

SOUTH KOREA MATERNITY LEAVE: HOW U.S. LAW COULD BE LESS BURDENSOME TO EMPLOYERS AND PROVIDE MORE PROTECTION FOR WOMEN IN THE WORKPLACE

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I. INTRODUCTION

Doesn't receiving a higher education afford you more opportunities to advance your career? Not quite. Many South Korean women have received higher education, but cannot advance their careers because of the ineffective and chauvinistic provisions set out in the Labor Standards Act.¹ The Labor Standards Act, hereinafter LSA, is the main body of law regulating minimum standards for working conditions.² The Act on Equal Employment and Support for Work-Family Reconciliation governs mandatory hiring guidelines.³ Of the population in South Korea between the ages of twenty-five and thirty-four, a higher percentage of women have received postsecondary education than men.⁴ Despite the fact that a higher percentage of women have received a tertiary education, only 57% of women are employed, compared to the 78.6% of men that are employed.⁵ Further, there is a disproportionate percentage of males in high level positions compared to women.⁶ Women only make up 17% of seats in parliament, and a meager 2.4% of seats on the board of companies.⁷

A recent survey by the Korea Chamber of Commerce and Industry, hereinafter KCCI, and McKinsey & Company, has found that Korean Corporate Culture desperately needs a change to address the

1. See *South Korea's Working Women: Of Careers and Carers*, ECONOMIST (June 11, 2016) [hereinafter *South Korea's Working Women*], <https://www.economist.com/news/asia/21700461-conservative-workplaces-are-holding-south-korean-women-back-careers-and-carers> (stating that three-quarters of women go to Universities but employers overlook that when faced with hiring a female or male).

2. Jeong Han Lee & Anthony Chang, *Korea*, in EMPLOYMENT & LABOUR LAW 133, 133 (Charles Wynn-Evans & Jennifer McGrandle eds., 4th ed. 2015).

3. *Id.*

4. See *South Korea's Working Women*, *supra* note 1. In South Korea, 71.8% of women have received a tertiary education, compared to 63.9% of men. *Id.*

5. *Id.*

6. See, e.g., CREDIT SUISSE, THE CS GENDER 3000: WOMEN IN SENIOR MANAGEMENT 8 (2014) (indicating that, as of 2013, women made up only 2.4 % of boards of companies situated in South Korea); OECD, OECD ECONOMIC SURVEYS: KOREA 12 (2016) (indicating that, as of 2014, "Women [in Korea] account for a disproportionate share of non-regular workers, thus discouraging female employment.").

7. CREDIT SUISSE, *supra* note 6 (indicating that women only made up 2.4% of board members in South Korean companies); *Women in national parliaments*, INTER-PARLIAMENTARY UNION ARCHIVE, <http://archive.ipu.org/wmn-e/classif.htm> (last updated Dec. 1, 2017) (indicating that, as of April 14, 2016, women made up 17% of the Republic of Korea's parliament).

inefficiencies in the workplace.⁸ McKinsey & Company, a global management consulting firm,⁹ pointed out that local companies need to “establish a new corporate culture, away from the authoritarian-style management [to increase global competitiveness].”¹⁰ Jun In-sik, KCCI’s Chief of corporate culture division, said “Even if companies expand facility investment and recruit talented workers, it’s hard to reap good accomplishments if the software of corporate management to combine capital and human resources is outdated”¹¹ In KCCI and McKinsey & Company report, they found that 35% of the disadvantage in evaluations and promotions of women were due to a career gap for childbirth and childcare.¹²

South Korea had other motives for implementing maternity leave provisions. As a result, the provisions do not adequately protect women. South Korea first implemented maternity leave as part of the Act on Equal Employment in 1987, one year before the 1988 Summer Olympics in Seoul, Korea.¹³ South Korea adopted the Act on Equal Employment in order to gain recognition internationally as a developed nation and to meet the International Labor Organization (ILO) standards for minimum levels of “legally acceptable” working conditions.¹⁴ South Korea’s Act on Equal Employment states that the purpose of the Act is “to realize gender equality in employment in accordance with the principle of equality proclaimed in the Constitution . . . by ensuring equal opportunities and treatment in employ-

8. KCCI & MCKINSEY & CO., REPORT ON THE DIAGNOSIS ON ORGANIZATIONAL HEALTH AND CORPORATE CULTURE OF KOREAN COMPANIES 1, 28-29 (2016) [hereinafter KCCI & MCKINSEY & Co.].

9. *About Us: Overview*, MCKINSEY & CO., <https://www.mckinsey.com/about-us/overview> (last visited Feb. 8, 2018).

10. *Corporate Korea Needs Culture Reform: Experts*, YONHAP NEWS AGENCY (June 1, 2016, 2:41 PM), <http://english.yonhapnews.co.kr/news/2016/06/01/0200000000AEN20160601006600320.html>.

11. *Id.* (quoting a statement made by Jun In-sik).

12. KCCI & MCKINSEY & CO., *supra* note 8, at 10; see also *Korean Women Angry at Being Promoted Less Than Men*, GRAND NARRATIVE (Jan. 18, 2010), <https://thegrandnarrative.com/2010/01/18/korea-sexual-discrimination-workplace/> (indicating that, in a 2010 survey of working Korean women, 35.9% of responders indicated that they receive low evaluation scores if they take time off of work before or after giving birth).

13. Myunghwa Lee, *Legislative Initiative for Work-Family Reconciliation in South Korea: A Comparative Analysis of the South Korean, American, French, and German Family Leave Policies*, 22 ASIAN AM. L.J. 45, 57 (2015) (first citing Jenny Ma, *Of “Females and Minors”: A Gendered Analysis of the Republic of Korea’s Labor Standards Act and Reforming Labor Market Dualism*, 49 COLUM. J. TRANSNAT’L L. 717, 725-26 (2011); and then citing Act on Equal Employment and Support for Work-Family Reconciliation, Act. No. 3989, Dec. 4, 1987, June 7, 2011 (S. Kor.), translated in Ministry of Government Legislation online database, <http://www.moleg.go.kr/FileDownload.mo?flSeq=38868>).

14. Lee, *supra* note 13 (citing Ma, *supra* note 13).

ment . . . and protecting maternity and promoting female employment”¹⁵ However, these laws are not fulfilling their intended purpose.¹⁶ The laws that South Korea adopted for female employees are too extensive and the fines for violations are so minimal that there is little incentive for businesses to comply with the extensive regulations.¹⁷

In 2001, the Act on Equal Employment was amended to require that “all Korean workplaces provide up to one year job-protected paid leave to employed parents (both mothers and fathers) who wish to care for a child under one year of age.”¹⁸ However, in 2005, approximately 48% of businesses were in violation of parental leave laws set out in the Act on Equal Employment,¹⁹ which “can be attributed to an attitude of disregard for laws and reliance on business custom and industry practices.”²⁰ Article 6 of the Labor Standards Act, which provides for equal treatment of males and females, states that “No employer shall discriminate against workers on the basis of gender”²¹ Businesses do not have a great incentive to abide by the laws set out in the Act on Equal Employment because Article 114 of the Labor Standards Act, which sets out penal provisions, states that any organization in violation of Article 6 “shall be punished by a fine not exceeding five million won[,]”²² which is only approximately 4,600 USD.

The South Korea labor laws that set out to provide special protections for female employees are overreaching and ineffective. South

15. Act on Equal Employment and Support for Work-Family Reconciliation, Act. No. 3989, Dec. 4, 1987, *amended by* Act No. 8781, Dec. 21, 2007, art. 1 (S. Kor.).

16. See Lee, *supra* note 13, at 81 (citing Act on Equal Employment and Support for Work-Family Reconciliation, Act. No. 3989, Dec. 4, 1987, *amended by* Act No. 10339, June 4, 2010 & Act No. 8781, Dec. 21, 2007, art. 7-8 (S. Kor.)) (stating that gender discrimination is illegal but gender inequality has contributed to gender discrimination in the workplace); Ma, *supra* note 13, at 737 (stating that “[Korean] employers have failed to live up to the Korean Constitution and the LSA’s promises.”).

17. See Ma, *supra* note 13, at 738.

18. Kyungmin Baek & Erin L. Kelly, *Noncompliance with Parental Leave Provisions in Korea: Extending Constitutional Research to a New Legal Context*, 39 L. & SOC. INQUIRY 176, 176 (2014); see Act on Equal Employment and Support for Work-Family Reconciliation, Act. No. 3989, Dec. 4, 1987, *amended by* Act No. 8781, Dec. 21, 2007, art. 19 (S. Kor.). Currently, the Act on Equal Employment requires that employers, “grant childcare leave, if a worker asks for leave to take care of his/her child (including an adopted child) aged 6 and under who is not enrolled into elementary school.” *Id.*

19. Baek & Kelly, *supra* note 18, at 176-77, 179.

20. Lee, *supra* note 13, at 59 (citing Baek & Kelly, *supra* note 18, at 177).

21. Geunlogijunbeob [Labor Standards Act], Act No. 5309, Mar. 13, 1997, art. 6 (S. Kor.), translated in Ministry of Government Legislation online database, <http://www.moleg.go.kr/FileDownload.mo?flSeq=26558>.

22. *Id.* art. 114, *amended by* Act No. 9038, Mar. 28, 2008.

Korea should look to the U.S. Family and Medical Leave Act of 1993²³ and the Pregnancy Discrimination Act of 1978,²⁴ which amended Title VII of the Civil Rights Act of 1964 to revise its maternity leave laws and increase fines to promote a higher rate of compliance in order to prevent gender-based discrimination in the workplace.²⁵

II. BACKGROUND

The deeply rooted values in South Korean culture have a large impact on various aspects of daily life. South Korea culture is largely based on Confucianism,²⁶ and it is believed that “each individual has [their] own roles and responsibilities according to [their] identity and social class.”²⁷ Each person has his or her own “duty and roles to play and each of the roles has its moral principle to be adhered to according to age, gender, job, and education.”²⁸ South Koreans place a great emphasis on social harmony, loyalty, and honor.²⁹ South Koreans are encouraged to act for the benefit of society as a whole, and to limit pursuit of self-interest.³⁰ In Korean culture, there is an emphasis on loyalty and respect for elders and people of seniority.³¹ South Koreans feel that they must be loyal to their company and “owe a supreme allegiance to the company’s interest and identify completely with the goals of the company” because of the Confucian values that are stressed upon them.³² These Confucian values influence all aspects of life, and are also prominent in the workplace.³³

23. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2016).

24. Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. §§ 2000e (2016)).

25. See 42 U.S.C. §§ 2000e–2000e-17.

26. See Lee, *supra* note 13, at 75.

27. Tan Soo Kee, *Influences of Confucianism on Korean Corporate Culture*, 36 ASIAN PROFILE (2008).

28. *Id.*

29. See Andrew Eungi Kim & Gil-sung Park, *Nationalism, Confucianism, Work Ethic and Industrialization in South Korea*, 33 J. CONTEMP. ASIA 37, 44 (2003).

30. See MYUNG OAK KIM & SAM JAFFE, *THE NEW KOREA: AN INSIDE LOOK AT SOUTH KOREA’S ECONOMIC RISE* 177 (2010); Kee, *supra* note 27.

31. Kim & Park, *supra* note 29 (discussing Confucian values such as loyalty and respect for elders or authority figures).

32. *Id.*; see also Choong Y. Lee, *Korean Culture and Its Influence on Business Practice in South Korea*, 7 J. INT’L MGMT. STUD. 184, 185 (2012) [hereinafter *Korean Culture and Its Influence on Business*].

33. See Kee, *supra* note 27.

Confucianism is deeply rooted in South Korean corporate culture and is manifested in its management styles.³⁴ South Korea has a traditional labor market which is based on “long-term employment and seniority-based wages [making] it costly to take a leave of absence from work.”³⁵ Most South Korean companies use a top-down management structure,³⁶ which means that top management makes decisions, and that these decisions are handed down the hierarchy for execution.³⁷ The manager is seen as the “father” of their department, who, in return for loyalty, looks out for the well-being of his subordinates.³⁸ Employees are protected by their employers, but are not given any responsibility or freedom to express their opinions.³⁹ As a way of showing loyalty and respect to their managers, employees are strongly encouraged not to leave work until their supervisor leaves.⁴⁰ A recent study by McKinsey & Company found that “superiors who value working late consider it a sign of hard-working.”⁴¹ To show respect to their superiors, employees must point out the mistakes of their superiors indirectly in order to not offend them.⁴²

South Korea is a restrained society, as they “do not put much emphasis on leisure time . . . and feel that indulging themselves is somewhat wrong.”⁴³ Employees are discouraged from taking vacations, because it signifies a lack of dedication to the company and loyalty to their colleagues.⁴⁴ Because employees are discouraged from taking time off from work even for vacations, maternity leave is especially frowned upon because it requires colleagues to cover for the

34. See Kim & Park, *supra* note 29 (discussing Confucian values such as loyalty and respect for elders or authority figures).

35. ANGEL GURRÍA, OECD, A FRAMEWORK FOR GROWTH AND SOCIAL COHESION IN KOREA 26 (June 2011).

36. See *Korean Culture and Its Influence on Business*, *supra* note 32, at 189 (discussing Korean management style, which consists of top-down decision making).

37. See Micah Harper, *Top-Down vs. Bottom-Up Management Styles*, Touro U. WORLDWIDE (Jan. 3, 2015), <http://www.tuw.edu/content/business/top-down-bottom-up-management/>.

38. See *Korean Culture and Its Influence on Business*, *supra* note 32 (discussing the importance of subordinates being loyal to managers and of managers looking out for their subordinates).

39. See Kee, *supra* note 27.

40. See Michael Kocken, *Korean Overtime and Why Korea has the Second Longest Working Hours in the OECD*, ASIA OPTIONS (Apr. 23, 2015), <http://www.asiaoptions.org/korean-overtime/>.

41. KCCI & MCKINSEY & CO., *supra* note 8, at 11; see also KIM & JAFFE, *supra* note 30.

42. See *Korean Culture and Its Influence on Business*, *supra* note 32, at 184-85.

43. *What About South Korea?*, HOFSTEDÉ INSIGHTS, <https://www.hofstede-insights.com/country/south-korea/> (last visited Feb. 22, 2018).

44. See Kim Bo-eun, *Korea: Republic of Workaholics*, KOREA TIMES (July 21, 2013, 11:36 AM), http://www.koreatimes.co.kr/www/news/biz/2015/02/328_139616.html.

absent employees for a very long period of time.⁴⁵ Both male and female employees are equally discouraged from taking time off from work to care for their newborn children.⁴⁶

Gender discrimination is inherent in the hiring process for South Korean companies⁴⁷ due to their corporate culture. There are several aspects of Korean corporate culture that make it easier for employers to prefer hiring male employees over female employees.⁴⁸ Relationship building, both within the company and amongst business partners, is very important in Korean business culture, and it typically takes place during dinner, followed by drinks after the meal.⁴⁹ In Korean culture, there is a stigma against women consuming alcohol in a group with male co-workers or business partners, as they may be mistaken for “women entertainers.”⁵⁰ Although there is a “high tolerance for open drunkenness, and ‘mistakes’ made while under the influence of alcohol[,]” this is only applicable to men, and women are not afforded the same level of tolerance for their bad behavior under the influence of alcohol.⁵¹ If a woman participates in consuming alcohol in the same way as her male counterpart, she may be criticized for lack-

45. See Meejung Chin et al., *Family Policy in South Korea: Development, Current Status, and Challenges*, 21 J. CHILD & FAM. STUD. 53, 57 (2012).

46. See, e.g., Chung Ah-young, *Dads Rarely Take Paternity Leave*, KOREA TIMES (July 27, 2015, 5:15 PM), http://www.koreatimes.co.kr/www/news/nation/2015/07/116_183611.html (discussing that Sim Jae-won, a working Korean father, took paternity leave because his job was more flexible than his wife’s job, but shortly after returning to work, he quickly heard of concerns regarding his job performance assessment within the company).

47. See Lee, *supra* note 13, at 81-82 (first citing JUNG-JIN OH, KOREAN WOMEN’S DEV. INST., CASE LAW ON WOMEN’S EMPLOYMENT INTERNATIONALLY AND IN KOREA 319-30 (2003), [goo.gl/iTgMq3](http://www.koreatimes.co.kr); then citing *Labor Participation Rate, Female (% of Female Population Ages 15+)* (Modeled ILO Estimate), WORLD BANK, <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS/countries/1W?display=graph> (last updated Mar. 1, 2017); and then citing VICTÓRIA KIS & EUNAH PARK, OECD, A SKILLS BEYOND SCHOOL REVIEW OF KOREA, <http://www.oecd.org/korea/SBS%20Korea.pdf> (last visited Feb. 22, 2018)).

48. See Lee, *supra* note 13, at 75.

49. See KIM & JAFFE, *supra* note 30, at 189 (indicating that, given the complexity of communication in Korean culture, drinking with colleagues is one way to build trust in a business relationship); Nancy Kim, *Reasonable Expectations in Sociocultural Context*, 45 WAKE FOREST L. REV. 641, 655-56 (2010) (quoting *Doing Business in Korea*, EXPORT.GOV., <https://2016.export.gov/southkorea/doingbusinessinkorea/index.asp> (last updated June 16, 2017, 1:55 AM)) (discussing the importance of heavy drinking to establish a personal or business relationship in South Korean culture); Dong Wook Lee et al., *Korean Working Adults’ and Undergraduates’ Attitudes Towards, and Self-Efficacy in, Joining Drinking Parties*, 34 SOC. BEHAV. & PERSONALITY 487, 488 (2006); Clayton DeGeorgio, *Dos and Dont’s of Global Biz Etiquette: Good Manner Key to Business Success*, SEOUL TIMES, <http://theseoultimes.com/ST/?url=/ST/db/read.php?idx=1432> (last visited Feb. 2, 2018).

50. See Wooksoo Kim & Sungjae Kim, *Women’s Alcohol Use and Alcoholism in Korea*, 43 SUBSTANCE USE & MISUSE 1078, 1079 (2008).

51. *Id.*

ing self-discipline, seen as a woman entertainer, or identified as “easy.”⁵² “Easy” is a term used to describe “women who will easily engage in sexual activity.”⁵³ These double standards force women to juggle the balance between building relationships through dinner and drinks while not being perceived as a woman entertainer.⁵⁴ As a result, employers are more inclined to hire males because they can partake in the relationship building process without these limitations.

Because of the influence of Confucianism, South Koreans value collectivism and therefore, female employees are not encouraged to speak about discrimination.⁵⁵ Collectivism is “the practice or principle of giving a group priority over each individual in it.”⁵⁶ Since South Koreans value working for the greater good of society, and not for the individual, women are not encouraged to speak out about discrimination they face in the workplace, but rather to accept this type of treatment for the greater good of society.⁵⁷ These values are deeply engrained in the corporate culture, and remain as such because new members observe and adapt to the existing corporate culture they encounter.⁵⁸ These “inefficient” ways of working have been engrained in the mindsets of employees and have become a social norm.⁵⁹

III. SOUTH KOREA’S REGULATIONS FOR FEMALE EMPLOYEES ARE OVERREACHING AND INEFFECTIVE

When South Korea implemented maternity leave provisions to comply with the ILO’s standards, it implemented additional provisions in an effort to protect female employees. As a consequence, South Korea has many special protections set forth for female employees,⁶⁰ but the provisions are simply for appearances and, in practice, are over-extensive while offering very little protection for the female employees.⁶¹ In fact, the special protections set out for female

52. *Id.*

53. *Id.* at 1086.

54. *See id.* at 1079.

55. Kee, *supra* note 27.

56. *Collectivism*, OXFORD DICTIONARY OF ENGLISH 341 (3rd ed. 2010); *see also* Lee, *supra* note 13, at 76 (citing Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement*, 27 MICH. J. INT’L L. 1, 29-35 (2005)).

57. *See* Kee, *supra* note 27.

58. *Id.*

59. *See* KCCI & MCKINSEY & CO., *supra* note 8, at 1.

60. *See* Ma, *supra* note 13, at 731, 739 (citing Joonmo Cho & Kyu-Young Lee, *Deregulation of Dismissal Law and Unjust Dismissal in Korea*, 27 INT’L REV. L. & ECON. 409 (2007)).

61. *See id.* at 741 (describing the inefficiencies of the “special protections” afforded to working women).

employees are sexist and hinder female employees from advancing in their careers. The female employment rate was below the OECD average because mothers who wish to return to work usually end up in “low paid, part-time, and temporary employment.”⁶²

The special protections prohibit employers from having female employees perform certain types of jobs, and require employers to make special exceptions for women for extended periods of time. The “special protections” afforded to women include: a one-day menstruation leave each month, restrictions on performing work inside a pit, and restrictions on work for pregnant females.⁶³ Further, the LSA defines a pregnant woman as “a female in pregnancy [sic] or with less than one year after childbirth.”⁶⁴ Taking all the special protections into consideration, the employers must comply with the restrictions for “pregnant” females for almost two years⁶⁵—much longer than the duration of the actual pregnancy.

The LSA sets forth restrictions for both pregnant and non-pregnant women. The LSA states that females shall not be forced to work between the hours of 10 p.m. and 6 a.m.⁶⁶ In addition to these extensive regulations, the LSA requires that employers grant pregnant female workers ninety days of leave before and after childbirth, with at least forty-five days allocated to the period after childbirth, and sixty days of pay by the employer.⁶⁷ Moreover, Article 74 of the LSA prohibits employers from having pregnant female workers work overtime.⁶⁸ Because of these extensive regulations for female employees, approximately 5,000 women are fired each year while on maternity or parental leave.⁶⁹ Although some were fired due to their companies’ financial struggles, most of the women were dismissed for “other reasons” that the companies did not specify.⁷⁰ Many other women return

62. See Hye-Ryun Kang & Chris Rowley, *Women in Management in South Korea: Advancement or Retrenchment?*, 11 ASIA PAC. BUS. REV. 213, 223 (2005); Lee, *supra* note 13, at 46-47, 75.

63. Geunlogijunbeob [Labor Standards Act], Act No. 5309, Mar. 13, 1997, art. 65, 72, 73 (S. Kor.), translated in Ministry of Governmental Legislation online database, <http://www.moleg.go.kr/FileDownload.mo?flSeq=26558>; see also Ma, *supra* note 13, at 729.

64. *Id.* art. 65.

65. *See id.*

66. *Id.* art. 70(1).

67. *Id.* art. 74(1), (4), amended by Act No. 8781, Dec. 21, 2007, Act No. 11270, Feb. 1, 2012, Act No. 12325, Jan. 21, 2014.

68. *Id.* art. 74(5), amended by Act No. 11270, Feb. 1, 2012.

69. Kim Se-jeong, *5,000 Women on Maternity Leave Fired Every Year*, KOREA TIMES (Sept. 13, 2015, 5:38 PM), http://www.koreatimes.co.kr/www/news/nation/2015/09/116_186737.html; see also Roh Mihye, *Women Workers in a Changing Korean Society*, in *WOMEN OF JAPAN AND KOREA: CONTINUITY AND CHANGE* 240, 240-41 (Joyce Gelb & Marian Lief Palley eds., 1994).

70. Se-jeong, *supra* note 69.

to the workforce after giving birth only to take on part-time positions.⁷¹ One thing the “special provisions” have in common is the underlying notion that all females require these “protections” and dismisses the idea that some women may not want or need these protections, and that they may want to work at a level similar to their male counterparts.

In order to adequately protect female employees, South Korea must adopt laws that force employers to change the corporate culture to discourage discrimination. Deeply rooted Confucian values in the South Korean Culture inherently encourage discrimination between male and female employees, so South Korean labor laws should focus on changing these cultural values in order to promote equality between male and female employees. South Korea needs to promote gender equality in the workplace, not only to change the Confucian ideals in the corporate culture, but also to increase the total labor force by utilizing the qualified female workforce.

A. *South Korean Corporate Culture Encourages Discrimination*

South Korean corporate culture encourages discrimination against women, so laws should be designed to protect female employees from discrimination. As previously mentioned, late night dinners and drinks play an important role in the South Korean business culture.⁷² The provisions in the LSA prohibiting employers from requiring pregnant females to work late at night encourage employers to favor hiring males over females.⁷³ Further, employers are prohibited from having female employees work late up to one year after giving birth, making employing females costly for the employers.⁷⁴

There may be other factors that encourage gender discrimination in the workplace. The discrimination likely takes place because most fathers do not take paternity leave to care for their children, and as a result, do not understand the struggles that mothers experience in try-

71. Lee, *supra* note 13, at 80 (citing OH, *supra* note 47).

72. See KIM & JAFFE, *supra* note 30, at 189; *South Korean Culture*, S. KOR. DOING BUS. GUIDE, <http://www.southkorea.doingbusinessguide.co.uk/the-guide/south-korean-culture> (last visited Feb. 5, 2018).

73. *Poll Finds Employers Prefer Hiring Men*, YONHAP NEWS AGENCY (Mar. 15, 2016, 11:32 AM), <http://english.yonhapnews.co.kr/national/2016/03/15/0302000000AEN20160315005400320.html>.

74. See Geunlogijunbeob [Labor Standards Act], Act No. 5309, Mar. 13, 1997, *amended by* Act No. 10339, June 4, 2010, art. 65, 70 (S. Kor.), *translated in* International Labour Organization online database, <http://www.ilo.org/global/lang—en/index.htm>.

ing to balance a career and family life.⁷⁵ Only 2% of the requests for parental leave were from men, because of “concern that it would have negative effects on their career and relationships with colleagues.”⁷⁶ The small percentage of fathers that take paternity leave are labeled as “brave” because they chose to take paternity leave even if it would have consequences on their careers.⁷⁷ Fathers can request a reduced work schedule as an alternative to taking paternity leave, but often this is not a feasible alternative.⁷⁸ The reduced work schedule is not mandated, and employers are free to reject the request without being penalized.⁷⁹ Because most fathers do not take time off from work to care for their newborn children, the mothers must undertake this role, and the practice of women taking time off work to care for their newborns is seen as a burden to the employers and their colleagues.

B. Confucian Gender Roles Promote Discrimination

The gender roles rooted in the Confucian culture promote different treatment of men and women. In Confucianism, men are seen as superior, and their authority is not challenged by anyone of an inferior status.⁸⁰ The woman’s role is to obey men: “their fathers before they are married, [and] their husbands after they are married.”⁸¹ This gender inequality is not only practiced within the home, but also in the workplace.⁸² Employers are less likely to recruit women, especially married women because they frequently ask for leave, must balance work with their duties as a mother, and may not put work as their first priority.⁸³ However, it is hard for women to put work as their first priority because of social expectations, as Confucianism teaches that “women should place first priority on family responsibility.”⁸⁴

75. See Lee, *supra* note 13, at 90-91; see also Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C. L. REV. 707, 781 (2000).

76. Randall S. Jones & Satoshi Urasawa, *Labour Market Policies to Promote Growth and Social Cohesion in Korea*, 1068 OECD ECON. DEP’T WORKING PAPERS 1, 11 (2013).

77. See *Getting Paternity Leave Still Tough in S. Korea*, BUS. WORLD ONLINE (Jan. 15, 2016), <http://www.bworldonline.com/content.php?section=Labor&title=getting-paternity-leave-still-tough-in-s.-korea&id=121488>.

78. See Meejung Chin et al., *Family Policy in South Korea: Development, Current Status, and Challenges*, 21 J. CHILD & FAM. STUD. 53, 56 (2012) (stating that paternity leave in South Korea is not mandated).

79. See Lee & Chang, *supra* note 2, at 142; Chin et al., *supra* note 78.

80. Kee, *supra* note 27.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

C. Existing Legislation in South Korea is Ineffective

Although maternity leave provisions in South Korea have been in place for over thirty years, “less than one out of every five pregnant female employees takes advantage of family leave.”⁸⁵ Female employees’ reasons for not taking family leave include: “fear of disrupting the workload, . . . guilt for fellow workers, . . . policy inadequacy, and . . . fear of dismissal or penalties in promotions and salary.”⁸⁶ Even when the female employees do take family leave, they often return to the office to find that their job duties have been “[re]assigned to another team with inferior responsibilities . . . transferred out of town where commuting is not feasible . . . [or are bullied] into signing a resignation form.”⁸⁷ Women are not encouraged to bring law suits, but if they are successful in bringing a lawsuit, the damages awarded to the employees do not adequately compensate the employee for the loss of their employment.⁸⁸

IV. U.S. LAW CAN HELP SOUTH KOREA PREVENT GENDER DISCRIMINATION IN THE WORKPLACE

The United States has a maternity leave provision that is less burdensome to employers and has a high rate of compliance. The Family and Medical Leave Act of 1993, hereinafter FMLA, allows all eligible employees, men and women, to take twelve workweeks of leave for “the birth of a child and to care for the new born within one year of birth.”⁸⁹ Upon the employee’s return, the employer must restore employee to the original position or an equivalent position with equivalent benefits, pay, and other terms of employment.⁹⁰ If an employer violates provisions of the FMLA, the employer may have to pay damages, including wages or other compensation denied to the employee by the violation, actual monetary loss to the employee as a

85. Lee, *supra* note 13, at 86 (citing *Chulsan Mit Yuga Hyujik Hyunhwang [Status on Care Leave Participants]*, STAT. KOREA, http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1504 (last updated Mar. 15, 2017)).

86. Lee, *supra* note 13, at 86 (citing Nam-Hee Do, *Kiuppei Janyeo Yangyuk Jiwon Shiltaewa Junkchekgwajae [Current State of Company Assistance on Care Leave and Remaining Legislative Tasks in Korea]*, KOREA INST. CHILD CARE & EDUC. (2012), <https://goo.gl/8Evrqy>).

87. *Id.* (citing OH, *supra* note 47).

88. *See, e.g., id.* at 87 (citing Seoul Central District Court [Dist. Ct.], *Hwang v. Lim*, Criminal Appeals Section 9, Feb. 13, 2014 (S. Kor.)) (stating that the Court of Appeals awarded the plaintiff \$2,000 USD when the firm fired the employee upon discovering she was pregnant).

89. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2016).

90. *Id.* § 2614.

direct result of the violation, interest on wages or actual monetary loss, and reasonable attorney's fees.⁹¹

The Equal Employment Opportunity Commission, hereinafter EEOC, amended Title VII of the Civil Rights Act of 1964 to include the Pregnancy Discrimination Act of 1978.⁹² The Pregnancy Discrimination Act requires an employer "to show that their policies do not have a disproportionate adverse effect on women, and that their policy is job related for the position in question and consistent with business necessity."⁹³ According to the EEOC, an "employer can prove a business necessity by showing that the requirement is 'necessary to safe and efficient job performance.'"⁹⁴ However, the policies can still be in violation of the EEOC if the employer refuses to adopt a less discriminatory alternative to satisfy their business needs.⁹⁵

A. FMLA Requirements and Compliance

The FMLA has a workable standard that employers can adhere to, which results in a high rate of compliance. Fifty-nine percent of employees are eligible for leave under the FMLA, and sixteen percent of the covered and eligible employees took a leave under FMLA in 2012.⁹⁶ In order to qualify for leave under the FMLA, employees must have worked for their employer for at least twelve months, logged 1,250 hours of work over the past twelve months, and been employed with a company that employs at least fifty individuals who live within a seventy-five mile radius of the company.⁹⁷ Companies that violate the regulations set forth under the FMLA may have to pay money damages including lost wages, interest on lost wages, and reasonable attorney's fees.⁹⁸

91. *Id.* § 2617(a)(1), (3).

92. See Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. §§ 2000e (2016)).

93. Camille Hébert, *Disparate Impact and Pregnancy: Title VII's Other Accommodation Requirement*, 24 J. GENDER, SOC. POL'Y & L. 107, 142 (2015). See generally 42 U.S.C. § 2000e-2(k)(1)(A)(i) (2016).

94. JENNY R. YANG, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES 26 (2015), https://www.eeoc.gov/laws/guidance/upload/pregnancy_guidance.pdf (quoting *Dothard v. Rawlinson*, 433 U.S. 321, 331 n.14 (1977)).

95. 42 U.S.C. § 2000e-2(k)(1)(A)(ii) (2016); see also 42 U.S.C. § 2000e-2(k)(1)(C) (2016).

96. JACOB ALEX KLERMAN ET AL., ABT ASSOC. INC., FAMILY AND MEDICAL LEAVE IN 2012: TECHNICAL REPORT i-ii (2014).

97. *FMLA (Family & Medical Leave)*, U.S. DEP'T LAB., <https://www.dol.gov/general/topic/benefits-leave/fmla> (last visited Jan. 16, 2018).

98. See 1 EMP. DISCRIM. COORD. *Analysis of Federal Law* § 32:77, Westlaw (database updated Apr. 2018); Deborah C. England, *What Money Damages are Available if You Win an*

The FMLA further protects employees by prohibiting employers from “discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right.”⁹⁹ According to the U.S. Department of Labor’s key findings for the Act’s twentieth anniversary, “the [FMLA] codified a simple and fundamental principle: Workers should not have to choose between the job they need and the family members they love and who need their care.”¹⁰⁰ The study showed that “employers generally find it easy to comply with the law, and misuse of the FMLA by workers is rare.”¹⁰¹

B. Legislative History of Title VII to Protect Women Against Discrimination

In *Muller v. Oregon*, decided in 1908, “the Supreme Court upheld a law restricting the number of hours women could work in laundries on the theory that the state was justified in acting to protect the ‘maternal functions’ of women.”¹⁰² On its face, these laws “accommodated the domestic and reproductive obligations of women to protect them from exploitation by employers.”¹⁰³ The United States Equal Employment Opportunity Commission issued its first guidelines on pregnancy discrimination in 1972, due to the pressure from women’s rights advocates.¹⁰⁴ The Court’s decision prior to the enactment of the Pregnancy Discrimination Act set a precedent that “women were not entitled to any ‘special’ benefits or treatments based on their pregnancy; but neither could employers penalize those women who were able to work while pregnant,” essentially stating that “a pregnant worker who could work like a man (or . . . a non-pregnant person), had the right to continue to do so.”¹⁰⁵

FMLA Case?, NOLO, <http://www.nolo.com/legal-encyclopedia/what-money-damages-are-available-if-you-win-fmla-case.html> (last visited Jan. 16, 2018).

99. WAGE & HOUR DIV., U.S. DEP’T OF LABOR, FACT SHEET #77B: PROTECTION FOR INDIVIDUALS UNDER THE FMLA (2011), <https://www.dol.gov/whd/regs/compliance/whdfs77b.pdf>.

100. *Family Medical Leave Act Benefits Workers and Their Families, Employers*, U.S. DEP’T LAB. (Feb. 4, 2013), <https://www.dol.gov/opa/media/press/whd/WHD20130175.htm>.

101. *Id.* In fact, 91% of employers reported that complying with FMLA has either no noticeable effect or a positive effect on business operations. *See id.*

102. Deborah L. Brake & Joanna L. Grossman, *Unprotected Sex: The Pregnancy Discrimination Act at 35*, 21 DUKE J. GENDER L. & POL’Y 67, 72 (2013) (citing *Muller v. Oregon*, 208 U.S. 412, 422 (1908)).

103. Brake & Grossman, *supra* note 102.

104. *Id.* at 72-73.

105. *Id.* at 74.

The U.S. amended Title VII of the Civil Rights Act of 1964 to issue revised guidance addressing issues of pregnancy.¹⁰⁶ The EEOC enacted The Pregnancy Discrimination Act of 1978 to prevent discrimination on the basis of pregnancy, childbirth, or other related medical conditions.¹⁰⁷ Camille Hébert claims that “the disparate impact theory, rather than the disparate treatment theory” likely promoted Title VII’s requirement to accommodate pregnancy.¹⁰⁸ “Both disparate impact and disparate treatment refer to discriminatory practices [But] disparate impact occurs when policies, practices, rules or other systems that appear to be neutral result in a disproportionate impact on a protected group.”¹⁰⁹ Pregnancy-neutral policies cause a disparate impact to women because of the temporary physical limitations associated with pregnancy and childbirth.¹¹⁰ The Pregnancy Discrimination Act insisted that “employers abandon express rules and policies that classified on the basis of pregnancy, as well as stereotyped ways of thinking about the pregnant women as workers.”¹¹¹

Prior to the enactment of the Pregnancy Discrimination Act, the *Gilbert* Court held that exclusion based on pregnancy was not a distinction based on gender, even though pregnancy was confined only to women, because it is “different from the typically covered diseases” as pregnancy “is often a voluntarily undertaken and desired condition.”¹¹² Congress enacted the Pregnancy Discrimination Act after the ruling in *Gilbert*, showing that Congress intended to disapprove the *Gilbert* holding and the notion that discrimination based on pregnancy is not a form of sex discrimination.¹¹³ The Supreme Court held in *California Federal Savings & Loan Ass’n v. Guerra*, that the Pregnancy Discrimination Act was “intended to provide relief to working women

106. See Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2016); Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. §§ 2000e (2016)); see also S. REP. NO. 95-331, at 2 (1977).

107. Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. §§ 2000e (2016)).

108. Camille Hébert, *Disparate Impact and Pregnancy: Title VII’s Other Accommodation Requirement*, 24 J. GENDER, SOC. POL’Y & L. 107, 109 (2016).

109. *EEO: General: What are Disparate Impact and Disparate Treatment?*, SOC’Y FOR HUM. RES. MGMT. (Aug. 30, 2016), <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/disparateimpactdisparatetreatment.aspx>.

110. See Hébert, *supra* note 108, at 109-11.

111. Brake & Grossman, *supra* note 102, at 67, 75 (first citing 42 US C § 2000e(k); and then citing H.R. REP. NO. 95-948, at 3 (1978), as reprinted in 1978 U.S.C.A.N. 4749, 4751).

112. *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 136 (1976) (citing *Gilbert v. Gen. Elec. Co.*, 375 F. Supp. 367, 375, 377 (E.D. Va. 1974)).

113. Hébert, *supra* note 108, at 113 (citing CHAIRMAN HARRISON A. WILLIAMS, JR., COMM. ON LABOR & HUMAN RES., U.S. SENATE, LEGISLATIVE HISTORY OF THE PREGNANCY DISCRIMINATION ACT OF 1978 (U.S. Government Printing Office 1980)).

and to end discrimination against pregnant workers”¹¹⁴ and to “guarantee women the basic right to participate fully and equally in the workforce, without denying them the fundamental right to full participation in family life.”¹¹⁵ The Court in *Nashville Gas Co. v. Satty* held that:

the employer’s policy of denying accumulated seniority to women returning from pregnancy leave violated Title VII, because, even though “neutral in its treatment of male and female employees,” the employer’s practice imposed a substantial burden on women and not men with respect to their employment opportunities that had not been justified by business necessity.¹¹⁶

C. *Success of Enactment of Law to End Discrimination Based on Pregnancy in the United States*

Since the enactment of the Pregnancy Discrimination Act, only a few cases involving pregnancy discrimination claims have reached the Supreme Court, meaning lower level courts have “taken a relatively strong reading of the Act.”¹¹⁷ However, this does not mean that pregnancy discrimination is no longer present in the U.S. But, the Pregnancy Discrimination Act has improved the workplace for women because there is an increased number of women working outside of the home since the passage of the Act.¹¹⁸ Although there are still many cases reported of women being discriminated against in the workplace and U.S. laws are not perfect in preventing discrimination in the workplace, there have been significant improvements since the enactment of the Pregnancy Discrimination Act.

V. CAN A LEGAL TRANSPLANT BE SUCCESSFUL IN SOUTH KOREA?

South Korea should consider a legal transplant of U.S. maternity leave laws to change their culture and attitude toward discrimination based on gender in the workplace. A legal transplant can be deemed successful when it solves the legal problem for which the transplant

114. *Cal. Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 285-86 (1987) (citing 123 CONG. REC. 8,144 (1977)).

115. *Guerra*, 479 U.S. at 289 (quoting 123 CONG. REC. 29,658 (1977)).

116. Hébert, *supra* note 108, at 135 (quoting and citing *Nashville Gas Co. v. Satty*, 434 U.S. 136, 140-43 (1977)).

117. Brake & Grossman, *supra* note 102, at 67, 77.

118. See Amal Bass, *Slow & Uneven Progress: The Pregnancy Discrimination Act at 35*, WOMEN’S L. PROJECT (Oct. 31, 2013), <https://womenslawproject.wordpress.com/2013/10/31/slow-uneven-progress-the-pregnancy-discrimination-act-at-35/>.

was made.¹¹⁹ Legal transplants may be an excellent option because of its “utility to the lawmaker: it is easier for the lawmaker to borrow a law than to create a law.”¹²⁰ Also, because law “gives expression to culture . . . [and] . . . provides symbols whereby cultural values and goals may be expressed[,]”¹²¹ legal transplants can also have a significant effect on and change the host culture.¹²² Therefore, if South Korea revises its laws, they will be able to change the mindsets and cultural values of people through the laws.¹²³ “A change in the behavior must be the first step . . . [and a] change in attitudes will follow.”¹²⁴ South Korea can change the behavior of companies and employees of companies by enacting laws that promote gender equality in the workplace, and then, eventually, causing a change in peoples’ mindset.

A. *A Country in Need of Transplant Should Be Looking for Solutions and Options*

In order for a transplant to be successful, it is important “that the country in need of the transplant is actually and actively looking for solutions and options, rather than waiting for the host . . . country . . . [to implement] laws that do not really fit their needs.”¹²⁵ To achieve viability, the “law must comport with the cultural context in which it is located”¹²⁶ At the very least, the law should not clash violently with the culture in which it is to be transplanted.¹²⁷ The law does not need to completely comport with culture, but should not be so invasive that it leads to rejection.¹²⁸ In fact, one study showed that a trans-

119. Salvatore Mancuso, *Legal Transplants and Economic Development Civil Law Vs. Common Law?, in ONE COUNTRY, TWO SYSTEMS, THREE LEGAL ORDERS – PERSPECTIVES OF EVOLUTION* 75, 83 (Jorge Costa Oliveira & Paulo Cardinal eds., 2009).

120. Philip M. Nichols, *The Viability of Transplanted Law: Kazakhstani Reception of a Transplanted Foreign Investment Code*, 18 U. PA. J. INT’L ECON. L. 1235, 1272 (1997) (citing Alan Watson, *Aspects of Reception of Law*, 44 AM. J. COMP. L. 335 (1996)).

121. *Id.* at 1276.

122. *See id.* at 1271.

123. In 1964, Martin Luther King stated: “Even though morality cannot be legislated, behavior can be regulated” as a response to whether he would wait until the culture was ready for civil rights legislation. James S. Cole, *Which Comes First: Changing the Culture or Changing the Law?*, MERCATORNET (July 29, 2013), https://www.mercatornet.com/articles/view/which_comes_first_changing_the_culture_or_changing_the_law/12528.

124. *Id.*

125. María Paula Reyes Gaitán, *The Challenges of Legal Transplants in a Globalized Context: A Case Study on “Working” Examples* (Oct. 2014) (unpublished Masters of Law dissertation, University of Warwick) (on file with the Social Science Research Network), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2530811.

126. Nichols, *supra* note 120, at 1239.

127. *See id.* at 1273.

128. *See, e.g., id.* at 1273-74.

planted law survived even when it had little relationship to the host culture.¹²⁹

A transplant of U.S. Labor Laws would be successful in South Korea because it is not hostile to western concepts.¹³⁰ Many universities in South Korea teach a portion of their undergraduate and graduate courses in English, with some schools offering nearly a third of their courses in English.¹³¹ South Koreans see speaking English as a lucrative skill, and have the idea that “the ability to speak English is worth its weight in gold.”¹³²

There are signs that South Korea’s culture is already becoming more westernized. The older generation considers South Korea’s young adults to be more individualistic and westernized, because of the decline of “jeong.”¹³³ “Jeong” is a term used to describe “feelings of fondness, caring, bonding, and attachment that develop within interpersonal relationships.”¹³⁴ One critical aspect of “jeong” is deep interdependence, and a relationship of mutual give and take.¹³⁵ The fact that “jeong” is declining means that South Koreans are less focused on making sacrifices for their interdependent relationships, and are focusing more on their individual lives. Individuals now place more value on “personal happiness” and “work-life balance.”¹³⁶ People are no longer willing to sacrifice their current happiness for an uncertain future.¹³⁷ Since South Korea is showing their openness to western concepts by incorporating curriculum taught in English and

129. See *id.* at 1268-71 (illustrating the successful legal transplant in Kazakhstan despite the new law not having much of a relationship to Kazakhstani culture).

130. See Seong Hwan Cha, *Myth and Reality in the Discourse of Confucian Capitalism in Korea*, 43 *ASIAN SURV.* 485, 488 (2003) (indicating that western influence began on East Asian countries, including Korea, has been around since the nineteenth century); cf. Nichols, *supra* note 120, at 1274 (citing Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43 *AM. J. COMP. L.* 93, 97 n.14 (1995)) (indicating that a factor involved in Kazakhstani society accepting a transplanted law was that Kazakhstan “is not hostile to the West or Western concepts”).

131. *Studying in South Korea*, COMPLETE UNIV. GUIDE, <http://www.thecompleteuniversityguide.co.uk/international/asia/south-korea/> (last visited Feb. 6, 2018).

132. *The Future of English in Korea*, DIPLOMAT (June 29, 2014), <https://thediplomat.com/2014/06/the-future-of-english-in-korea/>.

133. See DANIEL TUDOR, *KOREA: THE IMPOSSIBLE COUNTRY* 100 (2012).

134. Christopher K. Chung & Samson J. Cho, *Conceptualization of Jeong and Dynamics of Hwabyung*, 3 *PSYCHIATRY INVESTIGATION* 46, 47 (2006).

135. TUDOR, *supra* note 133, at 92.

136. KCCI & MCKINSEY & CO., *supra* note 8, at 1; Annamarie Mann & Bailey Nelson, *Thinking Flexibly About Flexible Work Arrangements*, GALLUP (Dec. 12, 2017), <http://news.gallup.com/opinion/gallup/223304/thinking-flexibly-flexible-workarrangements.aspx>.

137. KCCI & MCKINSEY & CO., *supra* note 8, at 1.

being more individualistic, South Korea may be open to more western concepts, including U.S. maternity leave laws.

B. Korea is Showing Signs of Wanting to Change Their Corporate Culture

South Korea's corporate culture is changing, and companies are starting to adopt western corporate cultures.¹³⁸ Since South Korea is receptive to change, it is an opportune time for South Korea to reevaluate their current maternity leave provisions, and adopt U.S. maternity leave laws to better balance employer and employee interests. CJ Group, a South Korean conglomerate, is taking steps to “combat Korea's notoriously unsustainable work culture for women” by creating a “returnship” program that is specifically designed to help women returning to the workplace after being out of work for two or more years.¹³⁹ CJ Group's program includes “flexible hours, mentoring and special training from managers.”¹⁴⁰ While this is a great program, CJ Group is one of the only companies that offer this type of program for female workers to return to the workforce. As evidenced by the number of applicants, there is still a large number of female employees looking for flexible working hours to accommodate for their desire to advance their careers while taking care of their families.¹⁴¹

Samsung Electronics, ranked eighteenth on Forbes's “The World's Biggest Public Companies” list in 2016,¹⁴² has recently announced that they are going to change their corporate culture by moving “away from a top-down culture and towards a working

138. See Choong Y. Lee & Jennifer Lee, *South Korean Corporate Culture and its Lessons for Building Corporate Culture in China*, 9 J. INT'L MGMT. STUD., 33, 39 (2014).

139. Caroline Fairchild, *Korean Corporate Culture at a Crossroads*, FORTUNE (May 14, 2014), <http://fortune.com/2014/05/14/korean-corporate-culture-at-a-crossroads/>.

140. *Id.*

141. For instance, in 2013, 2,530 applicants applied for the 150 available positions. See Kim Rahn, *More Mothers Returning to Work*, KOREA TIMES (Aug. 19, 2013, 5:00 PM), http://www.koreatimes.co.kr/www/news/nation/2016/08/602_141345.html.

142. *The World's Biggest Public Companies: #18 Samsung Electronics*, FORBES, <http://www.forbes.com/companies/samsung-electronics/> (last updated May 2016) [<https://web.archive.org/web/20161012085820/https://www.forbes.com/companies/samsung-electronics/>]. In 2017, Forbes ranked Samsung Electronics as the fifteenth biggest public company in the world. *The World's Biggest Public Companies: #15 Samsung Electronics*, FORBES, <http://www.forbes.com/companies/samsung-electronics/> (last updated May 2017) [<https://web.archive.org/web/20170927160356/https://www.forbes.com/companies/samsung-electronics/>].

environment that fosters open dialogue.”¹⁴³ Samsung also said they “will . . . reduce unnecessary overtime and weekend work” to encourage “employees to spend time with their families”¹⁴⁴ Samsung’s announcement has sparked an interest in small and medium-sized companies to also change their corporate culture.¹⁴⁵ South Korea’s legislature should take this opportunity to revise maternity leave laws and encourage a change from old Confucian ideals while taking advantage of the momentum of the changing mindsets of their citizens as well as companies seeking a change in corporate culture.¹⁴⁶

In 2014, The Ministry of Gender Equality and Family (MOGEF) launched a taskforce to promote gender equality.¹⁴⁷ MOGEF’s objectives are to: expand women’s employment, create conditions for work-life balance, increase women’s representation, and spread the culture of gender equality.¹⁴⁸ Although the government has implemented many programs to promote gender inequality, the progress has been slow because of deep-rooted traditions and cultural norms that make it difficult for women to move up in their careers once they have families.¹⁴⁹ It may be more effective to enact laws, with penalties high enough to promote compliance, to encourage employers to encourage gender equality in the workplace.

C. Differences in U.S. Culture from South Korean Culture

The culture of the U.S. is largely based on individuality and equality,¹⁵⁰ as opposed to social harmony in South Korea.¹⁵¹ Ameri-

143. Se Young Lee, *World’s Biggest Startup? Samsung Electronics to Reform Corporate Culture*, REUTERS (Mar. 23, 2016, 10:27 PM), <https://in.reuters.com/article/samsung-elec-culture/worlds-biggest-startup-samsung-electronics-to-reform-corporate-culture-idINKCN0WQ0CT>.

144. *Id.*

145. Kim Jong-nam, *Changing Corporate Culture*, KOREA TIMES (June 3, 2016, 5:00 PM), http://www.koreatimes.co.kr/www/news/opinion/2016/06/162_206225.html.

146. As an example of South Korea’s willingness to change its corporate culture, South Korea’s legislature passed a bill on February 28, 2018 to be effective on July 1, 2018 to reduce Korea’s maximum working hours from sixty-eight hours per week to fifty-two, and making all public holidays mandatory paid days off. Anthony Chang et al., *New Legislation Reduces Maximum Weekly Working Hours in Korea*, LEXOLOGY (Apr. 10, 2018), <https://www.lexology.com/library/detail.aspx?g=eb4a6126-1eb4-4a78-a2c9-d20f382dcd1d>. The new law will initially be applied to large companies before being rolled out in stages to smaller companies. *Id.*

147. *See Gender Equality Policy*, MINISTRY GENDER EQUALITY & FAM., http://www.mogef.go.kr/eng/pc/eng_pc_f001.do (last visited Feb. 6, 2018).

148. *See id.*

149. Meg Kochuba, *The Republic of Korea*, PAUL HASTINGS, <https://www.paulhastings.com/genderparity/countries/korea.html> (last visited Jan. 27, 2018).

150. *Country Comparison*, HOFSTED INSIGHTS, <https://www.hofstede-insights.com/country-comparison/the-usa/> (last visited Jan. 27, 2018).

151. Kim and Park, *supra* note 29, at 44.

cans value their independence and consider “themselves as separate individuals . . . [rather than] members of a close-knit, tightly interdependent family.”¹⁵² Essentially, “Americans are generally less concerned about history and traditions[,]” and more focused on what the future holds.¹⁵³ Americans also value equality, and uphold the idea that everyone is created equal, both men and women.¹⁵⁴ In the U.S., people typically refer to others by their first name, and generally use informal speech.¹⁵⁵ Americans are also direct and honest about their opinions, and encourage open communication to resolve any conflicts.¹⁵⁶ Gender roles are not as distinct in the U.S., and there are many instances where the woman is the primary breadwinner for the family.¹⁵⁷ Americans also value time, and discourage spending time on activities that have no visible or beneficial outcome.¹⁵⁸

D. *Why U.S. Laws Would Work in South Korea*

Like South Korea’s current situation of firing women due to pregnancy, the U.S. faced a similar situation prior to the enactment of the Pregnancy Discrimination Act. As noted by the National Partnership for Women & Families in its review of the Pregnancy Discrimination Act and its history, twenty five years after its passing, “Prior to the passage of the PDA, it was not uncommon for employers to fire female employees who became pregnant, require that they take unpaid leave, or deny them benefits such as insurance coverage for pregnancy-related conditions.”¹⁵⁹ Because of such discriminatory practices, the National Partnership for Women & Families led the

152. *Key American Values*, U. MO.–ST. LOUIS, <http://www.umsl.edu/~intelstu/Admitted%20Students/Visitor%20Handbook/keyvalues.html> (last visited Jan. 27, 2018).

153. *Id.*

154. *See id.*

155. *See American Culture*, INTERNATIONALSTUDENT, https://www.internationalstudent.com/study_usa/way-of-life/american-culture/ (last visited Jan. 27, 2018, 5:05 PM).

156. *See Key American Values*, *supra* note 152.

157. *See* Dennis Cauchon, *An American Role-Reversal: Women the New Breadwinners*, USA TODAY (Mar. 24, 2013, 5:24 PM), <https://www.usatoday.com/story/news/nation/2013/03/24/female-breadwinners/2015559/>.

158. *See Key American Values*, *supra* note 152.

159. *The Pregnancy Discrimination Act, 25 Years Later: Pregnancy Discrimination Persists*, NAT’L PARTNERSHIP WOMEN & FAMILIES, <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/the-pregnancy-discrimination.pdf> (last visited Jan. 30, 2018) (first citing *Gilbert*, 429 U.S. 125 (1976); then citing *Geduldig v. Aiello*, 417 U.S. 484 (1974); and then citing *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974)).

Campaign to End Discrimination Against Pregnant Workers for two years prior to the enactment of the Pregnancy Discrimination Act.¹⁶⁰

Similar to South Korea, the U.S. previously had special protections set forth for women that did not actually achieve their desired result. In 1908, prior to the enactment of the Pregnancy Discrimination Act, “the Supreme Court upheld a law restricting the number of hours women could work in laundries on the theory that the state was justified in acting to protect the ‘maternal functions’ of women.”¹⁶¹ However, the protection was merely a pretext for “preserving better jobs for men and did not affect all women equally.”¹⁶² This only began to change in the 1970’s “when women’s rights advocates succeeded in establishing a constitutional right of sex equality and the statutory ban on sex discrimination in Title VII began to take shape.”¹⁶³ Similar to the conditions in the U.S. before the passage and enactment of the Pregnancy Discrimination Act, the current South Korean laws enacted to “protect maternal functions of women” may simply be a pretext to justify the discrimination taking place in the workplace.

South Korea cannot turn a blind eye to the recurring problem of gender discrimination, as the culture has already started to change. On August 8, 2016, female employees of Samsung staged the largest walk out both Samsung and South Korea had ever seen in protest due to wage discrimination and unequal treatment.¹⁶⁴ As one report on the event indicated, “Nearly 30,000 women discarded their employee badges on the floor of the main lobby chanting, ‘Together We Are One, Without Us Nothing!’”¹⁶⁵ “Nearly every single female employee from Samsung HQ . . . vacated the[ir] office,” and fellow female employees located in global offices expressed their interest in joining the protest to bring solidarity to this issue of inequality.¹⁶⁶ The 30,000 females voiced their position by making it “clear that they . . . [would] not return until all female employees’ salaries are matched with their

160. *The Pregnancy Discrimination Act, 25 Years Later: Pregnancy Discrimination Persists*, *supra* note 159.

161. Brake & Grossman, *supra* note 102 (citing *Muller v. Oregon*, 208 U.S. 412, 422 (1908)).

162. Brake & Grossman, *supra* note 102 (first citing Mary E. Becker, *From Muller v. Oregon to Fetal Vulnerability Policies*, 53 U. CHI. L. REV. 1219, 1237-38, 1239 (1986); and then citing David L. Kirp, *Fetal Hazards, Gender Justice, and the Justices: The Limits of Equality*, 34 WM. & MARY L. REV. 101, 115 (1992)).

163. Brake & Grossman, *supra* note 102 (first citing *Reed v. Reed*, 404 U.S. 71 (1971); and then citing *Craig v. Borden*, 429 U.S. 190 (1976)).

164. Mike Kim, *Women of Samsung Walk Out—National Strike for Equal Pay Hits Korea*, MEDIUM (Aug. 9, 2016), <https://medium.com/@mikekimsf/women-of-samsung-walk-out-national-strike-for-equal-pay-hits-korea-22a185bdd3f7#4xzaqwf8y>.

165. *Id.*

166. *Id.*

male counterparts and 3 females are added to the Board of Directors.”¹⁶⁷ Due to this protest, the company became nearly inoperable as Senior Executives left offices and “global offices . . . also . . . [began] to shut down.”¹⁶⁸ Samsung accounts for nearly 25% of the Nation’s GDP, and is a role model for many small businesses.¹⁶⁹

This recent strike is one example that the mindsets of female employees are rapidly changing, and that the Confucian corporate culture cannot stay for long. This is a clear sign that South Korea must change their laws to adapt to women’s changing mindsets. South Korea should take an active role in reevaluating and rewriting the laws to instill a culture of equality in the workplace.

VI. CONCLUSION

South Korea should adopt United States labor laws, which provide more workable, far-reaching protections and tougher enforcement to better protect women from discrimination in the workplace.

167. *Id.*

168. *Id.*

169. *Id.*

