

(H.B. 1349)

(No. 54)

(Approved March 10, 2000)

AN ACT

To amend Sections 2, 3, 4, 6 and 7 of Act No. 3 of March 13, 1942, as amended, known as Working Mothers Act, in order to include the adoption maternity leave as a benefit for working mothers protected by said act; and for other purposes.

STATEMENT OF MOTIVES

Through Act No. 3 of March 13, 1942, as amended, known as the “Working Mothers Act”, the Legislature of Puerto Rico adopted a public policy geared to offer protection to working mothers. From said moment on pregnant working women attained the right to enjoy a rest period of four (4) weeks before from birth and four (4) weeks after birth. However, the benefits granted by the referred law are not applicable in the case of working mothers who adopt a child under the laws and procedures in force in Puerto Rico.

The Executive Order published in the Informative Bulletin Number 4879 of March 6, 1987, the Governor of Puerto Rico at that time, Rafael Hernández Colón, authorized the granting of maternity leave to employees adopting a child, pursuant to the legislation and legal procedures in force in Puerto Rico. To such effects, subsection 5 of Section 12.4 of the Personnel Regulations for Career Employees of the Central Administration was amended. Likewise, Section 11.4 of the applicable Regulations for confidential employees was amended.

On the other hand, Act No. 81 of August 30, 1991, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico”, was amended by Act No. 84 of October 29, 1992, to the effect of providing that municipal employees shall enjoy other types of leaves, with or without pay, as established through regulations such as the maternity leave for the adoption of a child.

Maternity is one of the most cherished moments in the life of every woman who wishes to have a family. It is one of the most significant phases in life, which marks the beginning of a never-ending path of teaching and learning. Such is its importance, that employers grant a maternity leave as a fringe benefit, in order to allow mothers a prenatal and postpartum resting period.

Notwithstanding the above, Act No. 3 of March 13, 1942, as amended, does not provide that mothers who adopt a child pursuant to the legislation in force are also entitled to enjoy the right of a maternity leave as has been granted to pregnant working mothers. This is a much needed right because certainly it is no longer required sine qua non to be pregnant and give birth to a child in order to be a mother; becoming a mother through the process of adoption is an equally meritorious and fulfilling experience.

The primary objective of the Working Mothers Act is to provide pregnant working mothers a prenatal and postpartum resting period. The adopting working mother does not need the resting period, but does need a time to relate with her new child and to ground and strengthen the bond between mother and child.

Notwithstanding the above, this initial period in the relationship between the adopting mother and her child is crucial during the pre-school years of said child. For which reason the adopting mother will only receive

the benefit of the maternity leave if she adopts a pre-school minor under five (5) years of age who has not entered a school institution.

This Legislature deems it imperative, just as justice was made with respect to mothers, to also grant adopting mothers of a child within the above stated age limit the corresponding benefits. For such reasons, it is necessary to amend the law known as “Working Mothers Act” so as to include female workers who adopt a child by virtue of the laws and legal procedures in force in Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 2 of Act No. 3 of march 13, 1942, as amended, is hereby amended to read as follows:

“Section 2.- Pregnant working women shall be entitled to a rest period which shall include four (4) weeks before and four (4) weeks after childbirth. The working woman may opt to take only one (1) week of prenatal rest and extend up to seven (7) weeks the postnatal rest she is entitled to, provided she presents a medical certification to her employer showing that she is able to work up to one (1) week before childbirth. The physician shall take into consideration the type of work performed by the female worker. The rest period provided herein and all the rights or benefits provided by this Act, shall be applicable to every female worker who is at work or who is enjoying vacation or sick leave, as well as any other special leave or rest period authorized by law in which the employer-employee bond continues to be in effect. Provided that, every female worker who adopts a preschool aged child, that is, a child who is five (5) years or age or less and is not registered in school pursuant to the legislation and legal procedures in force in Puerto Rico, shall be entitled to the same benefits under the maternity leave as a female worker has who gives birth to a child. In said

case, the leave shall start to count as of the date in which the child joins the family unit. In order to claim said right, the female worker must notify the employer at least thirty (30) days in advance on her intention to adopt a child, plans for maternity leave and reinstatement to her job. Furthermore, she shall submit evidence to the employer of the adoption procedures issued by a competent organization.

Likewise, it shall be the obligation of the employer to pay working mothers half of the pay, salary or compensation that she had been receiving for her work at the time of the said rest period. This payment shall be effective as soon as the female employee begins to enjoy her pregnancy or maternity through adoption leave. Provided that, in order to calculate the amount of half the salary, pay, wages or compensation that she would have received during the six (6) months prior to the beginning of the rest period; or the salary, pay, wages or compensation that she would have been receiving at the time she began enjoying the special leave or rest she is entitled to by law, if it is not possible to apply the six (6) month term.

In the case of maternity by child birth which occurred before the weeks of prenatal rest to which she is entitled or before she has begun said prenatal rest period, the female worker may opt to extend the postnatal rest for a period of time equal to that which she failed to enjoy during the prenatal period, and it shall also be paid to her on a half salary basis; provided that, the working mother may request to be reinstated to her work after the first two (2) weeks of post natal rest upon submitting to her employer a medical certificate stating that she is able to work. In such case, the female worker shall be deemed to have waived the remaining weeks of postnatal rest to which she is entitled. Whenever the estimated birth date is miscalculated and the woman has enjoyed four (4) weeks of prenatal rest without having

given birth she shall be entitled to have the prenatal leave extended on a half salary basis until the birth takes place, in which case the additional period for which the prenatal rest is extended shall be paid in the same manner and terms established for the current payment of salary, pay, wages or compensation. If the female worker suffers any postnatal complication which prevents her to work for a period exceeding four (4) weeks, as of the date of the childbirth, the employer shall be under the obligation to extend the rest period for a term that shall not exceed twelve (12) additional weeks, provided that before the expiration of said rest period, a medical certificate is presented attesting to such facts. In such case, the female worker shall not be entitled to receive additional compensation but her position shall be reserved for her.

In the case of an adopting working mother, she may request to be reinstated to her work at any time after she has begun to enjoy her maternity leave. Provided that, in such case it shall be deemed that the adopting working mother waives any remaining term of the leave to which she is entitled.”

Section 2.- Section 3 of Act No. 3 of March 13, 1942, as amended, is hereby amended to read as follows:

“Section 3.- During the rest periods referred to in Section two (2), the employer shall be bound, notwithstanding any stipulation to the contrary, to reserve the position of the pregnant female worker and the female worker who adopts a child pursuant to this Act, the legislation and legal procedures in force in Puerto Rico or in any jurisdiction of the United States.”

Section 3.- Section 4 of Act No. 3 of March 13, 1942, as amended, is hereby amended to read as follows:

“Section 4.- The employer shall not, without just cause, discharge a pregnant woman or a woman who adopts a child pursuant to the legislation and legal procedures in force in Puerto Rico or in any jurisdiction of the United States of America. Diminished performance in work, due to the state of pregnancy, shall not be understood as just cause.

(a) Any employer who dismisses, suspends, reduces the salary, or discriminates in any manner against a worker for reason of a decrease in productivity while in the state of pregnancy, or who refuses to reinstate her in her position after child birth or adoption of a child pursuant to the legislation and legal procedures in force in Puerto Rico or in any jurisdiction of the United states of America, shall incur in civil liability and shall pay a sum equal to twice the amount of the damages caused to the female worker, or a sum of not less than one thousand (1,000) dollars or more than five thousand (5,000) dollars, at the discretion of the Court, if pecuniary damages cannot be determined, or double the amount thereof, should the total amount be less than one thousand (1,000) dollars.

The female employee shall also be entitled to be reinstated in her position, under penalty, for the employer, of incurring in additional damage identical or equal to those established in this section.”

Section 4.- Section 6 of Act No. 3 of March 13, 1942, as amended, is hereby amended to read as follows:

“Section 6.- Any employer who denies any working mother the rest period or the maternity leave for adoption to which she is entitled to by law, or who permits said worker to work in his/her office, establishment or business place during the last week of pregnancy or the subsequent two (2) weeks immediately after birth, without the pregnant working mother having

previously submitted herself voluntarily to medical examinations with the physician or medical specialist of her choice, and a report or medical certification has been submitted to the employer assuring that the condition and state of health of the working mother does not prevent her from performing her work or task, indicating such fact specifically, and stating in turn any special instruction or limitation regarding the time and place in which the working mother may be able to perform her work or task; or any employer who does not pay, in whole or in part, the salary, pay, daily wages or compensation to which she is entitled during said rest period or for the adoption of a child by virtue of the laws and procedures in force in Puerto Rico or any jurisdiction of the United States of America pursuant to the provisions of Section 2 of this Act, or who discharges her for reason of her state of pregnancy, or for her intention of adopting, or who does not keep the job position reserved for her as determined herein, or who avails him/herself of any recourse, fraud, deceit or subterfuge to deceive, deny or deprive any working mother from the referred rest period or maternity leave for adoption to which she is entitled to, shall incur a misdemeanor and if convicted, shall be punished by a fine of not less than one thousand (1,000) dollars or more than five thousand (5,00) dollars, or imprisonment for a term of not less than thirty (30) days or more than ninety (90), or both penalties at the discretion of the Court.”

Section 5.- Section 7 of Act No. 3 of March 13, 1942, as amended, is hereby amended to read as follows:

“Section 7.- Whenever a female worker has to file a claim against her employer for the enjoyment of the rest period established herein or for any sum on account of salary, pay, daily wages or compensation corresponding to said rest period or maternity leave for adoption, as determined herein, she

may avail herself of the procedure set forth in Act No. 10 of 1917, as subsequently amended, or any other legal procedure.

In the event the claim is sustained, the judgment shall order the employer to grant the rest period to which the petitioner is entitled to, or to pay the corresponding salary, pay, daily wages or compensation, as the case may be, plus a reasonable sum for costs, expenses and attorney fees.”

Section 6.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 54 (H.B. 1349) of the 7th Session of the 13th Legislature of Puerto Rico:

AN ACT to amend Sections 2, 3, 4, 6 and 7 of Act No. 3 of March 13, 1942, as amended, known as Working Mothers Act, in order to include the adoption maternity leave as a benefit for working mothers protected by said act; and for other purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 30th of June of 2003.

Elba Rosa Rodríguez-Fuentes
Director