

(H. B. 14)

(No. 148-2018)

(Approved July 19, 2018)

AN ACT

To amend Sections 4 and 8 of Act No. 3 of March 13, 1942, as amended, known as the “Working Mothers’ Protection Act,” in order to explicitly clarify that the protection offered to working mothers also extends to working mothers employed under a fixed-term contract during the effective term of such contract, unless a reasonable expectation of continuing employment has been created, in which case she may continue to enjoy the benefits of this Act; and in the event that pregnant women is dismissed, it shall be presumed that the employer’s actions were unwarranted and the burden of proof shall rest on the employer.

STATEMENT OF MOTIVES

Act No. 3 of March 13, 1942, as amended, known as the “Working Mothers’ Protection Act,” was originally approved to do justice to pregnant women by providing them with a rest period and their work salary during said rest period. Furthermore, it safeguards the right of women to remain employed and not be arbitrarily dismissed while pregnant. We thus prevent the socioeconomic consequences that an employment termination may entail during and after a pregnancy. In addition to safeguarding the health of pregnant women, this important legislative measure provides for rest periods before and after childbirth, prohibits discrimination on the basis of pregnancy, and establishes the remedies to which the employee is entitled when an employer violates the rights granted under said Act.

With this Act, this Legislative Assembly adopted a public policy directed at protecting working women who became mothers. The right of women to enjoy a rest period of four (4) weeks before and four (4) weeks after childbirth was established thenceforth.

The Act also provides that no employer may dismiss a pregnant woman without just cause. Once a working woman files a claim for recovery of damages for termination without just cause while pregnant, the employer shall be required to state the reasons for the termination in his response. In accordance with the applicable case law in effect, the burden rests on the employer who must raise a defense and prove, through the preponderance of the evidence, that it was a termination for cause. The burden of proof, or *onus probandi*, rests on the defendant. (*Rivera Águila v. K-Mart*, 123 DPR 599 and *Santiago González v. Oriental Bank & Trust*, 2002 TSPR 82).

Any employer that terminates, suspends, or otherwise discriminates against an employee on the basis of reduced work performance while pregnant, or that refuses to reinstate such employee after childbirth, shall be civilly liable for a sum equal to twice the amount of the damages caused to the working woman, or for an amount of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) at the discretion of the court if the amount of pecuniary damages cannot be determined, or twice the amount of the monetary damages if such damages amount to less than one hundred dollars (\$100). Any employee who is dismissed in violation of the provisions of this Act shall be entitled to reinstatement.

This Legislative Assembly deems it necessary to clarify that the protection afforded under this Act applies to every pregnant woman, regardless of the manner in which she was hired by the employer. Therefore, the “Working Mothers’ Protection Act” shall apply to pregnant women employed under a fixed-term

contract while the contract is in effect, whom may continue to enjoy the benefits available under this Act if the employer created a reasonable expectation of continuing employment. The amendment contained herein establishes the procedure to be followed in such cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 4 of Act No. 3 of March 13, 1942, as amended, is hereby amended to read as follows:

“The employer shall not, without just cause, dismiss a pregnant woman or a woman who adopts a child pursuant to the legislation and legal procedures in effect in Puerto Rico or in any jurisdiction of the United States of America. Diminished work performance as a result of the pregnancy shall not be deemed to be just cause.

(a) Any employer that terminates, suspends, or otherwise discriminates against an employee on the basis of reduced work performance while pregnant, or that refuses to reinstate such employee after childbirth or adopting a child pursuant to the statutes and legal procedures in effect in Puerto Rico or in any jurisdiction of the United States of America shall be civilly liable for a sum equal to twice the amount of the damages caused to the female employee, or for an amount of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) at the discretion of the Court if the amount of monetary damages cannot be determined, or twice the amount of the monetary damages if such damages amount to less than one thousand dollars (\$1,000). The employee shall also be entitled to reinstatement under penalty of the employer incurring in additional damages that are identical or equal to those established in this section. In any case in which a pregnant woman is dismissed it shall be presumed that the actions of the employer were unwarranted. The employer shall be required to submit sufficient proof to rebut the presumption.”

Section 2.- Section 8 of Act No. 3 of March 13, 1942, as amended, is hereby amended to read as follows:

“For the purposes of this Act, the term ‘working woman’ shall mean any woman employed for a salary, wage, day wage, a fixed-term contract, or any other kind of compensation, in any office, commercial or industrial establishment, or public service company. The protections afforded under this Act shall apply to female workers employed under a fixed-term contract as long as the employer-employee relationship is in effect unless a reasonable expectation of continuing work has been created, in which case the protections afforded under this Act shall be extended beyond the expiration date of the contract.”

Section 3.- This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 148-2018 (H. B. 14)** of the **3rd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 4 and 8 of Act No. 3 of March 13, 1942, as amended, known as the “Working Mothers’ Protection Act,” in order to explicitly clarify that the protection offered to working mothers also extends to working mothers employed under a fixed-term contract during the effective term of such contract, unless a reasonable expectation of continuing employment has been created, in which case she may continue to enjoy the benefits of this Act; and in the event that pregnant women is dismissed, it shall be presumed that the employer’s actions were unwarranted and the burden of proof shall rest on the employer.

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

In San Juan, Puerto Rico, on this 18th day of April, 2022.

Mónica Freire-Florit, Esq.
Director