

I MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

Bill No. 298-33 (COR)

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AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 3 TITLE 22 GUAM CODE ANNOTATED RELATIVE TO THE GUAM FAMILY AND MEDICAL LEAVE ACT; AND TO ADD A NEW ARTICLE 7 TO CHAPTER 3 TITLE 22 GUAM CODE ANNOTATED RELATIVE TO CHILD SCHOOL-RELATED LEAVE.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 6 is added to Chapter 3, Title 22 of the Guam Code

Annotated to read:

“ARTICLE 6

GUAM FAMILY AND MEDICAL LEAVE ACT.

- 1 § 3601. Title.
2 § 3602. Eligibility Requirements
3 § 3603. Definitions.
4 § 3604. Leave Requirements.
5 § 3605. Continuation of Benefits
6 § 3606. Certification of Leave to Care for Child, Spouse, or Parent

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1 § 3607 Certification of Leave for Employee’s Health Condition.

2 § 3608. Miscellaneous Provisions.

3 § 3609. Reinstatement.

4

5 **§ 3601. Title.** This Article *may* be cited as the *Guam Family and Medical Leave Act*.

6 **§ 3602. Eligibility Requirements.**

7 (a) Except as provided in subparagraph (b) of this section, it shall be an
8 unlawful employment practice for any employer, as defined in §3603(c), to
9 refuse to grant a request by any employee with more than 12 months of service
10 with the employer, and who has at least 1,000 hours of service with the
11 employer during the previous 12-month period, to take up to a total of 12
12 workweeks in any 12-month period for family care and medical leave. Family
13 care and medical leave requested pursuant to this subparagraph shall not be
14 deemed to have been granted unless the employer provides the employee, upon
15 granting the leave request, a guarantee of employment in the same or a
16 comparable position upon the termination of the leave.

17 (1) In any case in which the necessity for leave as defined under
18 § 3603(c)(1) is foreseeable based on an expected birth or placement, the
19 employee shall provide the employer with not less than 30 days’ notice,
20 before the date the leave is to begin, of the employee’s intention to take
21 leave under such subparagraph, except that if the date of the birth or
22 placement requires leave to begin in less than 30 days, the employee
23 shall provide such notice as is practicable.

24 (2) In any case in which the necessity for leave as defined under
25 §§ 3603(c)(2) or 3603(c)(3) is foreseeable based on planned medical
26 treatment, the employee:

1 (A) Shall make a reasonable effort to schedule the treatment so as
2 not to disrupt unduly the operations of the employer, subject to
3 the approval of the health care provider of the employee or the
4 health care provider of the son, daughter, spouse, or parent of
5 the employee, or health care provider of the parent, son, or
6 daughter of an employee's spouse, as appropriate; and

7 (B) Shall provide the employer with not less than 30 days' notice,
8 before the date the leave is to begin, of the employee's
9 intention to take leave under such subparagraph, except that if
10 the date of the treatment requires leave to begin in less than 30
11 days, the employee shall provide such notice as is practicable.

12 (b) Notwithstanding subparagraph (a) of this section, it shall *not* be an
13 unlawful employment practice for an employer to refuse to grant a request for
14 family care and medical leave by an employee if the employer employs fewer
15 than 25 employees in Guam.

16 **§ 3603. Definitions.**

17 For the purposes of this Article 6:

18 (a) "Child" means a biological, adopted, or foster child, a stepchild, a legal
19 ward, or a child of a person standing in loco parentis who is either of the
20 following:

21 (1) Under 18 years of age.

22 (2) An adult dependent child.

23 (b) "Employer" means either of the following:

24 (1) Any person (including any individual, association, partnership,
25 corporation, company, entity, or organized group of persons acting
26 directly or indirectly in the interest of an employer in relation to an

1 employee) who directly employs 25 or more persons to perform services
2 for a wage or salary.

3 (2) The government of Guam, and any governmental entity, department,
4 agency, commission, instrumentality, or public corporation, but
5 excluding the United States Government. The government of Guam and
6 each respective governmental entity, department, agency, commission,
7 instrumentality, or public corporation acting as an employer under this
8 Article shall be responsible for the development of the necessary rules
9 and regulations to ensure that the intent of this Article is followed and
10 implemented pursuant to the Administrative Adjudication Law under
11 Chapter 9, Title 5 Guam Code Annotated, or other applicable law.

12 (c) “Family care and medical leave” means any of the following:

13 (1) Leave for reason of the birth of a child of the employee, or the
14 placement of a child with an employee in connection with the adoption or
15 foster care of the child by the employee.

16 (2) Leave to care for a parent, spouse, or child of an employee, or a
17 parent or child of the spouse of an employee, who has a serious health
18 condition.

19 (3) Leave because of an employee’s own serious health condition that
20 makes the employee unable to perform the functions of the position of
21 that employee, except for leave taken for disability on account of
22 pregnancy, childbirth, or related medical conditions.

23 (d) “Employment in the same or a comparable position” means employment in
24 a position that has the same or similar duties and pay that can be performed at
25 the same or similar geographic location as the position held prior to the leave.

1 (e) “FMLA” means the federal Family and Medical Leave Act of 1993 (P.L.
2 103-3), as amended.

3 (f) “Health care provider” means any of the following:

4 (1) A person who is licensed to practice medicine under the provisions of
5 Article 2 (“Physician’s Practice Act”), Chapter 12, Title 10 Guam Code
6 Annotated; or an individual licensed to practice medicine in another state
7 or jurisdiction who directly treats or supervises the treatment of the
8 serious health condition for which leave under this Article 6 is taken.

9 (2) Any other person determined by the United States Secretary of Labor
10 to be capable of providing health care services under the FMLA.

11 (g) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal
12 guardian, or other person who stood in loco parentis to the employee when the
13 employee was a child.

14 (h) “Serious health condition” means an illness, injury, impairment, or physical
15 or mental condition that involves either of the following:

16 (1) Inpatient care in a hospital, hospice, or residential health care facility.

17 (2) Continuing treatment or continuing supervision by a health care
18 provider.

19 **§ 3604. Leave Requirements.**

20 (a) An employer shall not be required to pay an employee for any leave take
21 pursuant to §3602(a), except as required by subparagraph (b) of this section.

22 (b) An employee taking a leave permitted by §3602(a) may elect, or an
23 employer may require the employee, to substitute, for leave allowed under
24 §3602(a), any of the employee’s accrued vacation leave or other accrued time
25 off during this period or any other paid or unpaid time off negotiated with the
26 employer. If an employee takes a leave because of the employee’s own serious

1 health condition, the employee may also elect, or the employer may also require
2 the employee, to substitute accrued sick leave during the period of the leave.
3 However, an employee shall not use sick leave during a period of leave in
4 connection with the birth, adoption, or foster care of a child, or to care for a
5 child, parent, or spouse with a serious health condition, unless mutually agreed
6 to by the employer and the employee.

7 **§ 3605. Continuation of Benefits.**

8 (a) During any period that an eligible employee takes leave pursuant to
9 §3602(a) or takes leave that qualifies as leave under the FMLA, the employer
10 shall maintain and pay for coverage under a “group health plan,” as defined in
11 Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave,
12 not to exceed 12 workweeks in a 12-month period, commencing on the date
13 leave taken under the FMLA or under §3602(a) commences, at the level and
14 under the conditions coverage, if any, would have been provided if the
15 employee has continued in employment continuously for the duration of the
16 leave; provided that the employee shall continue to pay for the employee’s
17 share of insurance premiums at the same level that would have applied if the
18 employee has continued in employment continuously for the duration of the
19 leave. Nothing in the preceding sentence shall preclude an employer from
20 maintaining and paying for coverage under a “group health plan” beyond 12
21 workweeks. An employer may recover the premium that the employer paid as
22 required by this subsection for maintaining coverage for the employee under the
23 group health plan if both of the following conditions occur:

- 24 (1) The employee fails to return from leave after the period of leave to
25 which the employee is entitled has expired.

1 (2) The employee's failure to return from leave is for a reason other than
2 the continuation, recurrence, or onset of a serious health condition that
3 entitles the employee to leave under §3602(a) or other circumstances
4 beyond the control of the employee.

5 (b) Any employee taking leave pursuant to §3602(a) shall continue to be
6 entitled to participate in employee health plans for any period during which
7 coverage is not provided by the employer under §3605(a), employee benefit
8 plans, including life insurance or short-term or long-term disability or accident
9 insurance, pension and retirement plans, and supplemental unemployment
10 benefit plans to the same extent and under the same conditions as apply to an
11 unpaid leave taken for any purpose other than those described in §3602(a). In
12 the absence of these conditions an employee shall continue to be entitled to
13 participate in these plans and, in the case of health and welfare employee
14 benefit plans, including life insurance or short-term or long-term disability or
15 accident insurance, or other similar plans, the employer may, at his or her
16 discretion, require the employee to pay premiums, at the group rate, during the
17 period of leave not covered by any accrued vacation leave, or other accrued
18 time off, or any other paid or unpaid time off negotiated with the employer, as a
19 condition of continued coverage during the leave period. However, except as
20 otherwise provided in this Article or subparagraph (c) of this section, the
21 nonpayment of premiums by an employee shall not constitute a break in
22 service, for purposes of longevity, seniority under any collective bargaining
23 agreement, or any employee benefit plan.

24 (c) For purposes of pension and retirement plans, an employer shall not be
25 required to make employer or employee contribution payments during the
26 period of unpaid leave, and the unpaid leave period during which plan payments

1 are not made shall not be required to be counted for purposes of time accrued
2 under the plan. However, an employee covered by a pension or retirement plan
3 may continue to make contributions at his or her own expense in accordance
4 with the terms of the plan during the period of the unpaid leave, and the
5 employer may make corresponding employer contributions if required in
6 accordance with the terms of the plan.

7 (d) During a family care and medical leave period, the employee shall retain
8 employee status with the employer, and the leave shall not constitute a break in
9 service, for purposes of longevity, seniority under any collective bargaining
10 agreement, or any employee benefit plan. An employee returning from leave
11 shall return with no less seniority than the employee had when the leave
12 commenced, for purposes of layoff, recall, promotion, job assignment, and
13 seniority-related benefits such as vacation.

14 **§ 3606. Certification of Leave to Care for Child, Spouse, or Parent.**

15 (a) An employer may require that an employee's request for leave to care for
16 a child, a spouse, or a parent who has a serious health condition be supported by
17 a certification issued by the health care provider of the individual requiring
18 care. That certification shall be sufficient if it includes all of the following:

19 (1) The date on which the serious health condition commenced.

20 (2) The probable duration of the condition.

21 (3) An estimate of the amount of time that the health care provider
22 believes the employee needs to care or the individual requiring the care.

23 (4) A statement that the serious health condition warrants the
24 participation of a family member to provide care during a period of the
25 treatment or supervision of the individual requiring care.

1 (b) Upon expiration of the time estimated by the health care provider in
2 §3606(a)(3), the employer may require the employee to obtain recertification, in
3 accordance with the procedure provided in §3606(a), if additional leave is
4 required.

5 **§ 3607. Certification of Leave for Employee's Health Condition.**

6 (a) An employer may require that an employee's request for leave because of
7 the employee's own serious health condition be supported by a certification
8 issued by his or her health care provider. That certification shall be sufficient if
9 it includes all of the following:

10 (1) The date on which the serious health condition commenced.

11 (2) The probable duration of the condition

12 (3) A statement that, due to the serious health condition, the
13 employee is unable to perform the function of his or her position.

14 (b) The employer may require that the employee obtain subsequent
15 recertification regarding the employee's serious health condition on a
16 reasonable basis, in accordance with the procedure provided in §3607(a), if
17 additional leave is required.

18 (c) In any case in which the employer has reason to doubt the validity of the
19 certification provided pursuant to this § 3607, the employer may require, at the
20 employer's expense, that the employee obtain the opinion of a second health
21 care provider, designated or approved by the employer, concerning any
22 information certified under paragraph §3607(a).

23 (d) The second health care provider designated or approved under §3607(c)
24 shall not be employed on a regular basis by the employer.

25 (e) In any case in which the second opinion described in §3607(c) differs
26 from the opinion in the original certification, the employer may require, at the

1 employer's expense, that the employee obtain the opinion of a third health care
2 provider, designated or approved jointly by the employer and the employee,
3 concerning the information certified under §3607(a).

4 (f) The opinion of the third health care provider concerning the information
5 certified under §3607(a) shall be considered to be final and shall be binding on
6 the employer and the employee.

7 (g) As a condition of an employee's return from leave taken because of the
8 employee's own serious health condition, the employer may have a uniformly
9 applied practice or policy that requires the employee to obtain certification from
10 his or her health care provider that the employee is able to resume work.
11 Nothing in this paragraph shall supersede a valid collective bargaining
12 agreement that governs the return to work of that employee.

13 **§ 3608. Miscellaneous Provisions**

14 (a) It shall be an unlawful employment practice for an employer to refuse to
15 hire, or to discharge, fine, suspend, expel, or discriminate against, any
16 individual because of any of the following:

17 (1) An individual's exercise of the right to family care and medical leave
18 provided by §3602(a).

19 (2) An individual's giving information or testimony as to his or her own
20 family care and medical leave, or another person's family care and
21 medical leave, in any inquiry or proceeding related to rights guaranteed
22 under this section.

23 (b) This Article shall not be construed to require any changes in existing
24 collective bargaining agreements during the life of the contract.

25 (d) Leave provided for pursuant to this Article may be taken in one or more
26 periods. The 12-month period during which 12 workweeks of leave may be

1 taken under this Article shall run concurrently with the 12-month period under
2 the FMLA, and shall commence on the date leave taken under the FMLA
3 commences.

4 (e) In any case in which both parents entitled to leave under §3602(a) are
5 employed by the same employer, the employer shall not be required to grant
6 leave in connection with the birth, adoption, or foster care of child that would
7 allow the parents family care and medical leave totaling more than the amount
8 specified in §3602(a).

9 **§ 3609. Reinstatement.**

10 (a) Notwithstanding §3602(a), an employer may refuse to reinstate an
11 employee returning from leave to the same or a comparable position if all of the
12 following apply:

13 (1) The employee is a salaried employee who is among the highest paid
14 10 percent of the employer's employees employed on Guam.

15 (2) The refusal is necessary to prevent substantial and grievous economic
16 injury to the operations of the employer.

17 (3) The employer notifies the employee of the intent to refuse
18 reinstatement at the time the employer determines the refusal is
19 necessary under §3609(a)(2).

20 (b) In any case in which the leave has already commenced, the employer
21 shall give the employee a reasonable opportunity to return to work following
22 the notice prescribed by §3609(a)(3).

23 (c) Leave taken by an employee pursuant to this Article shall run
24 concurrently with leave taken pursuant to the FMLA, or with other non-FMLA
25 leave taken pursuant to the employer's leave policies if such leave also qualifies
26 for leave pursuant to this Article. The aggregate amount of leave taken

1 pursuant to this Article or the FMLA, or both, shall not exceed 12 workweeks
2 in a 12-month period. The aggregate amount of leave taken pursuant to this
3 Article or other non-FMLA leave taken pursuant to the employer’s leave
4 policies if such leave also qualifies for leave pursuant to this Article, or both,
5 shall not exceed the greater of 12 workweeks in a 12-month period, or the
6 maximum amount allowed for the non-FMLA leave taken pursuant to the
7 employer’s leave policies.

8 (d) It shall be an unlawful employment practice for an employer to interfere
9 with, restrain, or deny the exercise of, or the attempt to exercise, any right
10 provided under this Article.”

11 **Section 2.** A *new* Article 7 is *added* to Chapter 3, Title 22 of the Guam Code

12 Annotated to read:

13 **“ARTICLE 7**

14 **LEAVE FOR CHILD SCHOOL-RELATED PURPOSES**

15 **§ 3701.** Title.

16 **§ 3702.** Definitions.

17 **§ 3703.** Leave for Child School-Related Purposes.

18
19 **§ 3701. Title.** This Article *may* be cited as the *Child School-Related Leave Act*.

20 **§ 3702. Definitions.**

21 (a) For purposes of this Article, the following terms have the following
22 meanings:

23 (1) “Parent” means a parent, guardian, stepparent, foster parent, or
24 grandparent of, or a person who stands in loco parentis to, a child.

25 (2) “Child” (*plural*: “children”) and “employer” shall have the same
26 definitions as set forth in § 3603 of Title 22 Guam Code Annotated.

1 (3) “Child care provider or school emergency” means that an employee’s
2 child cannot remain in a school or with a child care provider due to one of the
3 following:

4 (A) The school or child care provider has requested that the child
5 be picked up, or has an attendance policy, excluding planned holidays,
6 that prohibits the child from attending or requires the child to be picked
7 up from the school or child care provider.

8 (B) Behavioral or discipline problems.

9 (C) Closure or unexpected unavailability of the school or child care
10 provider, excluding planned holidays.

11 (D) A natural disaster, including, but not limited to, fire,
12 earthquake, or flood.

13 **§ 3703. Leave for child school-related purposes.**

14 (a) (1) An employer shall not discharge or in any way discriminate against
15 an employee who is a parent of one or more children of the age to attend pre-
16 school, kindergarten, or grades 1 to 12, inclusive, for taking off up to 40 hours
17 each year, for the purpose of either of the following child-related activities:

18 (A) To find, enroll, or reenroll his or her child in a school or with
19 a licensed child care provider, or to participate in activities of the
20 school or licensed child care provider of his or her child, if the
21 employee, prior to taking the time off, gives reasonable notice to the
22 employer of the planned absence of the employee. Time off pursuant
23 to this subparagraph shall not exceed eight (8) hours in any calendar
24 month of the year.

1 (B) To address a child care provider or school emergency, if the
2 employee gives notice to the employer.

3 (2) If more than one parent of a child is employed by the same
4 employer at the same worksite, the entitlement under paragraph (1) of a planned
5 absence as to that child applies, at any one time, only to the parent who first
6 gives notice to the employer, such that another parent may take a planned
7 absence simultaneously as to that same child under the conditions described in
8 paragraph (1) only if he or she obtains the employer's approval for the
9 requested time off.

10 (b) (1) The employee shall utilize existing vacation, personal leave, or
11 compensatory time off for purposes of the planned absence authorized by this
12 section, unless otherwise provided by a collective bargaining agreement. An
13 employee also may utilize time off without pay for this purpose, to the extent
14 made available by his or her employer.

15 (2) Notwithstanding paragraph (1), in the event that all permanent, full-
16 time employees of an employer are accorded vacation during the same period of
17 time in the calendar year, an employee of that employer may not utilize that
18 accrued vacation benefit at any other time for purposes of the planned absence
19 authorized by this section.

20 (c) The employee, if requested by the employer, shall provide documentation
21 from the school or licensed child care provider as proof that he or she engaged
22 in child-related activities permitted in subdivision (a) on a specific date and at a
23 particular time. For purposes of this subdivision, "documentation" means
24 whatever written verification of parental participation the school or licensed
25 child care provider deems appropriate and reasonable.

1 (d) No employer shall discharge, threaten to discharge, demote, suspend, or
2 in any other manner discriminate against an employee in terms and conditions
3 of employment because the employee has taken time off to engage in child-
4 related activities permitted in subdivision (a). An employer who has been
5 found in a grievance procedure, arbitration, or court proceeding to have violated
6 this subsection shall be required, if applicable, to reinstate or promote the
7 affected employee, and shall be liable to the affected employee for an amount
8 equal to three times the employee's lost wages and work benefits, in addition to
9 actual lost wages and benefits and other damages to which the employee may
10 be entitled."

11 **Section 3. Effective Date.** The provisions of this Act *shall* become effective
12 upon enactment.

13 **Section 4. Severability.** *If* any provision of this Law or its application to any
14 person or circumstance is found to be invalid or contrary to law, such invalidity shall
15 *not* affect other provisions or applications of this Law which can be given effect
16 without the invalid provisions or application, and to this end the provisions of this Act
17 are severable.