

A Triumph for Women: Bringing to Light the Expanded Maternity Leave Law

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I. INTRODUCTION

No less than the 1987 Constitution, the highest law of the land, recognizes the disparity in rights between women and men with respect to majority of the phases of social, cultural, economic, and political life, by providing for a wide range of provisions that protect women.¹ In particular, Section 14 of Article II, Declaration of Principles and State Policies, provides that “[t]he State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”² Correspondingly,

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1. PHIL. CONST. art. II, § 14 & art. XIII, § 14.
2. PHIL. CONST. art. II, § 14.

Section 3 of Article XIII, Social Justice and Human Rights, mandates the State to “afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”³ In a similar fashion, Section 14 of Article XIII provides that “[t]he State shall protect working women by providing safe and healthful working conditions, taking into consideration their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential.”⁴

Likewise, Republic Act No. 9710, otherwise known as “The Magna Carta of Women,”⁵ recognizes and addresses the prevalent discrepancy between the rights of women and men workers, by providing a comprehensive women’s human rights law that strives for the eradication of discrimination against women.⁶ Discrimination against women is defined under said law as

any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.⁷

On the other hand, gender equity “refers to the policies, instruments, programs, services, and actions that address the disadvantaged position of women in society by providing preferential treatment and affirmative action.”⁸ Republic Act No. 9710 further recognizes that the economic, political, and sociocultural realities affect women’s current condition.⁹ Hence, it seeks to “promote [the] empowerment of women and [the pursuit of] equal opportunities for women and men and [] equal access to resources and to

3. PHIL. CONST. art. XIII, § 3.

4. PHIL. CONST. art. XIII, § 14.

5. An Act Providing for the Magna Carta of Women [Magna Carta of Women], Republic Act No. 9710 (2009).

6. *Id.* § 2.

7. *Id.* § 4 (b).

8. *Id.* § 4 (g).

9. *Id.* § 2.

development results and outcome.”¹⁰ It aims towards the “abolition of [] unequal structures and practices that perpetuate discrimination and inequality” by endeavoring “to develop plans, policies, programs, measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men.”¹¹

The inequality of working rights between women and men is likewise illustrated by jurisprudence, wherein the Supreme Court was called to exercise its power of judicial review in order to nullify work policies that discriminate against women.

In *Philippine Telegraph and Telephone Company v. NLRC*,¹² Philippine Telegraph and Telephone Company’s policy of not accepting or considering as disqualified from work any female worker who contracts marriage was struck down by the Supreme Court.¹³ The Supreme Court ruled that the subject policy “runs afoul [to] the test of, and the right against, discrimination, afforded all women workers by [Philippine] labor laws and ... the [1987] Constitution.”¹⁴ The Supreme Court held that a requirement that a woman employee must remain unmarried could only be justified as a “‘*bona fide* occupational qualifications [(BFOQ)],’ where the particular requirements of the job would justify the same, but not on the ground of a general principle, such as the desirability of spreading work in the workplace.”¹⁵

Likewise, in *Star Paper Corporation v. Simbol*,¹⁶ the Supreme Court declared the following policies as invalid for violating the standard of reasonableness, otherwise called the “Reasonable Business Necessity Rule:”¹⁷

10. *Id.*

11. Magna Carta of Women, § 2.

12. *Philippine Telegraph and Telephone Company v. NLRC*, 272 SCRA 596 (1997).

13. *Id.* at 605-15.

14. *Id.* at 605.

15. *Id.* at 613.

16. *Star Paper Corporation v. Simbol*, 487 SCRA 228 (2006).

17. *Id.* at 244.

- (1) New applicants will not be allowed to be hired if in case he/she has [a] relative, up to [the 3d] degree of relationship, already employed by the company[; and]
- (2) In case of two of our employees (both single[], one male and another female) developed a friendly relationship during the course of their employment and then decided to get married, one of them should resign to preserve the policy stated above.¹⁸

The Supreme Court rejected Star Paper Corporation's "sole contention that '[it] did not just want to have two [] or more of its employees related between the third degree by affinity and/or consanguinity[.]'"¹⁹ It did not give credence to the argument "[t]hat the second paragraph was meant to give teeth to the first paragraph of the questioned rule[.]" holding that such "is evidently not the valid reasonable business necessity required by the law."²⁰

Given the abovementioned, the unjust and unmerited reality that women constantly struggle with cannot and should not be overlooked. Indeed, women have constantly strived towards the protection and the promotion of their rights and welfare and the establishment of an environment in which their full potential can be achieved.

Significantly, in hopes of achieving the aforementioned, women workers and frontrunners across the country have relentlessly clamored and advocated for the extension of maternity leave for many years. Women in the labor force, after giving birth, are daunted with having to decide whether or not to return to work immediately, out of fear of losing their jobs, or resign from work, in order to prioritize taking care of their babies. Hence, bearing in mind the welfare of both women and their newborns, maternity leave is a vital labor and social issue that requires immediate attention. Indubitably, an extended maternity leave period not only recognizes women's maternal function as a social responsibility but also provides them with a sufficient transition time to regain their health and overall wellness and to assume their maternal roles before resuming paid work.²¹

18. *Id.* at 234.

19. *Id.* at 244.

20. *Id.*

21. An Act Increasing the Maternity Leave Period to One Hundred Five (105) Days for Female Workers with an Option to Extend for an Additional Thirty (30) Days

Notably, the commendable efforts of women for the extension of maternity leave bore fruit with the passage of Republic Act No. 11210, otherwise known as the “105-Day Expanded Maternity Leave Law.” Republic Act No. 11210 was signed into law on 20 February 2019 and became effective on 11 March 2019.²²

II. EVOLUTION OF THE GRANT OF MATERNITY LEAVE IN THE PHILIPPINES

Shockingly, it has taken almost 27 years for the Philippines to adopt and pass a law that would increase the maternity leave period for its women workers. Prior to the passage of Republic Act No. 11210, the controlling law with respect to maternity leave was the Social Security Act of 1954,²³ as amended by Republic Act No. 7322, entitled “An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector, Amending for the Purpose Section 14-A of Republic Act No. 1161, as Amended, and for Other Purposes.”²⁴ Republic Act No. 7322 was approved on 30 March 1992 and published in the Philippine Times Journal and Malaya on 8 April 1992 and in the Official Gazette on 18 May 1992.²⁵

Section 1 of Republic Act No. 7322 states that

Without Pay, and Granting an Additional Fifteen (15) Days for Solo Mothers, and for Other Purposes [105-Day Expanded Maternity Leave Law], Republic Act No. 11210, § 2, para. 3 (2019).

22. *Id.* & Marie Joy L. Simpao, DOLE, CSC, SSS sign IRR of Expanded Maternity Leave Law, available at <https://pia.gov.ph/news/articles/1021549> (last accessed July 6, 2019).
23. An Act to Create a Social Security System Providing Sickness, Unemployment, Retirement, Disability and Death Benefits for Employees [Social Security Act of 1954], Republic Act No. 1161 (1954) (as amended).
24. An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector, Amending for the Purpose Section 14-A of Republic Act No. 1161, as Amended, and for Other Purposes, Republic Act No. 7322 (1992).
25. *Id.*

Section 14-A of Republic Act No. 1161, as amended, is further amended to read as follows:

‘Sec. 14-A. Maternity Leave Benefit. [—] A covered female employee who has paid at least three monthly maternity contributions in the twelve-month period preceding the semester of her childbirth, abortion[,] or miscarriage and who is currently employed shall be paid a daily maternity benefit equivalent to one hundred percent (100%) of her present basic salary, allowances[,] and other benefits or the cash equivalents of such benefits for sixty (60) days subject to the following conditions:

...

(c) That in case of caesarian delivery, the employee shall be paid the daily maternity benefit for seventy-eight (78) days[.]’²⁶

Under the aforementioned provision, women are entitled a mere 60-day maternity leave period, in case of normal delivery, and a 78-day maternity leave, on the occasion of a caesarian delivery.²⁷ Notably, the periods of maternity leave provided for in Republic Act No. 7322 pale in comparison to those of other countries.

Prior to the passage of Republic Act No. 11210, the Philippines had the shortest period of maternity leave in Southeast Asia —

At 60 days, the country’s maternity leave policy [lagged] behind Malaysia, Cambodia, Thailand, and Indonesia (90 days each)[;] Myanmar (98 days)[; and] Laos and Brunei (105 days). In Southeast Asia, Singapore[,] and Vietnam [have] the best maternity leave policies at 112 days and 180 days, respectively.²⁸

While the Philippines has yet to ratify Convention No. 183 of the International Labour Organization (I.L.O.), otherwise known as the

26. *Id.* § 1.

27. *Id.*

28. Senate of the Philippines, HONTIVEROS: AFTER 26 YEARS, WOMEN SCORE MAJOR VICTORY WITH EXPANDED MATERNITY LEAVE LAW, available at http://senate.gov.ph/press_release/2018/0904_hontiveros2.asp (last accessed July 25, 2019).

“Maternity Protection Convention,”²⁹ it is necessary to examine the international standards of the rights of women workers. “[I]n order to further promote equality of all women in the workforce and the health and safety of the mother and child,”³⁰ the Maternity Protection Convention was adopted on 15 June 2000.³¹ In drafting the Maternity Protection Convention, the I.L.O. “[took] into account the circumstances of women workers and the need to provide protection for pregnancy, which [it considers as] the shared responsibility of government and society[.]”³² Under Paragraph 1 of Article 4, a period of maternity leave of not less than 14 weeks is prescribed.³³ Clearly, the period of maternity leave based on Republic Act No. 7322 is far below the international standard imposed in the Maternity Protection Convention.

In its publication entitled “Maternity and paternity at work: Law and practices across the world,”³⁴ the I.L.O. compared national laws in 185 countries and territories with the most recent I.L.O. standards.³⁵ According to such report, “[t]here has been a gradual global shift towards maternity leave periods that meet or exceed [its] standard of 14 weeks.”³⁶ Moreover, since 1994, no country has cut its maternity leave duration.³⁷ The I.L.O. emphasized the need to meet its mandate of having a period of maternity leave of at least 14 weeks, considering that the length of maternity leave plays a crucial role in enabling mothers to recover from childbirth and to return to work, while providing adequate care for their children.³⁸ It noted that,

29. Convention (No. 183) concerning the revision of the Maternity Protection Convention (revised), 1952, *adopted* June 15, 2000, 2181 U.N.T.S. 253.

30. *Id.* pmbl.

31. *Id.*

32. *Id.*

33. *Id.* art. 4 (1).

34. LAURA ADDATI, ET AL., MATERNITY AND PATERNITY AT WORK: LAW AND PRACTICES ACROSS THE WORLD (2014).

35. *Id.* at xiii.

36. *Id.* at 11.

37. *Id.* at 12.

38. *See* ADDATI, ET AL., *supra* note 33, at 8.

“[w]hen [maternity] leave is too short, mothers might not feel ready to return to work and[,] thus[,] drop out of the workforce[.]”³⁹

With the passage of Republic Act No. 11210, the labor practices of the Philippines are finally placed on equal footing with the international standards of women workers’ rights. Looking back at the history of labor policies concerning the grant of maternity leave in the Philippines, the passage of Republic Act No. 11210 is undeniably a historic win for Filipino women.

III. EXPANDED MATERNITY LEAVE LAW AND ITS IMPLEMENTING RULES AND REGULATIONS

Republic Act No. 11210 was passed precisely in recognition of the declared policy of the State under Section 14 of Article XIII, Social Justice and Human Rights, of the 1987 Constitution to protect and promote the rights and welfare of working women, “taking into account their maternal functions, and to provide an enabling environment in which their full potential can be achieved.”⁴⁰ In the same vein, the passage of Republic Act No. 11211 was brought about by acknowledging Section 12 of Article II of the 1987 Constitution on State Policies which provides that “[t]he State recognizes the sanctity of family life[.]”⁴¹ The aforesaid provision further directs the State to “protect and strengthen the family as the basic autonomous social institution” and to “equally protect the life of the mother and the life of the unborn from conception.”⁴²

In line with the previously mentioned, Republic Act No. 11210 was likewise passed to ensure compliance with “Sections 17 and 22 of Republic

39. ADDATI, ET AL., *supra* note 33, at 8.

40. 105-Day Expanded Maternity Leave Law, § 2, para. 1. *See also* PHIL. CONST. art. XIII, § 14.

41. 105-Day Expanded Maternity Leave Law, § 2, para. 2 & PHIL. CONST. art. II, § 12.

42. 105-Day Expanded Maternity Leave Law, § 2, para. 2 & PHIL. CONST. art. II, § 12.

Act No. 9710, otherwise known as ‘The Magna Carta for Women,’ [which] provides for women’s rights to health and decent work.”⁴³

Section 17 of Republic Act No. 9710 states —

Section 17. *Women’s Right to Health.* – (a) Comprehensive Health Services. – The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman’s life cycle and which addresses the major causes of women’s mortality and morbidity: *Provided, [t]hat in the provision for comprehensive health services, due respect shall be accorded to women’s religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood, and the right of women to protection from hazardous drugs, devices, interventions, and substances.*

...

(b) Comprehensive Health Information and Education. – The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education of all the above-stated aspects of women’s health in government education and training programs, with due regard to the following:

- (1) The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;
- (2) The formation of a person’s sexuality that affirms human dignity; and
- (3) Ethical, legal, safe, and effective family planning methods including fertility awareness.⁴⁴

On the other hand, Section 22 of Republic Act No. 9710 provides —

Section 22. *Right to Decent Work.* – The State shall progressively realize and ensure decent work standards for women that involve the creation of jobs of

43. 105-Day Expanded Maternity Leave Law, § 2, para. 2.

44. The Magna Carta of Women, §17.

acceptable quality in conditions of freedom, equity, security, and human dignity.

(a) Decent work involves opportunities for work that are productive and fairly remunerative as family living wage, security in the workplace, and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize, participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.

(b) The State shall further ensure:

- (1) Support services and gears to protect them from occupational and health hazards taking into account women's maternal functions;
- (2) Support services that will enable women to balance their family obligations and work responsibilities including, but not limited to, the establishment of day care centers and breast-feeding stations at the workplace, and providing maternity leave pursuant to the Labor Code and other pertinent laws;
- (3) Membership in unions regardless of status of employment and place of employment; and
- (4) Respect for the observance of indigenous peoples' cultural practices even in the workplace.

(c) In recognition of the temporary nature of overseas work, the State shall exert all efforts to address the causes of out-migration by developing local employment and other economic opportunities for women and by introducing measures to curb violence and forced and involuntary displacement of local women. The State shall ensure the protection and promotion of the rights and welfare of migrant women regardless of their work status, and protect them against discrimination in wages, conditions of work, and employment opportunities in host countries.⁴⁵

In order to attain the aforementioned and “in recognition of women’s maternal function as a social responsibility,” Republic Act No. 11210 was enacted.⁴⁶ Republic Act No. 11210 serves as “a mechanism to expand the maternity leave of women workers”⁴⁷ and thereby “provide [women workers]

45. *Id.* § 22.

46. 105-Day Expanded Maternity Leave Law, § 2, para. 3.

47. *Id.*

with ample transition time to regain their health and overall wellness and to assume their maternal roles before resuming paid work.”⁴⁸

Republic Act No. 11210 substantially expands the paid maternity leave to 105 days for women workers in both “government and the private sector, including those in the informal economy, regardless of civil status or the legitimacy of [the] child.”⁴⁹ Under the law, the maternity leave period of women workers no longer depends on the mode of delivery.⁵⁰ Hence, women workers are entitled to the grant of maternity leave benefits equivalent to 105 days for live childbirth, regardless of the mode of delivery.⁵¹

With respect to miscarriage or emergency termination of pregnancy, Republic Act No. 11210 grants to women workers 60 days of paid maternity leave.⁵² The “[e]njoyment of maternity leave cannot be deferred, but should be availed of either before or after the actual period of delivery in a continuous and uninterrupted manner[.]”⁵³ “The maternity leave can be credited as combinations of prenatal and postnatal leave[, provided that] it does not exceed [105] days or [60] days, as the case may be.”⁵⁴ However, “[i]n no case shall postnatal care be less than []60 days.”⁵⁵

With respect to single mothers, Republic Act No. 11210 grants an additional 15 days of paid leave, provided that they qualify as a solo parent

48. *Id.*

49. *Id.* § 3.

50. *Id.* § 4, para. 1 & § 5, para. 1.

51. *Id.*

52. 105-Day Expanded Maternity Leave Law, § 3, para. 3.

53. *Id.* § 3, para. 2.

54. *Id.* § 9 & Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, Republic Act No. 11210, rule IV, § 2, para. 2 (2019).

55. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, rule IV, § 2, para. 2.

under Republic Act No. 8972, or the “Solo Parents’ Welfare Act of 2000.”⁵⁶ Section 3 (a) of Republic Act No. 8972 defines a “solo parent” as

any individual who falls under any of the following categories:

- (1) A woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender: *Provided*, That the mother keeps and raises the child;
- (2) Parent left solo or alone with the responsibility of parenthood due to death of spouse;
- (3) Parent left solo or alone with the responsibility of parenthood while the spouse is detained or is serving sentence for a criminal conviction for at least one (1) year;
- (4) Parent left solo or alone with the responsibility of parenthood due to physical and/or mental incapacity of spouse as certified by a public medical practitioner;
- (5) Parent left solo or alone with the responsibility of parenthood due to legal separation or *de facto* separation from spouse for at least one (1) year, as long as he[or]she is entrusted with the custody of the children;
- (6) Parent left solo or alone with the responsibility of parenthood due to declaration of nullity or annulment of marriage as decreed by a court or by a church, as long as he[or]she is entrusted with the custody of the children;
- (7) Parent left solo or alone with the responsibility of parenthood due to abandonment of spouse for at least one (1) year;
- (8) Unmarried mother[or]father who has preferred to keep and rear her[or]his child[or]children instead of having others care for them or give them up to a welfare institution;
- (9) Any other person who solely provides parental care and support to a child or children; [or]

56. 105-Day Expanded Maternity Leave Law, § 3, para. 1.

- (10) Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance[,] or prolonged absence of the parents or solo parent.⁵⁷

Republic Act No. 11210 additionally provides women workers the option to extend their maternity leave for an additional 30 days without pay, provided that the employer shall be given due notice.⁵⁸ Due notice to the employer must be in writing and must be given at least 45 days before the end of the woman worker's maternity leave.⁵⁹ However, no prior notice shall be necessary in the event of a medical emergency; nevertheless, subsequent notice shall be given to the employer.⁶⁰ "The [aforementioned] period of extended maternity leave without pay shall not be considered as gap in the service."⁶¹

Notably, under Republic Act No. 11210, maternity leave will be granted to women workers for every pregnancy.⁶² Previously, the maternity benefits provided under the law were only available for the first four deliveries of women workers.⁶³

Under Republic Act No. 11210, "[m]aternity leave with full pay shall be granted even if the childbirth, miscarriage, or emergency termination of pregnancy occurs not more than [15] calendar days after the termination of an employee's service, [considering] her right thereto has already accrued[.]"⁶⁴ However,

57. An Act Providing for Benefits and Privileges to Solo Parents and their Children, Appropriating Funds therefor and for Other Purposes [Solo Parents' Welfare Act of 2000], Republic Act No. 8972, § 3 (a) (2000).

58. 105-Day Expanded Maternity Leave Law, § 4, para. 1 & § 5 (b).

59. *Id.*

60. *Id.*

61. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, rule IV, § 3, para. 3.

62. 105-Day Expanded Maternity Leave Law, § 3, para. 3.

63. Social Security Act of 1954, § 14-A (d) (as amended).

64. 105-Day Expanded Maternity Leave Law, § 8.

such period is not applicable when the employment of the pregnant woman worker has been terminated without just cause, in which case the employer will pay her the full amount equivalent to her salary for [105] days for childbirth and [60] days for miscarriage or emergency termination of pregnancy based on her full pay, in addition to the other applicable daily cash maternity benefits that she should have received had her employment not been illegally terminated.⁶⁵

Moreover, “the maternity leave benefits under [Republic Act No. 11210] shall be enjoyed by a [woman] worker in the government service and in the private sector even if she has a pending administrative case.”⁶⁶

IV. MATERNITY LEAVE FOR FEMALE WORKERS IN THE PUBLIC SECTOR

Under Section 4 of the 105-Day Expanded Maternity Leave Law,

[a]ny pregnant female worker in the government service, regardless of employment status, in National Government Agencies (NGAs), Local Government Units (LGUs), Government-Owned or -Controlled Corporations (GOCCs), or State Universities and Colleges (SUCs), shall be granted a maternity leave of [105] days with full pay regardless if the delivery was normal or caesarian: *Provided*, [t]hat, in case the employee qualifies as a solo parent under Republic Act No. 8972, or the ‘Solo Parents’ Welfare Act,’ the employee shall be paid an additional maternity benefit of [15] days.⁶⁷

Additionally,

[t]he female worker shall give prior notice to the head of agency of her pregnancy and her availment of maternity leave at least [30] days in advance, whenever possible, specifying the effective date of the leave. The female worker shall use the prescribed civil service form in the filing of the maternity leave application, supported by a medical certificate.⁶⁸

65. *Id.*

66. *Id.* § 12.

67. *Id.* § 4, para. 1.

68. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, rule V, § 2.

An additional leave of 30 days, without pay, can be elected by a woman worker.⁶⁹ Due notice, in writing, shall be submitted to the head of the agency at least 45 days before the last day of the employee's maternity leave, except in the event of a medical emergency.⁷⁰ Nevertheless, subsequent notice shall be given to the head of the agency.⁷¹

A “[m]aternity leave of 60 days, with full pay, shall be granted for miscarriage or emergency termination of pregnancy.”⁷²

In any case,

[t]he female worker shall be entitled to full pay during maternity leave which shall be paid by the agency. The female worker shall have the option to receive full pay either through lump sum payment or regular payment of salary through agency payroll. A clearance from money, property[,] and work-related accountabilities shall be secured by the female worker. Money, property[,] and work-related accountabilities as well as pending administrative case[s] shall not deprive the female worker of the availment of her maternity leave benefits.⁷³

Should there be overlapping maternity benefit claims, the woman worker “shall be granted maternity benefits for the two contingencies in a consecutive manner[; however,] the [woman] worker shall be paid only one maternity benefit, regardless of the number of offspring[s], per childbirth [or] delivery.”⁷⁴

V. MATERNITY LEAVE FOR FEMALE WORKERS IN THE PRIVATE SECTOR

With regard to maternity leaves for a pregnant woman working in the private sector, she shall be granted a maternity leave of 105 days with full pay, regardless of whether she gave birth via natural delivery or caesarian section.⁷⁵

69. 105-Day Expanded Maternity Leave Law, § 4, para. 1.

70. *Id.*

71. *Id.*

72. *Id.* § 4, para. 2.

73. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, rule V, § 5.

74. *Id.* rule V, § 6.

75. 105-Day Expanded Maternity Leave Law, § 5, para. 1.

On the other hand, a maternity leave of 60 days with full pay shall be granted should the female worker suffer from a miscarriage or emergency termination of pregnancy.⁷⁶

Furthermore,

[a] female Social Security System (SSS) member who has paid at least three [] monthly contributions in the [12]-month period immediately preceding the semester of her childbirth, miscarriage, or emergency termination of pregnancy shall be paid her daily maternity benefit which shall be computed based on her average monthly salary credit for [105] days, regardless of whether she gave birth via caesarian section or natural delivery, subject to the following conditions:

- (1) That the female worker shall have notified her employer of her pregnancy and the probable date of her childbirth, which notice shall be transmitted to the SSS in accordance with the rules and regulations it may provide;
- (2) That the full payment shall be advanced by the employer within [30] days from the filing of the maternity leave application;
- (3) That payment of daily maternity benefits shall be a bar to the recovery of sickness benefits provided under Republic Act No. 1161, as amended, for the same period for which daily maternity benefits have been received;
- (4) That the SSS shall immediately reimburse the employer of [100%] of the amount of maternity benefits advanced to the female worker by the employer upon receipt of satisfactory and legal proof of such payment; and
- (5) That if a female worker should give birth or suffer a miscarriage or emergency termination of pregnancy without the required contributions having been remitted for her by her employer to the SSS, or without the latter having been previously notified by the employer of the time of the pregnancy, the employer shall pay to the SSS damages equivalent to the benefits which said female member would otherwise have been entitled to.

76. *Id.*

In case the employee qualifies as a solo parent under Republic Act No. 8972, or the 'Solo Parents' Welfare Act,' the employee shall be paid an additional maternity benefit of [15] days.⁷⁷

Should the female worker so choose, she may avail of an additional 30 days of maternity leave, without pay, as long as her "employer ... be given due notice [thereof], in writing, at least [45] days before the end of her maternity leave."⁷⁸ However, prior notice "shall [not] be necessary in the event of a medical emergency[,] but subsequent notice shall[, nevertheless,] be given to the head of the agency."⁷⁹

It is mandated under Republic Act No. 11210 that "[w]orkers availing of the maternity leave period and benefits must receive their full pay."⁸⁰ It is incumbent upon the employers from the private sector to pay "the salary differential between the actual cash benefits received from the SSS by the covered female workers and their average weekly or regular wages[] for the entire duration of the maternity leave[.]"⁸¹

However,

[f]emale workers employed by exempt establishments and enterprises, which satisfy the requirements and criteria listed below, shall not be entitled to the salary differential. The said female workers shall be entitled to receive only their SSS maternity benefits.

Upon submission of proofs and other necessary documents, the following establishments in the private sector may be exempted from paying the salary differential herein prescribed, provided that the criteria below are fully complied with:

(1) *Those operating distressed establishments.*

(a) For corporation/cooperative:

When the actual net loss amounts to 25% of total assets or when the corporation/cooperative registers capital

77. *Id.* § 5 (a).

78. *Id.* § 5 (b).

79. *Id.*

80. *Id.* § 5 (c).

81. 105-Day Expanded Maternity Leave Law, § 5 (c).

deficiency, i.e.,] negative stockholders' equity immediately preceding the application for exemption.

(b) For sole proprietorship and partnership:

When the accumulated net losses for the last two [] full accounting periods immediately preceding application for exemption amounts to 20% or more of the total invested capital at the beginning of the period under review or when the sole proprietorship/partnership registers capital deficiency, i.e., negative net worth as of the last full accounting period immediately preceding application for exemption.

(c) For [n]on-stock, non-profit organizations:

When the accumulated net losses for the last two [] full accounting periods immediately preceding application for exemption amounts to 20% or more of the fund balance/members' contribution at the beginning of the period or when an establishment registers capital deficiency, i.e., negative fund balance/members['] contribution as of the last full accounting period or interim period, if any, immediately preceding application for exemption.

(d) For banks and quasi-banks:

When there is a certification from the *Bangko Sentral ng Pilipinas* that it is under receivership or liquidation as provided in Section 30 of [R.A.] No. 7653, otherwise known as the 'New Central Bank Act[;]

(2) *Those retail/service establishments and other enterprises employing not more than [10] workers:*

When it is engaged in the retail sale of goods and/or services to end users for personal or household use and it is regularly employing not more than [10] workers regardless of status, except the owner/s, for at least six [] months in any calendar year[;]

(3) *Those considered as micro-business enterprises and engaged in the production, processing, or manufacturing of products or commodities including agro-processing, trading, and services, whose total assets are not more than Three Million Pesos (₱3,000,000.00), in accordance with the Barangay Micro Business Enterprises (BMBE's) Act of 2002; and*

- (4) *Those who are already providing similar or more than the benefits herein provided under an existing Collective Bargaining Agreement (CBA), company practice[,] or policy.*

The [abovementioned] exemptions shall be subject to an annual submission of a justification by the employer claiming exemption for the approval of the Department of Labor and Employment [].⁸²

Should the female worker experience consecutive pregnancies which would result in the overlap of maternity leaves and in cases of multiple childbirths, SSS maternity benefits shall be paid subject to the following rules:

- (1) In case of the overlapping of two [] maternity benefit claims, the female member shall be granted maternity benefits for the two contingencies in a consecutive manner. However, the amount of benefit corresponding to the period where there is an overlap shall be deducted from the current maternity benefit claim; and
- (2) The female member shall be paid only one maternity benefit, regardless of the number of offspring[s], per childbirth[or]delivery.⁸³

A. Allocation of Maternity Leave Credits

Significantly, Section 6 of Republic Act No. 11210 provides that “[a]ny female worker entitled to maternity leave benefits as provided for herein may, at her option, allocate up to seven [] days of said benefits to the child’s father, whether or not the same is married to the female worker[.]”⁸⁴ The allocated benefit granted to the child’s father under the law is over and above that which is provided under Republic Act No. 8187, or the “Paternity Leave Act of 1996.”⁸⁵ However, in case of death, absence, or incapacity of the child’s father,

82. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, rule VI, § 5 (emphasis supplied).

83. *Id.* rule VI, § 7.

84. 105-Day Expanded Maternity Leave Law, § 6.

85. *Id.* Compare 105-Day Expanded Maternity Leave Law, § 6 with An Act Granting Paternity Leave of Seven (7) Days With Full Pay to All Married Employees in the Private and Public Sectors for the First Four (4) Deliveries of the Legitimate Spouse With Whom He is Cohabiting and for Other Purposes [Paternity Leave Act of 1996], Republic Act No. 8187, § 2 (1996).

the woman worker may allocate up to seven days of her maternity leave benefits to an “alternate caregiver.”⁸⁶ The alternate caregiver may be either of the following:

- (1) “a relative within the fourth degree of consanguinity;”⁸⁷ or
- (2) “the current partner of the [woman] worker sharing the same household.”⁸⁸

If the beneficiary woman worker dies or suffers from any permanent incapacity, “the balance of her maternity leave benefits shall accrue to the father of the child or to a qualified caregiver[,]” as previously discussed.⁸⁹ However, the aforementioned is subject to the following conditions:

- (1) “That the maternity leave benefits have not yet been commuted to cash, if applicable; and”⁹⁰
- (2) “That a certified true copy of the death certificate or medical certificate or abstract is provided to the employers of both the woman worker and the child’s father or alternate caregiver.”⁹¹

Likewise,

[i]n case the maternity leave benefits of the deceased or permanently incapacitated female worker have already been paid to the latter in full, the child’s father or alternate caregiver shall be entitled to enjoy the remaining unexpired leave credits of the female worker, if there be any, without pay: *Provided*, [t]hat such leave without pay shall not be considered as a gap in the service of the child’s father or alternate caregiver, in both the public and private sector.⁹²

86. 105-Day Expanded Maternity Leave Law, § 6.

87. *Id.*

88. *Id.*

89. *Id.*

90. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, rule VIII, § 4 (a).

91. *Id.* § 4 (b).

92. *Id.* § 4, para. 2.

It must be noted, however, that “[t]he option to allocate maternity leave credits shall not be applicable in case the female worker suffers miscarriage or emergency termination of pregnancy.”⁹³

B. Penalties

Section 18 of Republic Act No. 11210 provides for the penalties to be imposed to those who fail or refuse to comply with the provisions of the law, to wit —

Section 18. *Penalties.* [—] Whoever fails or refuses to comply with the provisions of this Act shall be punished by a fine of not less than [T]wenty thousand pesos (₱20,000.00) nor more than [T]wo hundred thousand pesos (₱200,000.00), or imprisonment of not less than six (6) years and one (1) day nor more than twelve (12) years, or both. If the act or omission penalized by this Act shall be committed by an association, partnership, corporation, or any other institution, its managing head, directors, or partners shall be liable to the penalties provided in this Act for the offense.

Failure on the part of any association, partnership, corporation, or private enterprise to comply with the provisions of this Act shall be a ground for non-renewal of business permits.⁹⁴

VI. CONCLUSION

The passage of Republic Act No. 11210 marks a herculean victory for women and their families. Evidently, decades-worth of clamor for the extension of maternity leave in the Philippines has finally been addressed. The enactment of Republic Act No. 11210 is, without a doubt, a momentous occasion for mothers, families, and children not only of the present generation but for the generations to come as well. By signing into law Republic Act No. 11210, the State reaffirms the pivotal role women play in nation-building and the significance of protecting the sanctity of family life.

Nevertheless, there remains a mounting need to further lobby for the prioritization of crafting and instituting pieces of legislation and policy frameworks that provide for maternity protection and comprehensive work-family policies. In their struggle for equality, let the passage of Republic Act No. 11210 be a reminder to Filipino women that, while the dominant

93. *Id.* § 1, para. 3.

94. 105-Day Expanded Maternity Leave Law, § 18.

ideologies of patriarchy and misogyny have yet to be eradicated in present-day society, there is still hope for a better future — one that embodies true gender equity and where the voices of women will never be silenced again.