthermore, Chapter X of the Labor Code contains specific provisions for female labor and ensures gender equality, such as maternity protection, maternity leave, and allowances for caring for sick or injured children, and maternity leave...

Other legal perspectives on female labor can be mentioned, such as considering female labor as workers who have distinct psychological and physical characteristics compared to male laborers, and have unique gender-related traits when participating in labor relations.

Therefore, although the definition of female labor is mentioned in various research works, the understanding of female labor is relatively consistent and in line with the regulations of domestic laws as well as international conventions on the protection of women's rights. Female labor includes women who participate in labor activities, whether through labor contracts or other forms of labor. They perform tasks in various industries and fields with the purpose of earning income or contributing to socio-economic development. Female labor is not limited to formal sectors but also includes women working in informal or self-employed sectors.

###### ***The concept of women's employment***

The concept of employment can be approached from various aspects such as the socio-economic aspect and the legal aspect. From a socio-economic perspective, employment is a form of labor activity that creates benefits, income, and is closely linked to the productive activities of society. Employment is also defined as a condition in which there is fair compensation in terms of money or goods, active participation, individual nature, and direct production. Employment is carried out through human labor. Human labor in a market economy is considered a commodity in which the value of labor is priced through wages.

###### ***The concept of labor law regarding female employment***

Labor law regarding employment is a system of regulations formed to regulate social relations in employment, including social relations in the field of job creation and job settlement for workers. Based on the definition of labor law regarding employment, it can be seen that labor law regarding female employment consists of

regulations formed to regulate social relations in female employment, including social relations in job establishment, job implementation, and job termination. In the scope of this thesis research conducted in the formal sector, labor law regarding female employment consists of regulations formed to regulate social relations in female employment in the formal sector, job establishment, implementation, and termination are carried out through labor contracts signed between workers and employers.

***The concept of labor law regarding female employment in Vietnam.***

Based on the concept of labor law for female workers, the labor law for female workers in Vietnam can be understood as a system of regulations issued by the State to regulate the employment relationship of female workers, including social relations regarding job establishment, job implementation, and job termination. The purpose of establishing regulations on female employment in Vietnam is to protect the rights, safety, and ensure suitable working conditions for female workers, while promoting gender equality in the workplace. In Vietnam, these regulations are specified in legal documents such as the Labor Code, Gender Equality Law, and related Decrees, Circulars, international conventions that Vietnam is a member of, judgments, and internal documents (labor agreements, labor regulations).

**2.1.2. Characteristics of labor law for female workers**

From the concept of labor law for female workers, some basic characteristics of labor law for female workers can be derived as follows:

*Firstly*, regarding the process of forming legal norms on female employment: The formation of legal norms on female employment is closely linked to the process of gaining independence, building and developing the country.

*Secondly*, the main source of labor law for female employment is legal regulations.

*Thirdly*, in terms of scope of regulation: the law on female employment has a wide range of regulations related to many different areas, including gender equality and protection of women's rights.

**2.1.3. The role of the law on female employment**

*Firstly*, the law on female employment contributes to institutionalizing the Party's viewpoint and leadership direction on ensuring fairness in job creation and employment for women.

*Secondly*, the law on female employment contributes to ensuring the implementation of Vietnam's international commitments on protecting women's rights in general and women's employment rights in particular.

*Thirdly*, the law on female employment provides a legal basis for Vietnam to seize opportunities and cope with the challenges of international integration in terms of employment and job creation for women.

*Fourthly*, the law on female employment establishes a legal framework for ensuring and exercising the rights of female workers.

**2.2. CONCEPT, EVALUATION CRITERIA, CONTENT, AND CONDITIONS FOR IMPROVING THE LAW ON FEMALE EMPLOYMENT**

**2.2.1. Concept of improving the law on female employment**

Theo Vietnamese Dictionary, "hoan thien" is both an adjective and a verb. As an adjective, it means "*good and complete to the extent that nothing else needs to be done*", and as a verb, it means "*to make perfect*".

Perfecting the law is an essential need in the face of rapid and constant changes in economic, political, and social life.

Perfecting the law on female employment includes a series of activities by competent authorities and individuals following specific procedures.

### **2.2.2. Criteria for perfecting the law on female employment**

In Resolution No. 48-NQ/TW dated May 24, 2005, of the Politburo on the construction and perfection of the legal system by 2010, with a vision towards 2020, the goal is defined as "*Building and perfecting a comprehensive, unified, feasible, transparent, and focused legal system, with the core being the perfection of the socialist-oriented market economy institution, building the socialist rule of law state of the Vietnamese people, by the people and for the people.*"

The criteria for perfecting the law are divided into two groups:

#### **\* Criteria regarding form**

*The comprehensiveness of the law on female employment*

*Uniformity and consistency*

*Transparency*

*Effectiveness and feasibility*

#### **\* Criteria regarding content**

*The content of the law on employment for female workers must be in line with the views, guidelines, and policies of the Party.*

*The content of the law on employment for female workers must be in line with the objective political, economic, and social conditions.*

*The content of the law on employment for female workers must be in line with the principles and requirements for building the socialist rule of law state in Vietnam.* The content of the law on employment for female workers must be in line with the principles and standards of the ILO and other relevant international conventions of which Vietnam is a member.

### **2.2.3. The content of the law on employment for female workers in Vietnam needs to be further improved**

*First, complete the legal formality regarding female employment in Vietnam.*

*Second, improve the legal content regarding female employment in Vietnam.*

*First, improve the legal regulations on the right to work for female workers.* Second, improve the legal regulations on the recruitment of female workers.

*Third, improve the legal regulations on resolving employment and ensuring employment for female workers.*

*Fourth, improve the regulations on handling violations and resolving disputes regarding female employment.*

### **2.2.4. Conditions for ensuring the completion of the legal framework on female employment in Vietnam.**

The theory of perfecting the legal framework on female employment, no matter how scientific and comprehensive it is, cannot be realized in life without being verified in practice. To realize that theory, it is necessary to apply mental and

intellectual forces and use other tools and means to support implementation. Specifically, to perfect the legal framework on female employment, the following conditions need to be ensured:

#### **2.2.4.1. Conditions for ensuring political stability**

Politics and law have a close relationship, as the political system of a country will shape and guide the legal system of that country.

#### **2.2.4.2. Conditions for ensuring legal stability**

Based on the provisions of the Constitution, legal documents such as the 2019 Labor Code, the 2013 Employment Law, the 2014 Vocational Education Law, the 2020 Law on Vietnamese Workers Working Abroad under Contracts, and the 2006 Gender Equality Law have specified regulations on female labor employment.

#### **2.2.4.3. Conditions for ensuring human resources**

This is a central condition that determines the quality and quantity to perfect the laws on female labor employment. Decree No. 55/2011/ND-CP stipulates the functions, tasks, powers, and organizational structure of the legal framework organization to enhance the quality and human resources of the legal system.

#### **2.2.4.4. Conditions for ensuring infrastructure - technical facilities and financial resources**

Financial conditions: This is an important condition that affects various aspects of perfecting the laws on female labor employment. The work of perfecting the laws on female labor employment includes activities such as drafting detailed draft documents, drafting documents, drafting reports to serve the work of perfecting the laws, synthesizing, explaining, receiving opinions, summarizing the enforcement of laws...

### **2.3. LAWS ON FEMALE LABOR EMPLOYMENT IN SOME COUNTRIES AROUND THE WORLD AND THEIR VALUES FOR REFERENCE IN VIETNAM**

Referring to the labor laws on female employment from countries around the world not only helps Vietnam learn from the best successful experiences and practices but also helps build a legal system that is suitable for Vietnam's economic, social, and cultural conditions. This also contributes to ensuring that the labor laws on female employment in Vietnam not only meet domestic requirements but also comply with international standards.

#### **2.3.1. Labor laws on female employment in some countries around the world**

##### **2.3.1.1. Laws of Sweden**

The labor laws of Sweden began to pay attention to female labor from 1800 and regulations related to the protection of female workers were officially issued from the 1900s.

##### **2.3.1.2. Laws of the Philippines**

In the Philippines, ensuring equal rights for female workers is guaranteed by the Constitution, which states that "*the State shall protect women by ensuring that they have safe working conditions, health care, including the right to maternity leave, as well as physical and social opportunities to enhance their welfare.*" Additionally, the Constitution recognizes "*the role of women in nation-building and*

*ensures basic equality before the law between women and men."*

### **2.3.1.3. Laws of the People's Republic of China**

*Regulations on the employment of female workers:* The labor laws of China stipulate that female workers have equal rights with male workers and cannot be denied employment, except when there are state regulations regarding industries or positions that are not suitable for female workers.

### **2.3.1.5. Laws of Japan**

The laws regarding female employment in Japan focus on the following issues:

*The working rights of female workers:* The Labor Standards Act of Japan, No. 82 dated June 21, 2006, stipulates that employers must not discriminate in terms of wages, working hours, or other working conditions based on nationality, religion, gender, or social status of the workers (Article 3 of the Labor Standards Act of Japan).

### **2.3.2. Some reference values for Vietnam**

Through studying the labor laws of some countries around the world, we can draw some valuable lessons for Vietnam as follows:

Firstly, Vietnam's labor laws regarding female employment can refer to the progressive values in the regulations of Swedish law, which require clear provisions on direct and indirect discrimination.

Secondly, Vietnam can also consider enacting separate laws to ensure equal rights for female workers, including regulations on female employment.

Thirdly, in addition to financial incentives for businesses employing a large number of female workers, the Vietnamese Government can support these businesses with advisory and technical measures to improve gender inequality based on the lessons learned from Japan as mentioned above.

Fourthly, Vietnam can study the regulations of the Philippines regarding restrictions on female night work in certain cases.

Fifthly, Vietnam may consider studying additional regulations on the right to freedom of employment for female workers in the Labor Law based on the reference to the 2013 Labor Law of Laos.

## **CHAPTER 2 SUMMARY**

Chapter 2 analyzes the concept, characteristics, content, and role of the law on female employment in Vietnam. The law on female employment is a system of regulations formed as a provision of labor law that functions to regulate social relations regarding female employment, including social relations in the field of job creation and job placement for women. The characteristics of the law on female employment are the formation of legal norms on employment linked to the process of independence, construction, and development of the country; the source of the law on female employment is mainly legal normative documents, and the scope of regulation of the law on female employment is broad and related to many other fields, including gender equality and protection of women's rights. The content of the law on female employment includes regulations on the recruitment of female labor, the resolution of female employment, and the guarantee of female employment. The law on female employment contributes to institutionalizing the Party's viewpoint and leadership direction on ensuring fairness in job creation and job placement for women, contributing to ensuring the implementation of Vietnam's

international commitments on protecting women's rights in general and the right to employment for women in particular; creating a legal basis for Vietnam to seize opportunities and cope with the challenges of international integration in employment and job placement for women, and establishing a legal framework for ensuring the rights and implementation of rights for female labor.

The concept, criteria, and conditions for ensuring the completion of the legal framework on female employment in Vietnam are also mentioned here. The completion of the legal framework on female employment involves the activities of competent state agencies and individuals in researching, constructing, and promulgating regulations on female employment to create a basis for maintaining and ensuring employment for female workers. The completion of the legal framework is based on criteria for improving the form and criteria for the content. In addition, to complete the legal framework on female employment, it is necessary to ensure conditions regarding human resources, finance, provide information support, and apply information technology. In addition, Chapter 2 also refers to the legal framework on female employment in some countries around the world such as Sweden, the Philippines, China, Laos, and Japan, based on which some lessons and experiences that Vietnam can learn in improving the legal framework on female employment are drawn.

### **Chapter 3**

## **DEVELOPMENT PROCESS AND CURRENT SITUATION OF LABOR LAW REGARDING THE EMPLOYMENT OF FEMALE WORKERS IN VIETNAM**

### **3.1. DEVELOPMENT PROCESS OF LABOR LAW REGARDING FEMALE EMPLOYMENT IN VIETNAM AND THE EMPLOYMENT SITUATION OF FEMALE WORKERS IN VIETNAM**

#### **3.1.1. Period from 1945 to before 1992**

The law on female employment has a relatively long process of formation and development, closely linked to the process of gaining independence, protection, construction, and development of the country.

Inheriting and developing the legal principles in the 1946 Constitution, the 1959 Constitution has specific and clearer provisions on the issue of female employment. Article 24 of the 1959 Constitution stipulates: "*Women in the Democratic Republic of Vietnam have equal rights with men in political, economic, cultural, social, and family activities. In the same job, women are entitled to equal pay as men. The state ensures that female workers and female civil servants have maternity leave and still receive full salary.*"

#### **3.1.2. Period from 1992 to the present**

After more than ten years of implementing the task of building the country towards socialism, at the 6th Party Congress in 1986, our Party decided to apply the Renewal policy; the Vietnamese economy became a market economy with a socialist orientation.

#### **3.1.3. Employment situation of female workers in Vietnam**

### 3.1.3.1. Employment situation of female workers in Vietnam before the outbreak of Covid-19

In the report "*Labor Force Survey 2017, 2018 and 2019*", the General Statistics Office stated that the population scale of Vietnam has continuously increased in recent years. In addition, the advantage of the golden population has provided abundant labor force for the labor market in Vietnam. The labor force participation rate in Vietnam is the highest in Southeast Asia with a rate of 76.8%; the age group from 25 to 49 years old has a very high participation rate in the labor force, ranging from 95.2% to 96.7%. Among them, the labor force participation rate of female workers reached 76.8%.

### 3.1.3.2. Employment situation of female workers in Vietnam during the outbreak of Covid-19

The shortcomings and realities of female employment analyzed above become even more serious when Vietnam has to face the Covid-19 pandemic. It can be said that the Covid-19 pandemic has caused negative consequences for the employment situation of female workers.

### 3.2.3. Employment situation of female workers in Vietnam after the prevention and control of the Covid-19 pandemic

After the Covid-19 pandemic has been prevented and restricted by the government's measures, the employment situation of female workers has shown signs of improvement, but there are still many issues due to the instability of the global economic and political situation, negatively affecting Vietnam's economy and labor market.

## 3.2. CURRENT LEGAL SITUATION REGARDING FEMALE EMPLOYMENT IN VIETNAM

Vietnamese laws in general, and Vietnamese laws on female employment in particular, are built and enacted based on the Party's guidelines, viewpoints, and principles of international law.



### **Figure 3.1: Model of factors influencing the legal system on female employment in Vietnam**

The Party's Resolutions and Documents (Viewpoints, Guidelines)

International Legal Provisions (ILO, Human Rights, CEDAW)

Vietnamese legal provision

Organization, Machinery of the Protection and Promotion Bodies (central and local Governments)

Leadership and Governance Capacity

Conditions for guarantee (the awareness, legal culture, resources)

4.0 Industrial Revolution and Digitalization

Human Rights and Gender Equality

Employment of Female Worker at present

#### **3.2.1. Regulations on the right to work of female workers**

The right to work is the first issue to be addressed when analyzing the laws on female employment. The reason is that the right to work is a legal basis, a prerequisite for establishing other regulations related to female employment.

#### **3.2.2. Regulations on the recruitment of female workers**

In order to effectively implement gender equality in recruitment, the State has stipulated some solutions as well as policies to encourage employers to hire more female workers:

- *Regulations on the ratio of male and female workers to be recruited* (Point a, Clause 03, Article 13 of the Gender Equality Law 2006).

- *The state has a policy of reducing taxes for employers who employ a large number of female workers in accordance with the tax laws* (Clause 04 Article 135 of the Labor Code 2019).

#### **3.2.3. Regulations on employment and job security for female workers**

- Building and implementing employment programs

- Employment resolution fund

According to Decree 74/2019/ND-CP, there are several new points regarding the increase in loan amount and loan term to meet the practical needs of society:

*Regarding loan amount*

*Regarding loan term*

Regarding tasks, employment service centers have the following tasks: (i) Advising and introducing jobs to workers and providing free labor market information; (ii) Supplying and recruiting workers as requested by employers; (iii) Collecting labor market information; (iv) Analyzing and forecasting the labor market; (v) Implementing employment programs and projects; (vi) Training skills and vocational training as prescribed by law.

Regarding rights, female workers working abroad under contract have certain rights such as (i) Being provided with information on Vietnam's policies and laws regarding Vietnamese workers working abroad under contract; the policies, laws, customs, and practices of the host country related to workers; the rights and obligations of the parties when working abroad under contract; (ii) Being advised and supported to exercise rights, fulfill obligations, and enjoy benefits in the labor contract, vocational training contract; (iii) Receiving wages, remuneration,



healthcare, medical treatment, social insurance, occupational accident insurance, and other benefits and regimes according to the labor contract; (iv)

### **3.2.4. Regulations on handling violations and resolving disputes regarding female employment**

Currently, the regulations on penalties related to female labor are stipulated in Decree 12/2022/NĐ-CP. Specifically, the applicable penalty for employers who commit violations can be up to 40 million VND if the employer engages in the following behaviors:

- Failing to ensure gender equality and measures to promote gender equality in recruitment, job arrangement, employment, and training.
- Failing to ensure employment for female workers as stipulated in Article 140 of the 2019 Labor Code.
- Do not prioritize entering into new labor contracts for cases where the labor contract expires during the period of pregnancy or when the female worker is breastfeeding a child under 12 months old.
- Terminate or unilaterally terminate the labor contract with the employee due to marriage, pregnancy, maternity leave, or breastfeeding a child under 12 months old. In addition, the employer must re-employ the female worker.

Regarding dispute resolution, the current legal framework for labor dispute resolution in Vietnam is regulated in Chapter XIV of the Labor Code 2019.

## **3.3. Evaluation of the Law and the Implementation of the Law on Employment of Female Workers in Vietnam**

### **3.3.1. Evaluation of the law on employment of female workers in Vietnam**

#### **3.3.1.1. Advantages**

The law on employment of female workers in Vietnam has the following advantages:

*Firstly*, gender equality policies regarding employment between male and female workers have been consistently and uniformly regulated in all legal documents throughout the stages of construction and development of the country, from the 1946 Constitution, the 1959 Constitution, the 1980 Constitution, the 1992 Constitution, the 1994 Labor Code, the 2012 Labor Code, and up to the present with the 2013 Constitution, the 2019 Labor Code, and the 2013 Employment Law.

*Secondly*, the legal regulations have established a relatively complete and comprehensive system of legal norms governing the legal relations related to the employment of female workers.

*Thirdly*, the legal provisions have clarified the responsibilities of the entire political system, including the responsibilities of the State, political organizations, socio-political organizations, social organizations, and economic organizations, regarding the employment of female workers.

*Fourthly*, the sanctions for violations of the employment of female workers have been stipulated. Government Decrees on labor, employment, vocational education, sending Vietnamese workers to work abroad under contracts, and gender equality have regulated acts that infringe upon the employment of female workers, such as fines and additional penalties, and measures to remedy the consequences.

#### **3.3.1.2. Limitations**

Firstly, there are some limitations regarding the form of the laws on the employment of female workers in Vietnam.

Secondly, there are some limitations regarding the content of the laws on the employment of female workers in Vietnam that can be listed.

The limitations in Vietnamese laws on the employment of female workers stem from various reasons, including both objective and subjective factors.

*Objective factors*

*Subjective factors*

**3.3.2. Implementation of the laws on the employment of female workers in Vietnam.**

**3.1.3.1. Regarding the workers**

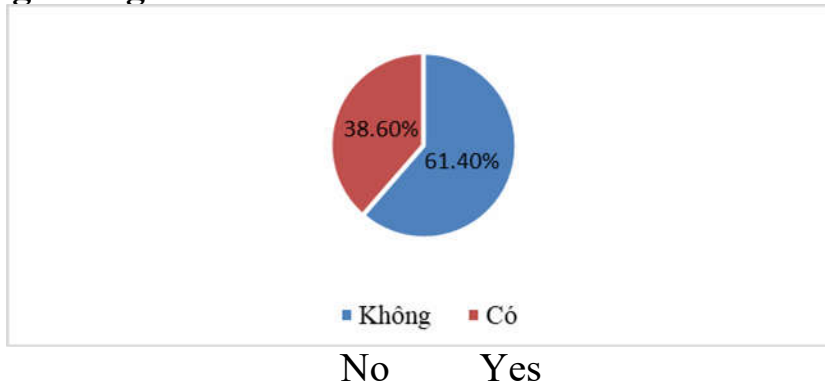
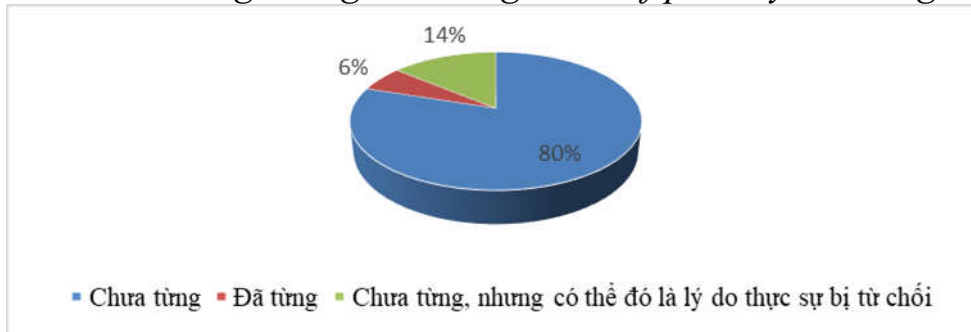
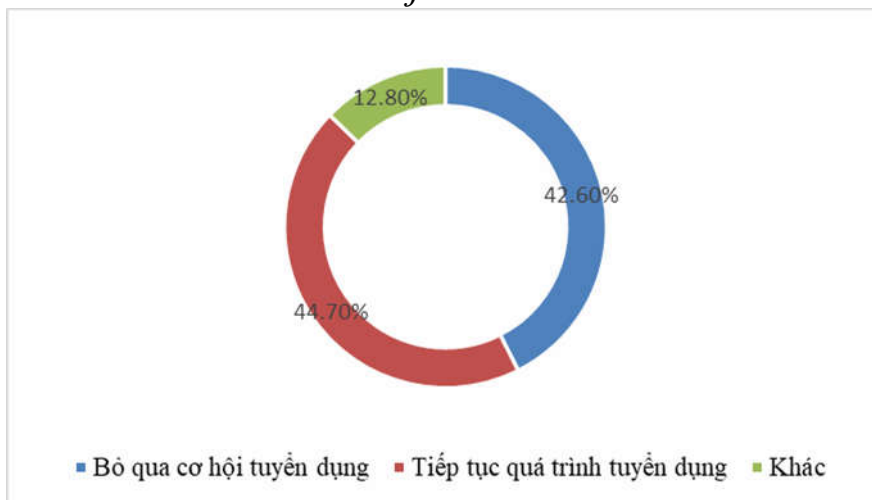


Chart 3.1: Regarding the recognition of priority in hiring male workers



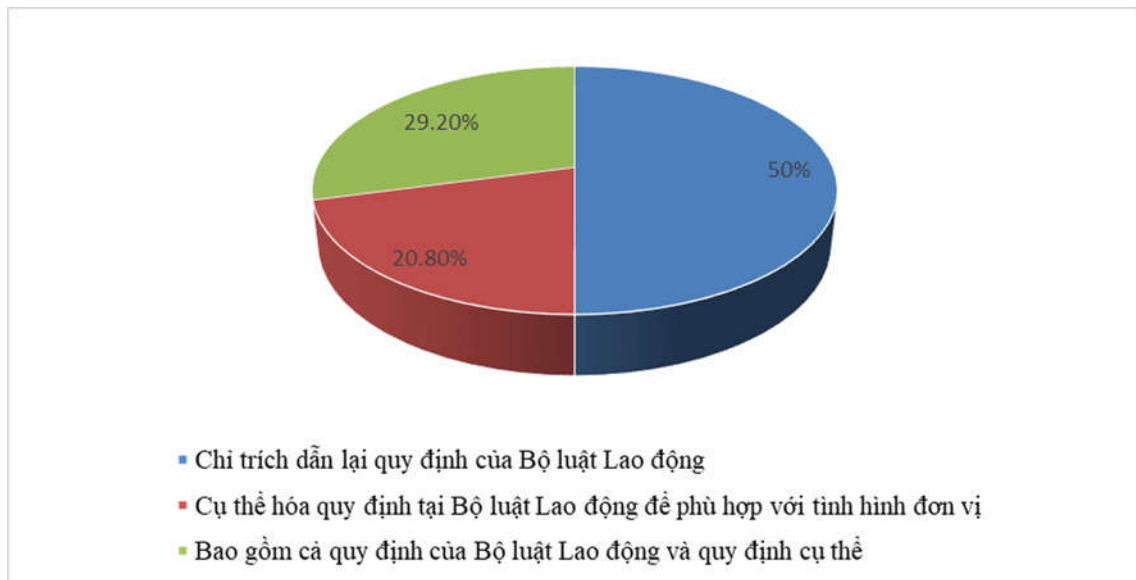
None      Used to      Could be denied with reasons

Chart 3.2: Recruitment Rejection due to Gender Reasons



Quit the opportunity      Continue the process      Other

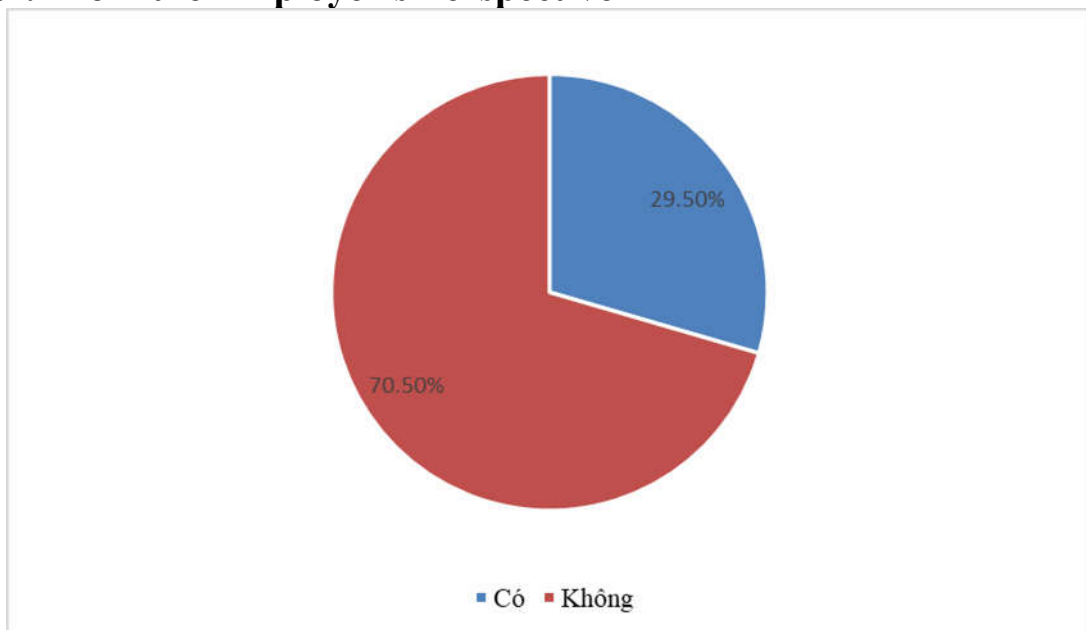
Chart 3.3: Reaction of Female Workers upon Recognizing Recruitment Priorities male workers



Only re-cited the provisions of Labour Code  
 Specify the Labour Code's provisions suitable with the institution  
 Include both the Labour Code's provisions and specific provisions

*Chart 3.4: Regulations on Women's Employment in Internal Documents of businesses*

### 3.1.3.2. From the Employer's Perspective



Yes No

**Chart 3.5: Current Trends in Gender-based Recruitment**

## CHAPTER 3 SUMMARY

In chapter 3, the researcher has clarified the following issues:

The employment situation of female workers in Vietnam in recent years has undergone many positive changes. The participation rate of female workers in the labor force tends to increase. However, female workers still face many difficulties and obstacles in accessing job opportunities and ensuring legitimate rights and benefits in employment. Especially in the context of the Covid-19 pandemic outbreak in Vietnam, which has left serious socio-economic consequences, female workers have faced many challenges in employment, with an increase in the rate of female workers quitting and losing their jobs.

The laws on employment of female workers in Vietnam have a relatively long history of formation and development, closely associated with the period of construction, protection, and development of the country. The principles of equality in employment and recruitment between male and female workers have been recognized throughout the legal documents in each stage, from the 1946 Constitution, the 1959 Constitution, the 1980 Constitution, the 1992 Constitution to the 2013 Constitution. In addition, the laws on employment of female workers have also been gradually improved with the issuance of the 1994 Labor Code, the 2012 Labor Code, and the 2019 Labor Code.

The current laws on employment of female workers in Vietnam are stipulated scatteredly in the 2019 Labor Code, the 2014 Vocational Education Law, the 2013 Employment Law, the 2020 Law on Vietnamese Workers Working Abroad under Contracts, the 2006 Gender Equality Law, and the accompanying guiding documents. Accordingly, the regulations on employment of female workers have been relatively complete and comprehensive, including aspects such as the right to work of female workers, recruitment of female workers, vocational training for female workers, sending female workers to work abroad under contracts, and ensuring employment for female workers. Therefore, female workers in Vietnam have a solid legal framework to protect their rights and legitimate interests in the field of employment.

The laws on employment for female workers have institutionalized the viewpoints, principles, and policies of the Party and the State regarding the protection of the rights of female workers in the field of employment. At the same time, the laws on employment for female workers have clearly defined the responsibilities of relevant entities in protecting and ensuring employment for female workers. However, the legal provisions on employment for female workers still have some limitations, such as being too general, lacking specificity, and having many loopholes and shortcomings, which have led to a lack of strict compliance and enforcement in practice, posing risks of infringement on the legitimate rights and interests of female workers in the field of employment.

## **Chapter 4**

### **VIEWPOINTS AND SOLUTIONS TO IMPROVE THE LAWS ON EMPLOYMENT FOR FEMALE WORKERS IN VIETNAM**

#### **4.1. VIEWPOINTS ON IMPROVING THE LAWS ON EMPLOYMENT FOR FEMALE WORKERS IN VIETNAM**

The improvement of laws on employment for female workers must be in line with the viewpoints, principles, and guidelines of the Communist Party of Vietnam on the construction and improvement of laws.

To improve the laws on employment for female workers, it is necessary to thoroughly understand and institutionalize the Party's viewpoint on building a socialist rule-of-law state.

The improvement of laws on employment for female workers must meet the following requirements:

#### **4.1.1. The completion of laws on employment for female workers must be based on an approach that respects the human rights of women and ensures the coherence of the legal system**

The legal system on employment for female workers needs to be built on a human rights-based approach, gender-based and gender-sensitive approaches in order to establish and improve a comprehensive and inclusive legal system that leaves no one behind, and etc.

#### **4.1.2. The completion of laws on employment for female workers must be based on research and evaluation of the current employment situation during the industrialization and modernization of the country**

During the implementation of the socio-economic development strategy for the period 2011-2020, Vietnam has seized many opportunities and overcome numerous economic and financial challenges in the region and globally, achieving significant accomplishments.

Furthermore, the quality of female labor in Vietnam is currently low in the international skills ladder. Vietnam lacks skilled female workers and high-level technical workers.

Therefore, the completion of laws on employment for female workers needs to be in line with the requirements of industrialization and modernization of the country in the present stage, which is extremely necessary.

#### **4.1.3. Improve the legislation on employment of female workers to ensure the best protection of the rights and legitimate interests of female workers, ensuring the principles of equality, non-discrimination, fairness, and democracy towards female workers, in work and at the workplace**

In the market economy conditions, interests are the dominant factor in social relationships. Labor relations are bilateral relationships, in which employers are an indispensable party to form and maintain labor relations.

Compliance with principles of equality, non-discrimination, democracy, transparency, and accountability, mechanisms for labor disputes and dispute resolution... at the workplace and in work, including career choice, recruitment, appointment, promotion, salary regime, rewards, commendation, discipline... must ensure the principles of the rule of law, compliance with international law and Vietnamese law.

#### **4.1.4. Improve the legislation on employment of female workers to be in line with the general trend of globalization and international integration, in accordance with international labor conventions**

In the current stage, the trend of globalization and international economic integration creates opportunities for countries to participate in the international labor market. International integration is an inevitable trend in today's era.

International economic integration brings many favorable opportunities for countries in various fields, including employment.

### **4.2. SOLUTIONS TO IMPROVE THE LEGAL FRAMEWORK ON FEMALE EMPLOYMENT IN VIETNAM**

#### **4.1.1. Solutions to enhance the form and content of the legal framework on female employment in Vietnam**

#### **4.1.1.1. Enhancing the form of the legal framework**

Regarding the form of the legal framework on female employment, it is necessary to continue reviewing the quantity and quality of legal documents related to female employment. Continuing to review and improve the quantity and quality of legal documents related to female employment is an important factor in ensuring that this legal framework fully reflects and protects the rights of female workers in the workplace.

In order for the legal regulations on female employment to be suitable for the socio-economic conditions of Vietnam, competent state management agencies need to overcome the situation of constructing and guiding the implementation of laws based solely on intuition and learning from external sources, with little experience drawn from the issues that have arisen in the practical implementation and enforcement of laws domestically.

Therefore, reviewing and improving the legal documents on female employment is an important process to ensure the effectiveness and protection of female workers in a constantly changing work environment due to the impact of integration and the Fourth Industrial Revolution.

#### **4.2.1.2. Enhancing the content of the legal framework**

Ensure equality in recruitment and promotion in the performance of work for female workers.

Ensure that female workers receive equal pay compared to male workers in the same position and job.

Enhance maternity rights and parental leave by extending the duration of maternity leave and providing financial support for women during their leave.

Ensure a safe working environment and gender equality by having regulations to protect women from any form of sexual harassment or discrimination in the workplace.

Implement support for training and career development:

Secondly, improve regulations on labor recruitment, utilization, and treatment of female workers.

To improve the legal regulations on labor recruitment, utilization, and treatment of female workers, it is necessary to amend and supplement the following provisions:

Firstly, amend and supplement regulations on employment conditions for industries that restrict the recruitment of female workers; amend policies that prioritize businesses employing more female workers.

Secondly, the 2019 Labor Code should clearly stipulate the prohibition of advertising and recruitment practices that contain discriminatory content or gender-based selection.

Thirdly, improve regulations on employment resolution and job security for female workers.

Firstly, remove the provision on the right to take leave during menstruation of female workers in Article 137.4 of the 2019 Labor Code.

Secondly, regulate pre-emptive vocational training for female workers. Depending on the field of operation of each enterprise, the enterprises will

coordinate with local authorities to create a list of jobs that female workers cannot perform when they reach a certain age.

Fourthly, improve regulations on handling violations and resolving disputes of female workers.

Increase the level of administrative penalties for employers who violate the law in implementing labor laws for female workers to ensure deterrence and compliance with the law. The amendment of these administrative penalty levels is fully consistent with the principles and general provisions of administrative violation handling laws.

#### **4.2.2. Solutions related to improving labor laws on female employment in Vietnam**

Firstly, enhance the capacity, awareness, and skills of female workers and employers regarding employment and labor laws.

The capacity, awareness, and skills of female workers and employers regarding employment and labor laws are extremely important in ensuring the effective implementation of labor laws for female workers in the current context.

Secondly, enhance the enforcement capacity of labor laws on female employment of relevant entities.

Enhance the enforcement capacity of labor laws on female employment of relevant entities, including the following contents:

*\* Enhance the capacity of labor representative organizations regarding the issue of female employment:*

Labor representative organizations here include the system of trade unions at all levels and organizations of workers at enterprises as regulated in the 2019 Labor Code. In the context where the legal status of workers' organizations at enterprises is not clearly defined in the 2019 Labor Code and guiding documents, the role of trade unions at all levels in the issue of female employment remains extremely important.

*\* Enhance the capacity of competent state agencies regarding the issue of female employment.*

No matter how strict the provisions of the law are, they will not be effective if they are not strictly enforced and implemented.

Courts and judicial agencies in general need to adhere to the idea of compliance with the law, overcome the idea of not valuing the resolution of labor cases in these systems to ensure the objective, timely, and lawful resolution of labor cases, especially labor cases related to the issue of female employment.

*\* Strengthen coordination mechanisms, information sharing, and digitization of national labor employment data to serve the formulation of employment development policies, construction, and promulgation of laws at the central and local levels regarding the development of female employment.*

To strengthen coordination mechanisms, information sharing, and digitization of national labor employment data to support the formulation of policies at the central and local levels, the following solutions can be implemented:

Firstly, the state needs to invest in building a national labor employment information management system that develops an independent information management system focused on female employment, collects and updates data

related to employment, gender equality, wages, and other issues related to female employment.

Secondly, there should be the implementation of data digitization activities and automatic reporting mechanisms, creating a digital database for information on female employment.

Thirdly, it is necessary to establish a mechanism for coordination among relevant ministries, agencies, and organizations, building a strong coordination mechanism between functional departments, social organizations, and businesses to ensure that information and data are shared effectively.

Fourthly, develop tools and applications specifically for female labor: Build digital applications and tools to help female workers access information on employment, rights, and support services. This can help create conditions for female workers to participate in the labor market suitable to their gender characteristics and family circumstances.

Fifthly, provide training and raise awareness of information security and privacy compliance.

Sixthly, carry out monitoring and evaluation activities effectively, creating opportunities for communities and society.

*\* Enhance national management capacity, effectively enforce the employment of female workers by ministries, departments, sectors, and localities*

Firstly, ensure that officials and employees of relevant ministries, departments, and sectors are fully trained and developed with the necessary knowledge and skills related to the employment of female workers.

Secondly, there must be an efficient data digitization and information management system to collect, store, and access information related to the employment of female workers.

Thirdly, create opportunities for exchange and learning among agencies and organizations, which can organize meetings, workshops, and courses to facilitate exchange and learning among different units.

Fourthly, establish regular monitoring and evaluation mechanisms to ensure the effectiveness of activities related to the employment of female workers.

Fifthly, create opportunities for women to participate in decision-making and management related to their employment.

Sixthly, collaborate with social organizations, businesses, and other partners to create programs and projects to support the employment of female workers.

Seventhly, organize educational campaigns and awareness-raising activities to enhance understanding of the rights and benefits of female workers as well as policies related to their employment.

Eighthly, coordinate and share information across management levels to ensure that administrative information and data are effectively shared and coordinated across management levels, including central and local levels.

Ninthly, set targets and performance indicators related to female worker employment to evaluate and monitor policy progress.



## CHAPTER 4 SUMMARY

The basic content of this chapter aims to analyze, explain and clarify:

Firstly, the current status of law enforcement on female workers' employment in Vietnam through surveying and evaluating the practice of management, use and application of law on female workers' employment

Secondly, requirements analysis and main content about Perfecting the law on female workers' employment in the new context. Accordingly, perfecting the law on female workers' employment must ensure five requirements, including: (i) ensuring the institutionalization of the policies and guidelines of the Communist Party of Vietnam on the work of building and perfecting the law; (ii) being based on the current employment situation in the period of industrialization and modernization of the country; (iii) ensuring the legitimate rights and interests of female workers in a reasonable correlation with the legitimate rights and interests of employers; (iv) ensuring the consistency of the legal system; (v) being consistent with the general trend of globalization and international integration. The above five requirements are also five important and necessary orientations for perfecting the law on female workers' employment to be implemented effectively and reasonably.

Thirdly, based on the current status of law enforcement and the need to improve the law, propose solutions to improve the law and improve the effectiveness of law enforcement on the employment of female workers.

## CONCLUSION

Women and decent work for female workers is a key issue for every society and every era. The work of female workers has always been a legal issue in Vietnam, especially in the context of the 4th industrial revolution, the digital age and the smart society. Because the system of theoretical and legal views on the work of female workers is still basic, not really comprehensive and profound.

Currently, Vietnam is actively perfecting mechanisms and policies to ensure the legitimate rights and interests of female workers. In addition to important documents such as the 2006 Law on Gender Equality, the 2014 Law on Social Insurance, the 2014 Law on Marriage and Family, and the 2013 Law on Employment, the 2019 Labor Code has special provisions related to female workers. Accordingly, these provisions have achieved many achievements and made remarkable progress compared to previous documents. The 2019 Labor Code has set the goal of ensuring equal employment rights for female workers and preventing gender discrimination in the recruitment and promotion process. The Employment Law emphasizes the creation of employment opportunities, improvement of working conditions, enhancement of professional qualifications, and facilitation of career development for female workers, and proposes the expansion of training types that are favorable to female workers, including preventive vocational training and training appropriate to the physical, physiological and maternal characteristics of women. These regulations and policies aim to ensure the legitimate rights and interests of female workers, especially in the field of employment. This is an

important step in building a fair and protective working environment for female workers in Vietnam.

The female workforce in Vietnam has made a positive contribution to the country's socio-economic activities. Although the female labor force participation rate in Vietnam is relatively high (71.2%), they still face many difficulties and challenges when participating in the labor market. The main problems that female workers face are: (i) Discrimination in the workplace: Female workers often face discrimination in the workplace, including gender discrimination and difficulties in promotion and career development. (ii) Illegal termination of labor contracts: Some female workers have problems with termination of labor contracts without complying with legal regulations. (iii) Limitations in qualifications and professional skills: A large proportion of female workers are facing limitations in professional qualifications, foreign language ability, and professional skills. (iv) Inadequate wage and social insurance policies: Policies related to wages, social insurance and remuneration mechanisms have not really met the aspirations and needs of the female workforce. (v) Impact of economic instability: Fluctuations in economic activities can have negative consequences for the female workforce, especially in maintaining stable employment. (vi) Difficulties in implementing labor relations: Due to psychological and gender characteristics, female workers often face more difficulties than male workers in labor relations, including coordinating work and family life. (vii) Gender bias: The concept of "male superiority and female inferiority" still exists and can make female workers vulnerable and affected in labor relations. (viii) Prioritizing the recruitment of male workers: Some enterprises and employers still tend to prioritize the recruitment and employment of male workers with the notion that female workers cannot be effective due to family and child obligations. These difficulties and challenges have been discussed and clearly identified in Resolution 11/NQ-TW of the Politburo on women's work in promoting national industrialization and modernization. This emphasizes the need to improve working conditions and rights of female workers so that they can make a strong contribution to the development of the country.

The thesis has presented the most basic and important issues related to the employment of female workers. It is a system of related research works, theoretical issues, legal status and legal improvement on the issue of female workers' employment. With this structure, the thesis is an important document contributing to deepening and comprehensively improving the viewpoints and policies on the issue of female workers' employment in Vietnam, helping to improve the position of female workers and consolidate and protect the employment of female workers in the labor market in Vietnam.

**LIST OF SCIENTIFIC WORKS  
OF THE AUTHOR RELATED TO THE THESIS**

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5. Pham Van Anh (2023), Impact of the fourth industrial revolution on Vietnamese Legislation on Female Employment Law: The Issues Raised in Improving the Law Governing the Employment of Female Workers (March 2023), ISSN: 2770-2782, Vol. 3. Issue 3, pp.501-508.
6. Pham Van Anh (2023), Current Situation of Implementation and Solution to Improve the Law on Employment of Female Workers in Vietnam (February 2023), ISSN: 2601-2766, Vol. 6. Issue 2.