

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam.

JUL 08 2016

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Tres Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

2016 JUL 12 AM 10:49

Dear Madame Speaker:

Transmitted herewith is Bill No. 298-33 (COR), "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 LEAVE FOR CHILD SCHOOL-RELATED PURPOSES," which was signed into law on June 30, 2016, as Public Law 33-170.

Senseramente,


EDDIE BAZA CALVO

33-16-1775
Office of the Speaker
Judith T. Won Pat, Ed.D

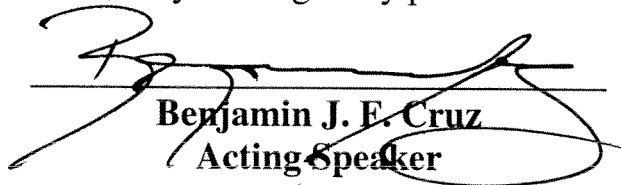
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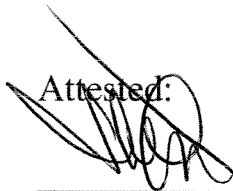
1775

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

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LÅHEN GUÅHAN

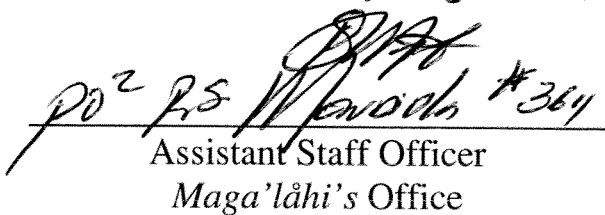
This is to certify that **Bill No. 298-33 (COR)**, "AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 3, TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO THE GUAM FAMILY AND MEDICAL LEAVE ACT; AND TO ADD A NEW ARTICLE 7 TO CHAPTER 3, TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO LEAVE FOR CHILD SCHOOL-RELATED PURPOSES," was on the 17th day of June 2016, duly and regularly passed.


Benjamin J. F. Cruz
Acting Speaker

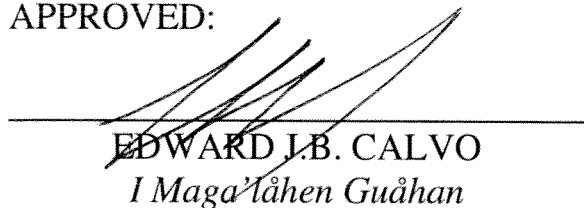
Attested:


Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 20th day of JUNE,
2016, at 5:35 o'clock P.M.


Assistant Staff Officer
Maga'låhi's Office

APPROVED:


EDWARD I.B. CALVO
I Maga'låhen Guåhan

Date: JUN 30 2016

Public Law No. 33-170

- 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.
- 7 § 3607 Certification of Leave for Employee’s Health Condition.
- 8 § 3608. Miscellaneous Provisions.
- 9 § 3609. Reinstatement.

10 § **3601.** **Title.** This Article may be cited as the *Guam Family and Medical*
11 *Leave Act.*

12 § **3602.** **Eligibility Requirements.**

13 (a) Except as provided in Subsection (b) of this Section, it *shall* be
14 an unlawful employment practice for any employer, as defined in § 3603(b),
15 to refuse to grant a request by any employee with more than twelve (12)
16 months of service with the employer, and who has at least one thousand
17 (1,000) hours of service with the employer during the previous twelve (12)-
18 month period, to take up to a total of twelve (12) workweeks in any twelve
19 (12)-month period for family care and medical leave. Family care and
20 medical leave requested pursuant to this Subsection *shall not* be deemed to
21 have been granted unless the employer provides the employee, upon granting
22 the leave request, a guarantee of employment in the same or a comparable
23 position upon the termination of the leave.

24 (1) In any case in which the necessity for leave as defined
25 under § 3603(c)(1) is foreseeable based on an expected birth or
26 placement, the employee *shall* provide the employer with not less than
27 thirty (30) days’ notice, before the date the leave is to begin, of the

1 employee's intention to take leave under such Subsection, except that
2 if the date of the birth or placement requires leave to begin in less than
3 thirty (30) days, the employee *shall* provide such notice as is
4 practicable.

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

8 (A) *Shall* make a reasonable effort to schedule the
9 treatment so as not to disrupt unduly the operations of the
10 employer, subject to the approval of the health care provider of
11 the employee or the health care provider of the son, daughter,
12 spouse, or parent of the employee, or health care provider of the
13 parent, son, or daughter of an employee's spouse, as appropriate;
14 and

15 (B) *Shall* provide the employer with not less than thirty
16 (30) days' notice, before the date the leave is to begin, of the
17 employee's intention to take leave under such Subsection, except
18 that if the date of the treatment requires leave to begin in less than
19 thirty (30) days, the employee *shall* provide such notice as is
20 practicable.

21 (b) Notwithstanding Subsection (a) of this Section, it *shall not* be an
22 unlawful employment practice for an employer to refuse to grant a request for
23 family care and medical leave by an employee if the employer employs fewer
24 than twelve (12) employees in Guam.

25 **§ 3603. Definitions.**

26 For the purposes of this Article:

1 (a) *Child* means a biological, adopted, or foster child, a stepchild, a
2 legal ward, or a child of a person standing in loco parentis who is either of the
3 following:

4 (1) Under eighteen (18) years of age; or

5 (2) An adult dependent child.

6 (b) *Employer* means either of the following:

7 (1) Any person (including any individual, association,
8 partnership, corporation, company, entity, or organized group of
9 persons acting directly or indirectly in the interest of an employer in
10 relation to an employee) who directly employs twenty-five (25) or more
11 persons to perform services for a wage or salary; or

12 (2) The government of Guam, and any governmental entity,
13 department, agency, commission, instrumentality, or public
14 corporation, but excluding the United States government. The
15 government of Guam and each respective governmental entity,
16 department, agency, commission, instrumentality, or public corporation
17 acting as an employer under this Article *shall* be responsible for the
18 development of the necessary rules and regulations to ensure that the
19 intent of this Article is followed and implemented pursuant to the
20 Administrative Adjudication Law under Chapter 9, Title 5, Guam Code
21 Annotated, or other applicable law.

22 (c) *Family care and medical leave* means any of the following:

23 (1) Leave for reason of the birth of a child of the employee, or
24 the placement of a child with an employee in connection with the
25 adoption or foster care of the child by the employee;

1 (2) Leave to care for a parent, spouse, or child of an employee,
2 or a parent or child of the spouse of an employee, who has a serious
3 health condition; or

4 (3) Leave because of an employee's own serious health
5 condition that makes the employee unable to perform the functions of
6 the position of that employee, except for leave taken for disability on
7 account of pregnancy, childbirth, or related medical conditions.

8 (d) *Employment in the same or a comparable position* means
9 employment in a position that has the same or similar duties and pay that can
10 be performed at the same or similar geographic location as the position held
11 prior to the leave.

12 (e) *FMLA* means the federal *Family and Medical Leave Act of 1993*
13 (P.L. 103-3), as amended.

14 (f) *Health care provider* means any of the following:

15 (1) A person who is licensed to practice medicine under the
16 provisions of Article 2 (Physician's Practice Act), Chapter 12, Title 10
17 Guam Code Annotated; or an individual licensed to practice medicine
18 in another state or jurisdiction who directly treats or supervises the
19 treatment of the serious health condition for which leave under this
20 Article is taken; or

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

24 (g) *Parent* means a biological, foster, or adoptive parent, a
25 stepparent, a legal guardian, or other person who stood in loco parentis to the
26 employee when the employee was a child.

1 (h) *Serious health condition* means an illness, injury, impairment, or
2 physical or mental condition that involves either of the following:

3 (1) Inpatient care in a hospital, hospice, or residential health
4 care facility; or

5 (2) Continuing treatment or continuing supervision by a
6 health care provider.

7 **§ 3604. Leave Requirements.**

8 (a) An employer *shall not* be required to pay an employee for any
9 leave taken pursuant to § 3602(a), except as required by Subsection (b) of this
10 Section.

11 (b) An employee taking leave permitted by § 3602(a) may elect, or
12 an employer may require the employee, to substitute, for leave allowed under
13 § 3602(a), any of the employee's accrued vacation leave or other accrued time
14 off during this period or any other paid or unpaid time off negotiated with the
15 employer. If an employee takes leave because of the employee's own serious
16 health condition, the employee may also elect, or the employer may also
17 require the employee, to substitute accrued sick leave during the period of the
18 leave. However, an employee *shall not* use sick leave during a period of leave
19 in connection with the birth, adoption, or foster care of a child, or to care for
20 a child, parent, or spouse with a serious health condition, unless mutually
21 agreed to by the employer and the employee.

22 **§ 3605. Continuation of Benefits.**

23 (a) During any period that an eligible employee takes leave pursuant
24 to § 3602(a) or takes leave that qualifies as leave under the FMLA, the
25 employer *shall* maintain and pay for coverage under a "group health plan," as
26 defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration
27 of the leave, not to exceed twelve (12) workweeks in a twelve (12)-month

1 period, commencing on the date leave taken under the FMLA or under §
2 3602(a) commences, at the level and under the conditions coverage, if any,
3 would have been provided if the employee has continued in employment
4 continuously for the duration of the leave; *provided*, that the employee *shall*
5 continue to pay for the employee's share of insurance premiums at the same
6 level that would have applied if the employee has continued in employment
7 continuously for the duration of the leave. Nothing in the preceding sentence
8 shall preclude an employer from maintaining and paying for coverage under
9 a "group health plan" beyond twelve (12) workweeks. An employer may
10 recover the premium that the employer paid as required by this Subsection for
11 maintaining coverage for the employee under the group health plan if both of
12 the following conditions occur:

13 (1) The employee fails to return from leave after the period of
14 leave to which the employee is entitled has expired; and

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

19 (b) Any employee taking leave pursuant to § 3602(a) *shall* continue
20 to be entitled to participate in employee health plans for any period during
21 which coverage is not provided by the employer under § 3605(a), employee
22 benefit plans, including life insurance or short-term or long-term disability or
23 accident insurance, pension and retirement plans, and supplemental
24 unemployment benefit plans to the same extent and under the same conditions
25 that apply to unpaid leave taken for any purpose other than those described in
26 § 3602(a). In the absence of these conditions an employee *shall* continue to
27 be entitled to participate in these plans and, in the case of health and welfare

1 employee benefit plans, including life insurance or short-term or long-term
2 disability or accident insurance, or other similar plans, the employer may, at
3 the employer's discretion, require the employee to pay premiums, at the group
4 rate, during the period of leave not covered by any accrued vacation leave, or
5 other accrued time off, or any other paid or unpaid time off negotiated with
6 the employer, as a condition of continued coverage during the leave period.
7 However, except as otherwise provided in this Article or Subsection (c) of this
8 Section, the nonpayment of premiums by an employee *shall not* constitute a
9 break in service for purposes of longevity, seniority under any collective
10 bargaining agreement, or any employee benefit plan.

11 (c) For purposes of pension and retirement plans, an employer *shall*
12 *not* be required to make employer or employee contribution payments during
13 the period of unpaid leave, and the unpaid leave period during which plan
14 payments are not made *shall not* be required to be counted for purposes of
15 time accrued under the plan. However, an employee covered by a pension or
16 retirement plan may continue to make contributions at the employee's
17 expense in accordance with the terms of the plan during the period of the
18 unpaid leave, and the employer may make corresponding employer
19 contributions if required in accordance with the terms of the plan.

20 (d) During a family care and medical leave period, the employee
21 *shall* retain employee status with the employer, and the leave *shall not*
22 constitute a break in service for purposes of longevity, seniority under any
23 collective bargaining agreement, or any employee benefit plan. An employee
24 returning from leave *shall* return with no less seniority than the employee had
25 when the leave commenced for purposes of layoff, recall, promotion, job
26 assignment, and seniority-related benefits such as vacation.

27 **§ 3606. Certification of Leave to Care for Child, Spouse, or Parent.**

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

6 (1) The date on which the serious health condition
7 commenced;

8 (2) The probable duration of the condition;

9 (3) An estimate of the amount of time that the health care
10 provider believes the employee needs to care for the individual
11 requiring the care; and

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

15 (b) Upon expiration of the time estimated by the health care provider
16 in Subsection (a)(3) of this Section, the employer may require the employee
17 to obtain recertification, in accordance with the procedure provided in
18 Subsection (a) of this Section, if additional leave is required.

19 **§ 3607. Certification of Leave for Employee's Health Condition.**

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

24 (1) The date on which the serious health condition
25 commenced;

26 (2) The probable duration of the condition; and

27 (3) A statement that, due to the serious health condition, the

1 employee is unable to perform the functions of his or her position.

2 (b) The employer may require that the employee obtain subsequent
3 recertification regarding the employee's serious health condition on a
4 reasonable basis, in accordance with the procedure provided in Subsection (a)
5 of this Section, if additional leave is required.

6 (c) In any case in which the employer has reason to doubt the
7 validity of the certification provided pursuant to this Section, the employer
8 may require, at the employer's expense, that the employee obtain the opinion
9 of a second health care provider, designated or approved by the employer,
10 concerning any information certified under Subsection (a) of this Section.

11 (d) The second health care provider designated or approved under
12 Subsection (c) of this Section *shall not* be employed on a regular basis by the
13 employer.

14 (e) In any case in which the second opinion described in Subsection
15 (c) of this Section differs from the opinion in the original certification, the
16 employer may require, at the employer's expense, that the employee obtain
17 the opinion of a third health care provider, designated or approved jointly by
18 the employer and the employee, concerning the information certified under
19 Subsection (a) of this Section.

20 (f) The opinion of the third health care provider concerning the
21 information certified under Subsection (a) of this Section *shall* be considered
22 to be final and *shall* be binding on the employer and the employee.

23 (g) As a condition of an employee's return from leave taken because
24 of the employee's own serious health condition, the employer may have a
25 uniformly applied practice or policy that requires the employee to obtain
26 certification from the employee's health care provider that the employee is
27 able to resume work. Nothing in this Subsection shall supersede a valid

1 collective bargaining agreement that governs the return to work of that
2 employee.

3 **§ 3608. Miscellaneous Provisions.**

4 (a) It *shall* be an unlawful employment practice for an employer to
5 refuse to hire, or to terminate, discharge, fine, suspend, expel, or discriminate
6 against, any individual because of any of the following:

7 (1) An individual's exercise of the right to family care and
8 medical leave provided by § 3602(a); or

9 (2) An individual's giving information or testimony regarding
10 the individual's family care and medical leave, or another person's
11 family care and medical leave, in any inquiry or proceeding related to
12 rights guaranteed under this Section.

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

15 (c) Leave provided pursuant to this Article may be taken in one (1)
16 or more periods. The twelve (12)-month period during which twelve (12)
17 workweeks of leave may be taken under this Article *shall* run concurrently
18 with the twelve (12)-month period under the FMLA, and *shall* commence on
19 the date leave taken under the FMLA commences.

20 (d) In any case in which both parents entitled to leave under §
21 3602(a) are employed by the same employer, the employer *shall not* be
22 required to grant leave in connection with the birth, adoption, or foster care of
23 a child that would allow the parents family care and medical leave totaling
24 more than the amount specified in § 3602(a).

25 **§ 3609. Reinstatement.**

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

4 (1) The employee is a salaried employee who is among the
5 highest paid ten percent (10%) of the employer's employees employed
6 on Guam;

7 (2) The refusal is necessary to prevent substantial and
8 grievous economic injury to the operations of the employer; and

9 (3) The employer notifies the employee of the intent to refuse
10 reinstatement at the time the employer determines the refusal is
11 necessary under Subsection (a)(2) of this Section.

12 (b) In any case in which the leave has already commenced, the
13 employer *shall* give the employee a reasonable opportunity to return to work
14 following the notice prescribed by Subsection (a)(3) of this Section.

15 (c) Leave taken by an employee pursuant to this Article *shall* run
16 concurrently with leave taken pursuant to the FMLA, or with other non-
17 FMLA leave taken pursuant to the employer's leave policies if such leave also
18 qualifies for leave pursuant to this Article. The aggregate amount of leave
19 taken pursuant to this Article or the FMLA, or both, *shall not* exceed twelve
20 (12) workweeks in a twelve (12)-month period. The aggregate amount of
21 leave taken pursuant to this Article or other non-FMLA leave taken pursuant
22 to the employer's leave policies if such leave also qualifies for leave pursuant
23 to this Article, or both, *shall not* exceed the greater of twelve (12) workweeks
24 in a twelve (12)-month period, or the maximum amount allowed for the non-
25 FMLA leave taken pursuant to the employer's leave policies.

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

4 **Section 2.** A new Article 7 is *added* to Chapter 3 of Title 22, Guam Code
5 Annotated, to read:

6 “ARTICLE 7

7 LEAVE FOR CHILD SCHOOL-RELATED PURPOSES

8 § 3701. Title.

9 § 3702. Definitions.

10 § 3703. Leave for Child School-Related Purposes.

11 **§ 3701. Title.** This Article may be cited as the *Child School-*
12 *Related Leave Act.*

13 **§ 3702. Definitions.**

14 (a) For purposes of this Article, the following terms have the
15 following meanings:

16 (1) *Parent* means a parent, guardian, stepparent, foster parent,
17 or grandparent of, or a person who stands in loco parentis to, a child.

18 (2) *Child* (plural: *children*) and *employer shall* have the same
19 definitions as set forth in § 3603 of Article 6 of this Title.

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

23 (A) The school or child care provider has requested that
24 the child be picked up, or has an attendance policy, excluding
25 planned holidays, that prohibits the child from attending or
26 requires the child to be picked up from the school or child care
27 provider;

1 (B) Behavioral or discipline problems;

2 (C) Closure or unexpected unavailability of the school
3 or child care provider, excluding planned holidays; or

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

6 **§ 3703. Leave for Child School-Related Purposes.**

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

12 (A) To find, enroll, or re-enroll the employee's child in
13 a school or with a licensed child care provider, or to participate
14 in activities of the school or licensed child care provider of his or
15 her child, if the employee, prior to taking the time off, gives
16 reasonable notice to the employer of the planned absence of the
17 employee. Time off pursuant to this Subsection *shall not* exceed
18 eight (8) hours in any calendar month of the year; or

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

21 (2) If more than one (1) parent of a child is employed by the
22 same employer at the same worksite, the entitlement under Subsection
23 (a)(1) of a planned absence as to that child applies, at any one (1) time,
24 only to the parent who first gives notice to the employer, such that
25 another parent may take a planned absence simultaneously as to that
26 same child under the conditions described in Subsection (a)(1) only if
27 he or she obtains the employer's approval for the requested time off.

1 (b) (1) The employee *shall* utilize existing vacation, personal leave,
2 or compensatory time off for purposes of the planned absence authorized by
3 this Section, unless otherwise provided by a collective bargaining agreement.
4 An employee also may utilize time off without pay for this purpose, to the
5 extent made available by the employee’s employer.

6 (2) Notwithstanding Subsection (b)(1), in the event that all
7 permanent, full-time employees of an employer are accorded vacation
8 during the same period of time in the calendar year, an employee of that
9 employer may *not* utilize that accrued vacation benefit at any other time
10 for purposes of the planned absence authorized by this Section.

11 (c) The employee, if requested by the employer, *shall* provide
12 documentation from the school or licensed child care provider as proof that
13 he or she engaged in the child-related activities permitted in Subsection (a) on
14 a specific date and at a particular time. For purposes of this Subsection,
15 “documentation” means whatever written verification of parental
16 participation the school or licensed child care provider deems appropriate and
17 reasonable.

18 (d) No employer shall discharge, threaten to discharge, demote,
19 suspend, or in any other manner discriminate against an employee in terms
20 and conditions of employment because the employee has taken time off to
21 engage in the child-related activities permitted in Subsection (a). An employer
22 who has been found in a grievance procedure, arbitration, or court proceeding
23 to have violated this Subsection *shall* be required, if applicable, to reinstate or
24 promote the affected employee, and *shall* be liable to the affected employee
25 for an amount equal to three (3) times the employee’s lost wages and work
26 benefits, in addition to actual lost wages and benefits and other damages to
27 which the employee may be entitled.”

1 **Section 3. Severability.** If any provision of this Act or its application to
2 any person or circumstance is found to be invalid or contrary to law, such invalidity
3 *shall not* affect other provisions or applications of this Act that can be given effect
4 without the invalid provisions or application, and to this end the provisions of this
5 Act are severable.