EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

JUL 0 8 2016

2016 JUL 12 AM 10:49

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

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
Date: 7-11-16
Time: 12:11pm
Received By:

1775

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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.

PO2 RS Mendiola #364
Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: JUN 30 2016

Public Law No. 33-170

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

Bill No. 298-33 (COR)
As amended on the Floor.

Introduced by:

Brant T. McCreadie
Michael F.Q. San Nicolas
R. J. Respicio
Tommy Morrison
N. B. Underwood, Ph.D.
V. Anthony Ada
T. R. Muña Barnes
Mary Camacho Torres
Frank F. Blas, Jr.
B. J.F. Cruz
Dennis G. Rodriguez, Jr.
James V. Espaldon
T. C. Ada
FRANK B. AGUON, JR.
Judith T. Won Pat, Ed.D.

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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 6 is *added* to Chapter 3, Title 22, Guam Code Annotated, to read:

"ARTICLE 6

GUAM FAMILY AND MEDICAL LEAVE ACT

§ 3601. Title.
§ 3602. Eligibility Requirements.
§ 3603. Definitions.
§ 3604. Leave Requirements.
§ 3605. Continuation of Benefits.
§ 3606. Certification of Leave to Care for Child, Spouse, or Parent.
§ 3607 Certification of Leave for Employee's Health Condition.
§ 3608. Miscellaneous Provisions.
§ 3609. Reinstatement.

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

§ 3602. Eligibility Requirements.

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

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

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

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

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

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

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

§ 3603. Definitions.

For the purposes of this Article:

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

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

(2) An adult dependent child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3604. Leave Requirements.

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

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

§ 3605. Continuation of Benefits.

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

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

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

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

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

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

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

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

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

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

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

(2) The probable duration of the condition;

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

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

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

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

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

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

(2) The probable duration of the condition; and

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

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

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

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

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

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

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

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

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

§ 3608. Miscellaneous Provisions.

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

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

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

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

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

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

§ 3609. Reinstatement.

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

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

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

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

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

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

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

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

"**ARTICLE 7**

LEAVE FOR CHILD SCHOOL-RELATED PURPOSES

§ 3701. Title.

§ 3702. Definitions.

§ 3703. Leave for Child School-Related Purposes.

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

§ 3702. Definitions.

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

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

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

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

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

(B) Behavioral or discipline problems;

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

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

§ 3703. Leave for Child School-Related Purposes.

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

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

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

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

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

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

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

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

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