

2019年7月号 産前産後休業のルール改定について

2019年5月1日に産前産後休業についてのルール改定が行われました（RA No 11210）。

1. 概要

主な改正内容は以下の表の通りです。

項目	旧法	新法
有給の産休期間	自然出産の場合：60日 帝王切開の場合：78日	いかなる場合も105日（※1）
ソロペアレントの場合の追加有給の産休期間	15日	15日
流産の場合の有給期間	60日	60日
無給による休暇の延長	無し	30日（※2）
取得上限	4人目の出産まで	上限無し
父親の有給の育児休暇	7日	7日

※1：105日の休暇のうち、7日間を父親にも付与することが可能です。7日間の父親育児休暇があるため、合計14日を有給とすることが可能です。

また、105日の有給休暇のうち、産後の休暇は60日以下とすることは出来ません。

※2：無給による休暇の延長を行う場合には、遅くとも有給の産休が終わる45日前までに通知を行うことが必要です。

2. 適用時期

公示後15日後に適用開始のため、当該ルールは本メールマガジン発行時点で有効です。

3. 最後に

これまでフィリピンの産前産後休業は非常に手薄であると言われていたことに対応し、上記表の通り、かなり休暇の日数が増えており、手厚くなっています。

しかし、他ルールと同様に、変更直後は関係各機関が混乱していることが予想され、特に会社が一度負担をした有給休暇分の給与をSSSに対して還付申請を行う際には規則適用直後はスムーズに進まないことが予想されるため、対応を行う場合には、適切に添付のルールと照らし合わせて申請を行うことが重要です。

会社紹介

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S. No. 1305
H. No. 4113

Republic of the Philippines
Congress of the Philippines
Metro Manila

Seventeenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-third day of July, two thousand eighteen.

[REPUBLIC ACT NO. **11210**]

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 WITHOUT PAY, AND GRANTING AN ADDITIONAL FIFTEEN (15) DAYS FOR SOLO MOTHERS, AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* – This Act shall be known and cited as the “105-Day Expanded Maternity Leave Law”.

SEC. 2. *Declaration of Policy.* – It is the declared policy of the State under Article XIII, Section 14 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.

Article II, State Policies, Section 12 of the 1987 Constitution provides that the State recognizes the sanctity of family life and shall protect and strengthen the family as the basic autonomous social institution and that it shall equally protect the life of the mother and the life of the unborn from conception. Moreover, Sections 17 and 22 of Republic Act No. 9710, otherwise known as "The Magna Carta of Women", provides for women's rights to health and decent work.

To achieve these, and in recognition of women's maternal function as a social responsibility, the State shall institutionalize a mechanism to expand the maternity leave period of women workers. This will provide them with ample transition time to regain health and overall wellness as well as to assume maternal roles before resuming paid work. This Act is consistent with local and international legal instruments that protect and promote the rights of women.

SEC. 3. *Grant of Maternity Leave.* – All covered female workers in government and the private sector, including those in the informal economy, regardless of civil status or the legitimacy of her child, shall be granted one hundred five (105) days maternity leave with full pay and an option to extend for an additional thirty (30) days without pay: *Provided, That* in case the worker qualifies as a solo parent under Republic Act No. 8972, or the "Solo Parents' Welfare Act", the worker shall be granted an additional fifteen (15) days maternity leave with full pay.

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 one hundred five (105) days, as the case may be.

Maternity leave shall be granted to female workers in every instance of pregnancy, miscarriage or emergency termination of pregnancy, regardless of frequency: *Provided, That* for cases of miscarriage or emergency termination of pregnancy, sixty (60) days maternity leave with full pay shall be granted.

SEC. 4. *Maternity Leave for Female Workers in the Public Sector.* – Any 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 one hundred five (105) days with full pay regardless if the delivery was normal or caesarian: *Provided, That*, 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 fifteen (15) days. An additional maternity leave of thirty (30) days, without pay, can be availed of, at the option of the female worker: *Provided, further, That*, the head of the agency shall be given due notice, in writing, at least forty-five (45) days before the end of her maternity leave: *Provided, finally, That* no prior notice shall be necessary in the event of a medical emergency but subsequent notice shall be given to the head of the agency.

Maternity leave of sixty (60) days, with full pay, shall be granted for miscarriage or emergency termination of pregnancy.

SEC. 5. *Maternity Leave for Female Workers in the Private Sector.* – Any pregnant female worker in the private sector shall be granted a maternity leave of one hundred five (105) days with full pay, regardless of whether she gave birth via caesarian section or natural delivery, while maternity leave of sixty (60) days with full pay shall be granted for miscarriage or emergency termination of pregnancy.

(a) A female Social Security System (SSS) member who has paid at least three (3) monthly contributions in the twelve (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 one hundred five (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 thirty (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 one hundred percent (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.

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 fifteen (15) days.

(b) An additional maternity leave of thirty (30) days, without pay, can be availed of, at the option of the female worker: *Provided*, That the employer shall be given due notice, in writing, at least forty-five (45) days before the end of her maternity leave: *Provided, further*, That no prior notice shall be necessary in the event of a medical emergency but subsequent notice shall be given to the head of the agency.

(c) Workers availing of the maternity leave period and benefits must receive their full pay. Employers from the private sector shall be responsible for payment of 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, with the following exceptions, subject to the guidelines to be issued by the Department of Labor and Employment (DOLE):

(1) Those operating distressed establishments;

(2) Those retail/service establishments and other enterprises employing not more than ten (10) workers;

(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 (P3,000,000.00); and

(4) Those who are already providing similar or more than the benefits herein provided.

Provided, That said exemptions shall be subject to an annual submission of a justification by the employer claiming exemption for the approval of the DOLE.

SEC. 6. *Allocation of Maternity Leave Credits.* – Any female worker entitled to maternity leave benefits as provided for herein may, at her option, allocate up to seven (7) days of said benefits to the child's father, whether or not the same is married to the female worker: *Provided*, That in the death, absence, or incapacity of the former, the benefit may be allocated to an alternate caregiver who may be a relative within the fourth degree of consanguinity or the current partner of the female worker sharing the same household, upon the election of the mother taking into account the best interests of the child: *Provided, further*, That written notice thereof is provided to the employers of the female worker and alternate caregiver: *Provided, furthermore*, That this benefit is over and above that which is provided under Republic Act

No. 8187, or the "Paternity Leave Act of 1996": *Provided, finally*, That in the event the beneficiary female worker dies or is permanently incapacitated, the balance of her maternity leave benefits shall accrue to the father of the child or to a qualified caregiver as provided above.

SEC. 7. *Maternity Leave for Women Regardless of Civil Status.* – All female workers in the government and female members of the SSS, regardless of their civil status, shall be granted maternity leave, with full pay, upon compliance with the preceding section.

SEC. 8. *Maternity Leave With Pay in Case of Childbirth, Miscarriage, or Emergency Termination of Pregnancy After the Termination of an Employee's Service.* – Maternity leave with full pay shall be granted even if the childbirth, miscarriage, or emergency termination of pregnancy occurs not more than fifteen (15) calendar days after the termination of an employee's service, as her right thereto has already accrued: *Provided*, That 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 one hundred five (105) days for childbirth and sixty (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.

SEC. 9. *Maternity Leave Credits.* – The maternity leave can be credited as combinations of prenatal and postnatal leave as long as it does not exceed one hundred five (105) days and provided that compulsory postnatal leave shall not be less than sixty (60) days.

SEC. 10. *Maternity Leave Benefits for Women in the Informal Economy and Voluntary Contributors to the SSS.* – Maternity benefits shall cover all married and unmarried women, including female workers in the informal economy.

Female workers in the informal economy are entitled to maternity leave benefits if they have remitted to the SSS at

least three (3) monthly contributions in the twelve (12)-month period immediately preceding the semester of her childbirth, miscarriage, or emergency termination of pregnancy.

SEC. 11. *Maternity Benefits for Female Workers Who are Non-Members of the SSS.* – Female workers who are neither voluntary nor regular members of the SSS shall be governed by the Philippine Health Insurance Corporation (PhilHealth) Circular No. 022-2014 or the "Social Health Insurance Coverage and Benefits for Women About to Give Birth".

SEC. 12. *Maternity Leave of a Female Worker With Pending Administrative Case.* – The maternity leave benefits granted under this Act shall be enjoyed by a female worker in the government service and in the private sector even if she has a pending administrative case.

SEC. 13. *Maternity Leave for Female National Athletes.* – In the event a national athlete becomes pregnant, she will be referred to the team physician or an accredited physician of the Philippine Sports Commission (PSC) or an obstetrician-gynecologist to determine her fitness to continue training. She will be allowed to participate in all team-related activities, unless the physician advises that participation is not medically safe or should be limited. Upon medical advice, she shall go on maternity leave until cleared to return to training. She shall continue receiving her allowance and be entitled to the same benefits while on maternity leave prior to childbirth and up to six (6) months after, unless she can resume sooner as advised by her physician, in which case, she will be entitled to the allowance and benefits she had prior to pregnancy: *Provided*, That a female national athlete employed in the public sector shall not receive double compensation or benefits.

SEC. 14. *Non-Diminution of Benefits.* – Nothing in this Act shall be construed as to diminish existing maternity benefits currently enjoyed whether or not these are granted under collective bargaining agreements (CBA) or present laws, if the same are more beneficial to the female worker. Any other working arrangement which the female worker shall agree to, during the additional maternity leave period, shall be allowed: *Provided*, That this shall be consented to in

writing by the female worker and shall primarily uphold her maternal functions and the requirements of postnatal care.

SEC. 15. *Security of Tenure.* – Those who avail of the benefits of this Act, whether in the government service or private sector, shall be assured of security of tenure. As such, the exercise of this option by them shall not be used as basis for demotion in employment or termination. The transfer to a parallel position or reassignment from one organizational unit to another in the same agency or private enterprise shall be allowed: *Provided*, That it shall not involve a reduction in rank, status, salary, or otherwise amount to constructive dismissal.

SEC. 16. *Non-Discrimination.* – No employer whether in the public or private sector shall discriminate against the employment of women in order to avoid the benefits provided for in this Act.

SEC. 17. *Periodic Review.* – The Civil Service Commission (CSC), the DOLE, the SSS, and the Gender Ombud of the Commission on Human Rights (CHR), in consultation with trade unions, labor organizations, and employers' representatives shall within one (1) month after the effectivity of this Act conduct a review of the maternity leave benefits of female workers in the government service and the private sector, respectively. Thereafter, they shall include maternity leave benefits in their valuation report conducted every four (4) years for the SSS and the DOLE and every three (3) years for the CSC, or more frequently as may be necessary, with the end in view of meeting the needs of pregnant women and newly-born infants, and improving their welfare.

SEC. 18. *Penalties.* – Whoever fails or refuses to comply with the provisions of this Act shall be punished by a fine of not less than Twenty thousand pesos (P20,000.00) nor more than Two hundred thousand pesos (P200,000.00), and 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.

SEC. 19. *Implementing Rules and Regulations.* – The CSC, the DOLE, and the SSS shall issue the necessary rules and regulations for the effective implementation of this Act within sixty (60) days from the effectivity of the same.

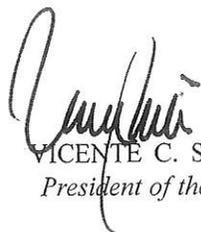
SEC. 20. *Separability Clause.* – If any provision of this Act is declared unconstitutional or otherwise invalid, the validity of the other provisions shall not be affected thereby.

SEC. 21. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

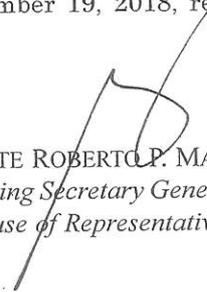
SEC. 22. *Effectivity.* – This Act shall take effect after fifteen (15) days from its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,


GLORIA MACAPAGAL-ARROYO
Speaker of the House
of Representatives


VICENTE C. SOTTO III
President of the Senate

This Act which is a consolidation of Senate Bill No. 1305 and House Bill No. 4113 was passed by the Senate and the House of Representatives on November 14, 2018 and November 19, 2018, respectively.


DANTE ROBERTO P. MALING
*Acting Secretary General
House of Representatives*


MYRA MARIE D. VILLARICA
Secretary of the Senate

Approved: FEB 20 2019




RODRIGO ROA DUTERTE
President of the Philippines

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