
Introduced by Senator Miriam Defensor Santiago

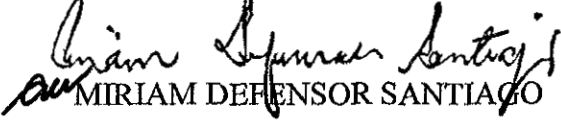
EXPLANATORY NOTE

It has been observed that the number of single-parent households and two-parent households in which the single parent or both parents work has increased significantly. Thus, there is less opportunity for either or both parents to participate in early childrearing and the care of family members who have serious health conditions, despite its importance in the development of children and the family unit. However, there is a lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting.

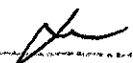
It has also been observed that due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men. Employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

This bill seeks to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. More specifically, it aims to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition, but, at the same time, accommodate the legitimate interests of employers. It also seeks to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons,

including maternity-related disability, and for compelling family reasons, on a gender-neutral basis. Lastly, it aims to promote the goal of equal employment opportunity for women and men.


MIRIAM DEFENSOR SANTIAGO

SENATE
S. B. No. 2515

RECEIVED BY: 

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AN ACT
TO GRANT FAMILY AND TEMPORARY MEDICAL LEAVE
UNDER CERTAIN CIRCUMSTANCES

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 as the “Family and Medical Leave Act of 2006”.

SECTION 2. *Declaration of Policy.* – It is the policy of the State to promote the general welfare of the people. Pursuant to this policy, this Act seeks to create a law granting family and temporary medical leaves to certain employees under certain circumstances.

SECTION 3. *Definition of Terms.* – For purposes of this Act, the term

- (A) “Commerce” or “industry or activity affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”.
- (B) “Commission” means the National Labor Relations Commission.
- (C) “Eligible employee” means an employee who has been employed
 - (1) For at least twelve (12) months by the employer with respect to whom leave is requested under Section 4 of this Act; or
 - (2) For at least 1,250 hours of service with such employer during the previous 12-month period.

The term "eligible employee" does not include any government employee covered by the Civil Service Code; or any employee of an employer who is employed at a worksite at which such employer employs less than fifty (50) employees if the total number of employees employed by that employer within twenty (20) kilometers of that worksite is less than fifty (50).

- (D) "Employee" means any individual employed by an employer.
- (E) "Employer" means any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations.
- (F) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an employee benefit plan.
- (G) "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the State to be capable of providing health care services.
- (H) "Parent" means the biological parent of an employee or an individual who stood *in loco parentis* to an employee when the employee was a son or daughter.
- (I) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- (J) "Secretary" means the Secretary of Labor.
- (K) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or

residential medical care facility; or continuing treatment by a health care provider.

- (L) “Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under eighteen (18) years of age; or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
- (M) “Spouse” means a husband or wife, as the case may be.

SECTION 4. *Entitlement to Leave.* – Subject to the Certification requirement under Section 9 of this Act, eligible employee shall be entitled to a total of twelve (12) workweeks of leave during any twelve (12) month period for one or more of the following:

- (A) The birth of a son or daughter of the employee and in order to care for such son or daughter.
- (B) The placement of a son or daughter with the employee for adoption or foster care.
- (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- (D) A serious health condition that makes the employee unable to perform the functions of the position of such employee.

The entitlement to leave under Paragraphs (A) and (B) above for a birth or placement of a son or daughter shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

SECTION 5. *Leave Taken Intermittently or on a Reduced Leave Schedule.* – Leave under Paragraph (A) or (B) of the preceding Section shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to the requirements under Section 9, leave under Paragraph (C) or (D) of the preceding Section may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this

paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled beyond the amount of leave actually taken.

If an employee requests intermittent leave, or leave on a reduced leave schedule, under Subparagraph (C) or (D) of the preceding Section, that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits; and better accommodates recurring periods of leave than the regular employment position of the employee.

SECTION 6. *Unpaid Leave Permitted.* – If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the twelve (12) workweeks of leave required under this title may be provided without compensation.

Except as provided in the next succeeding Section, leave granted under Section 4 may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary, the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

SECTION 7. *Substitution of Paid Leave.* – An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under Paragraph (A), (B), or (C) of Section 4 for any part of the twelve (12) week period of such leave under such subsection.

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under Paragraph (C) or (D) of Section 4 for any part of the twelve (12) week period of such leave, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

SECTION 8. *Foreseeable Leave.* – In any case in which the necessity for leave under Paragraph (A) or (B) of Section 4 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 Paragraph, 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.

In any case in which the necessity for leave under Paragraph (C) or (D) of Section 4 is foreseeable based on planned medical treatment, the employee 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, as appropriate; and 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 Paragraph, 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.

In any case in which a husband and wife entitled to leave under Section 4 are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve (12) workweeks during any twelve (12) month period, if such leave is taken under Paragraph (A) or (B) of Section 4; or to care for a sick parent under Paragraph (C) of such Section.

SECTION 9. *Certification.* – An employer may require that a request for leave under Paragraph (C) or (D) of Section 4 be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

Certification that is required by the employer pursuant to Paragraph 1 above shall be sufficient if it states the following:

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

- (B) The probable duration of the condition; and
- (C) The appropriate medical facts within the knowledge of the health care provider regarding the condition;

For purposes of leave under Paragraph (A) of Section 4, a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent. For purposes of leave under Paragraph (D) of the same Section, a statement that the employee is unable to perform the functions of the position of the employee

In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

In the case of certification for intermittent leave, or leave on a reduced leave schedule under Paragraph (D) of Section 4, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

In the case of certification for intermittent leave, or leave on a reduced leave schedule, under Paragraph C of Section 4, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

In any case in which the employer has reason to doubt the validity of the certification provided under Paragraph 1 above for leave under Paragraph (C) or (D) of Section 4, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified for such leave. The health care provider designated or approved shall not be employed on a regular basis by the employer.

In any case in which the second opinion differs from the opinion in the original certification, the employer may require, at the expense of the employer, 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. The opinion of the third health care provider concerning the information certified shall be considered to be final and shall be binding on the employer and the employee. The employer may require that the eligible employee obtain subsequent re-certifications on a reasonable basis.

SECTION 10. *Prohibited Acts.* – The following shall be considered unlawful under this Act:

- (A) To interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this Act;
- (B) To discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this Act;
- (C) To discharge or in any other manner discriminate against any individual because such individual has
 - (1) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this Act;
 - (2) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or
 - (3) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this title.

Any person found by the National Labor Relations Commission to have committed any of the prohibited acts above shall be liable for the damages in the amounts described in the next succeeding Section.

SECTION 11. *Liabilities.* – Any employer who commits any of the prohibited acts shall be civilly liable to any eligible employee affected for damages equal to

- (A) The amount of any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation.
- (B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses

sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve (12) weeks of wages or salary for the employee the interest on the amount described in clause calculated at the prevailing rate;

- (C) An additional amount as liquidated damages equal to the sum of the amount and the interest described in Paragraph (B) above, except that if an employer who has violated Section 10 proves to the satisfaction of the Commission that the act or omission was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, the court may, at its discretion, reduce the amount of the liability to the amount and interest determined under Paragraphs (A) and (B) respectively; and
- (D) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

An action to recover the damages or equitable relief prescribed above may be filed by the maintained against any employer in any court of competent jurisdiction by any one or more employees for and in behalf of the employees; or the employees and other employees similarly situated.

The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

The right provided by to bring an action by or on behalf of any employee shall terminate on the filing of a complaint by the Secretary pursuant to the next succeeding Section below in an action in which restraint is sought of any further delay in the payment of the amounts described in Paragraph 1 above to such employee by an employer responsible for the payment; or on the filing of a complaint by the Secretary of an action in which a recovery is sought of the damages owing to an eligible employee by an employer, unless the action is dismissed without prejudice on motion of the Secretary.

SECTION 12. *Action by the Secretary of Labor.* – The Secretary shall receive, investigate, and attempt to resolve complaints of any commission or commissions of the prohibited acts under Section 10. The Secretary may bring a civil action in any court of competent jurisdiction to recover all the damages described in Paragraph 1 of Section 12 above.

Any sums recovered by the Secretary pursuant to this Section shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of three (3) years shall be deposited into the Treasury of the Philippines as miscellaneous receipts.

SECTION 13. *Limitation on the Period Within Which to Bring Suit.* – Except as provided in , an action may be brought pursuant to this Act not later than two (2) years after the date of the last event constituting the alleged violation for which the action is brought.

When action is commenced by the Secretary under Section 12, it shall be considered to be commenced on the date when the complaint is filed for the purposes of this Section.

SECTION 14. *Separability Clause.* – If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 15. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this act is hereby repealed, modified or amended accordingly.

SECTION 16. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

/rgs