

Abstract

This thesis is a study on legislation protecting the rights to employment for the disabled, according to The Persons with Disabilities Empowerment Act B.E 2550, on the issue of unfair discrimination in the employment of the disabled. According to the statistics conducted by the National Statistics Office in 2007, the number of disabled population is 1,871,860 and on an increasing trend, along with the population increase. However, only a minority of the disabled people are under employment due to discrimination by employees. This injustice results in a deteriorating social status of the disabled and undue burden on their families and the country as a whole. The study is conducted by comparing the legislation, both from international and foreign laws, such as US and Australian law.

From a review of Thai law, it appears that no legislation specifically provide a protection in employment. Although The Persons with Disabilities Empowerment Act B.E 2550 exists, such provision for the disabled is not available. Nevertheless, the general provisions can be adapted for the cases of employment discrimination against the disabled and provide protection in this regard.

This act provides an opportunity for the disabled to pursue a legal suit as protection against discrimination in employment opportunity or to appeal to a committee for a restraint or repeal order against unfair treatments. However, problems still exist in enforcing this legislation.

Firstly, the definition of discrimination against the disabled is absent. There is no specific description as to what constitutes discrimination similar to the clear provisions in US and Australian law which also specify the rights for the disabled.

Secondly, there is a lack of clarity and comprehensiveness in classification of disability for the purpose of providing provision to the disabled. The current legislation classifies disability into 6 categories. For a comprehensive provision of protection for the disabled from unfair discrimination, this study suggests that the legislation should have a broad interpretation of disability which is prohibitive a person from leading a normal life in society, even though a given kind of disability does not fit into the 6 categories currently specified but can be proven to be an obstacle in his or her daily life and participation in society.

Thirdly, there is a concern with the problem of the quota system and the prohibition of unfair treatment. Since Thai legislation uses both the positive discrimination and anti-discrimination measures and there is no conflict between the two, a balance should be created. The support for positive discrimination for the disabled with a quota system and a tax incentive to induce employment of the disabled is needed since the anti-discrimination is inadequate and may overload the courts with law suits. Moreover, employees can avoid persecution by arguing on legal technicality regarding the lawful employment of the disabled.

Lastly, the positive effects on businesses and the economy from accepting disabled people include expansion of workforce and other benefits such as tax exemption proportionate to the salary paid to the disabled or fund contribution on case by case basis and as stated by law. Therefore, the only way which business can be adversely affected is by refusing to employ people with disability. Those who refuse to comply with the Act are required to contribute financially towards the disability fund. In case of delay or refusal to pay, an interest of 7.5% per year shall be applied.

However, the Act amendment proposal mentioned above still requires further study into more details to ensure that it is appropriate and relevant to the current state of society.