



**National Institution for Human Rights Visions Regarding  
Draft Law on amending the Article No. (5) of Law No. 74 of 2006 on  
the Welfare, Rehabilitation and Employment of Persons with  
Disabilities**

**Stipulation of Article (5) as stated in the original law:**

**" Notwithstanding the provisions of Labor Law in the private sector and civil service statutes, a disabled female employee shall deserve full paid special leave not to be calculated from her other leaves, if she is pregnant and the medical committee recommends that her case requires so in accordance with the provisions and rules to be determined by resolution of the Minister". (End of stipulation).**

**Stipulation of the article as stated in the draft law:**

A second paragraph shall be added to Article No. (5) of Law No. (74) of 2006 on Welfare, Rehabilitation and Employment of Persons with Disabilities stipulates:

**"the mother with disability, who gives birth to a child with disability requiring special care, shall be entitled to additional rest hours to the rest hours granted to her at work" (End of stipulation).**

**Stipulation of the article as approved by Honorable Council of Representatives:**

A second paragraph shall be added to Article No. (5) of Law No. (74) of 2006 on Welfare, Rehabilitation and Employment of Persons with Disabilities stipulates:

**"the employee or the worker with a disability the degree of which to be determined by the competent ministry and the employee or worker who undertakes the care of a wife or any of his relatives with disability to the second degree, supported by a medical certificate that they are in need for special care, shall be entitled to two paid rest hours per day in accordance with the conditions and controls to be determined by virtue of a resolution to be issued by the Minister". (End of stipulation).**



### **NIHR Visions:**

To begin with, the NIHR commends the efforts exerted by the two chambers of the legislative authority - Council of Representatives and the Shura Council – in relation to the rights of persons with disabilities. With all due respect to the bases and principles adopted by the current draft law, there are some remarks thereon summarized as follows:

- **First:** it is noted that the mentioned stipulation as stated in the resolution issued by the Honorable Council of Representatives on addition of a new paragraph to article No. (5) of Law No. (74) of 2006 on Welfare, Rehabilitation and Employment of Persons with Disabilities is more general, comprehensive and coherent than the stipulation stated in the original draft law. The latter stated that the mother with disabilities, who is blessed with a child with disabilities needs special care, shall be entitled to rest hours more than the rest hours in addition to the rest hours granted to her in the work, while the stipulation according to the resolution issued by the Honorable Council of Representatives concludes that the employee or the worker disabled with a disability degree and the employee or worker who undertakes the care of a wife or any of his relatives with disability shall be entitled to two paid rest hours per day according to the conditions and controls to be determined by virtue of a resolution to be issued by the Minister.
- **Second:** the stipulation – as approved by the honorable Council of representatives – grants two paid rest hours on a daily basis according to the conditions and controls to be determined by resolution to be issued by the Minister – Minister of Social Development – for each of:

**(1) The employee or the worker with a disability the degree of which to be determined by the competent ministry:**

This means that the employee or the worker, whether those who are subject to the provisions of Law of Labor in the private sector or the civil service systems will benefit from two paid rest hours per day, provided that the competent ministry shall determine the disability degree, which allows him to procure such rest hours. Such granting may not be deemed as discrimination between the sound employee or worker and the other disabled ones, because this is considered as positive measures that aim at achieving the actual equality in the



opportunities and dealing between persons with disabilities and other employees and workers.

This is confirmed by the stipulation of article No. (4) of International Labor Convention No. 159 of 1983 for Vocational Rehabilitation and Employment (for persons with disabilities) that the Kingdom has joined thereto by virtue of Decree-by-Law No. (17) of 1999 that:

**" ..... the special positive measures that aim at achieving the actual equality in the opportunities and dealing between persons with disabilities and other employees and workers shall not be deemed as discriminatory measures against the other workers".**

In parallel, Article No. (5), Paragraph No. (4) of Convention on the Rights of Persons with Disabilities approved by the Kingdom according to Law No. (22) of 2011, stipulates the same content that:

**"The determined measures necessary for acceleration or achievement of the actual equality for the persons with disabilities may not be deemed as discrimination pursuant to provisions hereof".**

In all cases, this dealing shall be equal whether for the Bahraini or foreign employees or workers with disabilities according to the International Labor Convention No. (111) of 1985 on Discrimination in the Employment and Profession approved by the Kingdom according to Decree No. (11) of 2000.

**Thereupon**, the NIHR hereby finds that granting the employee or the with a disability the degree of which to be determined by the competent ministry – Ministry of Social Development - two paid rest hours on a daily basis in accordance with the conditions and controls to be determined by resolution to be issued by the Minister doesn't contradict with the principle of equality, but it is deemed as positive discrimination that ensures the enablement of the persons with disability to maintain human dignity. In addition, this agrees with the intention of the honorable Council of Representatives in this regard.



**(2) The employee or worker who undertakes the care of a wife or any of his second-degree relatives with disability who are in need for a special care as established by a medical certificate that they are in need for a special care:**

It is noted that the feature determined in the draft law isn't limited to the disabled employee or worker, but the issue extends to the employee or worker who undertakes the care of a wife or any of his relatives with disability to the second degree, who are proved according to a medical certificate that they are in need for a special care according to the conditions and controls to be determined by a resolution to be issued by the Minister.

Although the stipulation implies a human character for the caregivers of persons with disabilities; especially if the person with disability is in need for special care and there is only the employee or the worker who manages the basic daily affairs and needs of such person with disability. However, it is potential that this may lead to misapplication of the current stipulation; although this is limited to the employee or worker who undertakes the care of a wife or any of his relatives with disability to the second degree, who are proved according to a medical certificate that they are in need for a special care.

In order to achieve the objectives intended by the apparent stipulation; it is necessary that the controls and procedures to be determined by virtue of a resolution to be issued by the Minister shall be according to specific and clear conditions un-extendable, which shall adhere to principle of equality and non-discrimination. We think that this may not be achieved in reality, because it is impossible to determine in the practical considerations the actual and real caregiver of the person with disability without neglecting the other aspects represented in possibility of abstention of the public sector from employing those who have persons with disabilities. Especially, the employment contracts are based upon the personal considerations and it is necessary that such right shall be enjoyed by each employee or worker whether Bahraini or foreigner in agreement with the International Labor Convention No. (111) of 1985 on Discrimination in the Employment and Profession mentioned above.



In this regard, it is worth mentioning that the international reference for the related rights of persons with disabilities represented in Declaration on Persons with Disabilities <sup>1</sup>, Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>2</sup>, Convention of Rights of Persons with Disabilities and Optional Protocol attached to the same don't include any direct provisions give preferential advantage or rights stipulated for those in charge of persons with disabilities or their caregivers.

**Thereupon**, the NIHR hereby finds that in spite of acceptability of the justifications and human objectives represented in granting the employee or worker who undertakes the care of a wife or any of his relatives with disability to the second degree, who are proved according to a medical certificate that they are in need for a special care, two paid rest hours per day according to the conditions and controls to be determined by virtue of a resolution to be issued by the Minister; however, the above-mentioned resolution shall include the conditions and controls determined for such preferential feature in a determined way for limitation and expressly without doubt or violation to principles of equality and non-discrimination to determine the actual and real person in charge of the disabled person. In addition to the medical certificate, it shall be added expressly that such certificate shall be issued by the "**Medical Committee**" defined by article (1), paragraph (f) of the law as the entity to be determined by Minister of Health. In addition, this shall include the meaning and intention of the phrase "**needs for special care**" the extent of quantity thereof; otherwise, this phrase is deemed as unjustified addition.

<sup>1</sup> Document No. (A/RES/3447/XXX) approved by United Nations General Assembly Resolution No. 3447 (d-30), dated on 09<sup>th</sup> December 1975.

<sup>2</sup> Document No. (A/RES/48/96) by virtue of United Nations General Assembly Resolution based upon 3<sup>rd</sup> committee report (A/48/627)