

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City

SIXTEENTH CONGRESS
Second Regular Session



House Bill No. **5440**

Introduced by
ACT TEACHERS Party-List Representative Antonio L. Tinio

EXPLANATORY NOTE

This bill seeks to extend a broader maternity protection as assured under international law pursuant to the relevant Maternity Protection Conventions and Recommendations such as Convention 138 and Recommendation 191 (both of 2000) but is denied under Philippine laws, mainly *An Act to Grant Maternity Leave to Married Women Who are in the Service of the Government or of Any of Its Instrumentalities* (Commonwealth Act No. 647) and the *Social Security Act* (Republic Act No. 8282).

In the main, this bill carries the principle of granting maternity protection to all women "without any discrimination whatsoever" (Article 1 of Convention 138), that is, granting maternity leave with pay to any female employee regardless of her civil status, the filiation of her child, her employment status, and the number of pregnancies she already had.

Second, this bill endeavors to extend the period of paid maternity leave to 120 days in case of normal delivery and 138 days in case of cesarian delivery from the current 60 days in case of normal delivery and 78 days in case of cesarian delivery. If anyone consults international law, these periods per the limitation of the GSIS and SSS Laws are far shorter than the 98 days (or 14 weeks) as stated by Convention 138 and closer to the 126 days (or 18 weeks) as urged by Recommendation 191. If anyone consults a woman who had gone through the successive ordeals of pregnancy, childbirth, and nursing, 60 or even 78 days are not enough to afford any woman the time to recuperate physically and emotionally and adjust to the duties of nursing her newborn.

This bill also seeks to institutionalize several rules and regulations from Civil Service Commission issuances which follow the said principle of extending maternity protection to as many female employees as possible, including those who return to work prior to the end of the 120 or 138 days, adoptive parents with respect to their adoptive children, those whose childbirth occurred not more than 15 days from separation or dismissal from the service, those who have pending administrative cases, and teachers with proportional vacation pay.

For these reasons, approval of this bill is earnestly sought.

ANTONIO L. TINIO

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AN ACT
EXTENDING THE PERIOD OF MATERNITY LEAVE TO ONE HUNDRED TWENTY (120) DAYS OR
ONE HUNDRED THIRTY EIGHT (138) DAYS IN CASE OF CEASARIAN DELIVERY, MAKING THE
SAME AVAILABLE TO ALL WOMEN WORKERS AND EMPLOYEES IN THE PUBLIC AND PRIVATE
SECTORS WITHOUT ANY DISCRIMINATION AS TO THE CIVIL STATUS OF THE MOTHER OR THE
LEGITIMACY OF HER CHILD, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Grant of maternity leave.* Any covered female employee of the Government Service Insurance System (GSIS) or Social Security Service (SSS) who has paid at least three monthly contributions in the twelve-month period immediately 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 one hundred twenty (120) days, or one hundred thirty eight (138) days in case of cesarean delivery, subject to the following conditions:

- a. The employee shall notify her employer of the probable date of her childbirth which notice shall be transmitted to the GSIS or SSS, as the case may be, in accordance with the rules and regulations it may provide;
- b. The employer shall advance the payment to the employee in two (2) equal monthly installments: the first fourteen (14) days before the probable date of childbirth and the second within thirty (30) days after the date of delivery;
- c. Payment of the benefit under this Act shall be a bar to the recovery of sickness benefits provided by the rules of the Civil Service Commission and the Labor Code for the same compensable period of 120 or 138 days for the same childbirth, abortion, or miscarriage;
- d. The GSIS or SSS shall immediately reimburse the employer of 100% of the amount of maternity leave benefits advanced to the employee upon receipt of satisfactory proof of such payment and the legality thereof;

- e. If the employee should give birth or suffer miscarriage or abortion without the required contributions having been remitted for her to the GSIS or SSS, the GSIS or SSS shall in turn pay such amount to the employee concerned, and the employer shall pay to the latter damages equivalent to the benefits which the employee would otherwise have been entitled to; and
- f. Maternity leave shall be granted to female employees in every instance of pregnancy, miscarriage, or abortion irrespective of its frequency.

Enjoyment 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, not exceeding 120 or 138 calendar days, as the case may be.

SECTION 2. *Discrimination as to civil status of mother or legitimacy of child prohibited.* All covered female employees of the GSIS or SSS, regardless of her civil status or the legitimacy of her child, shall be granted maternity leave with pay upon compliance with the preceding section.

SECTION 3. *Return to work of employee prior to expiration of leave.* When a female employee wants to report back to duty before the expiration of her maternity leave, she may be allowed to do so provided she presents a medical certificate that she is physically fit to assume the duties of her position.

The commuted money value of the unexpired portion of the leave need not be refunded that when the employee returns to work before the expiration of her maternity leave, she may receive both the benefits granted under the maternity leave law and the salary for actual services rendered effective the days she reports for work.

SECTION 4. *Maternity leave with pay of adoptive parents.* A female adoptive parent, whether married or unmarried, shall, with respect to her adopted child, be granted maternity leave with pay if the adoptee is below seven (7) years of age as of the date the child is placed with the adoptive parents thru the Pre-Adoptive Placement Authority issued by the Department of Social Welfare and Development.

SECTION 5. *Maternity leave with pay in case childbirth, miscarriage, or abortion after termination.* Maternity leave with pay shall be granted even if the childbirth, miscarriage, or abortion occurs not more than 15 calendar days after the termination of an employee's service, as her right thereto has already accrued.

SECTION 6. *Maternity leave benefits of employees on teachers' leave basis.* In the case of those in the teaching profession under the Department of Education, maternity benefits can be availed of even if the period of delivery occurs during the long vacation, in which case, both the maternity benefits and the proportional vacation pay shall be received by the teacher concerned.

SECTION 7. *Maternity leave of a female employee with pending administrative case.* Every woman employee in the government service and in the private sector shall be entitled to maternity leave with pay even if she has a pending administrative case.

SECTION 8. *Maternity leave of contractual employees.* All contractual female employees, whether or not receiving the corresponding GSIS or SSS premium, shall be entitled to maternity leave benefits like regular employees.

SECTION 9. *Implementing rules and regulations.* The GSIS, SSS, DSWD, Department of Labor and Employment, and Civil Service Commission shall issue their respective rules and regulations necessary for the effective implementation of this Act.

SECTION 10. *Separability Clause.* If any provision of this Act is declared invalid, the other provisions not affected thereby shall remain valid.

SECTION 11. *Repealing clause.* Section 14-A of Republic Act No. 1161, as amended by Republic Act No. 8282, or the *Social Security Act of 1997*, and Section 1 of Commonwealth Act No. 647, *An Act to Grant Maternity Leave to Married Women Who are in the Service of the Government or of Any of Its Instrumentalities* are hereby repealed.

All administrative issuances executive orders, rules and regulations or parts thereof inconsistent with this Act are repealed, modified, and amended accordingly.

SECTION 12. *Effective date.* This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or one (1) newspaper of general circulation.

Approved,