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The folly of the expanded Maternity Leave Law

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The recent enactment of Republic Act No. 11210, otherwise known as the "105-Day Expanded Maternity Leave Law," on February 20, 2019 was well applauded by women's groups and their supporters. The Philippine Commission on Women welcomed the signing of the law as a "gift for Filipino women and families" as it "recognizes and acknowledges women's vital role and contribution to the labor force, while giving them the opportunity to exercise their unique reproductive role."[1] The Gabriela Women's Party lauded the passage of the law more than ten years since they filed the original bill in 2008 "as a significant move in ensuring women's right to maternal health and in upholding the security of tenure of pregnant workers". Senator Risa Hontiveros, principal sponsor of the bill in the Senate, hailed its signing as a "big victory for women and families". Meanwhile, Representative Pia Cayetano, principal sponsor of the bill in the Lower House, hailed the passage of the law as an "acknowledgement of the dual role of women in society: as members of the work force and as mothers."

Nonetheless, there had also been a few expressions of misgivings.

In a survey conducted by the Employers Confederation of the Philippines immediately after the passage of the law, 31% of 118 respondents claimed that the new law will affect their hiring decisions for the following reasons: (a) the long maternity leave is disruptive to the operations and planning for the company, (b) the cost implications caused by the expanded maternity benefit and the hiring and training of temporary replacements are high, (c) the company's productivity will decline and be compromised due to the long absence of the employee, and (d) the comparatively larger adversarial effect to female-dominated micro and small enterprises. The Philippine Chamber of Commerce and Industry echoed these findings with the observation that "the business sector cannot help but worry over the impact of the Expanded Maternity Leave Law on costs and productivity".

Is there really something to be ecstatic about in the new maternity leave law? Certainly, additional paid maternity leave for women is helpful for their complete recovery after delivery. But, is there a grain of truth in the apprehensions expressed by the business community?

Postpartum Care During the "Fourth Trimester"

The very recent 2018 opinion of the American College of Obstetricians and Gynecologists (ACOG) proposed a new paradigm for postpartum care reinforcing the importance of the "fourth trimester," or the weeks immediately following child birth, in "setting the stage for long-term health and well-being" for women and their infants. The ACOG opinion states in part:

> *It is recommended that all women have contact with their obstetrician–gynecologists or other obstetric care providers within the first 3 weeks postpartum. This initial assessment should be followed up with ongoing care as needed, concluding with a comprehensive postpartum visit no later than 12 weeks after birth. The comprehensive postpartum visit should include a full assessment of physical, social, and psychological well-being, including the following domains: mood and emotional well-being; infant care and feeding; sexuality, contraception, and birth spacing; sleep and fatigue; physical recovery from birth; chronic disease management; and health maintenance. Women with chronic medical conditions such as hypertensive disorders, obesity, diabetes, thyroid disorders, renal disease, and mood disorders should be counseled regarding the importance of timely follow-up with their obstetrician–gynecologists or primary care providers for ongoing coordination of care.*

Such "ongoing process" of "services and support tailored to each woman's individual needs" recommended by the ACOG to optimize the health of women and infants is difficult to accomplish within the 60-78 days of maternity leave previously provided under Philippine laws. Thus, the expanded period of 105 days is undoubtedly a blessing. But, the law remains wanting in more ways than one.

Insignificant Paternity Leave for Fathers

To begin with, the law provides an option for the pregnant woman to allocate up to seven (7) days of her maternity leave benefit to her child's father, whether or not they are married (Section 6). This benefit is in addition to that which is provided under Republic Act No. 8187, otherwise known as the "Paternity Leave Act of 1996". It must be remembered that the latter statute provides every married male employee in the private and public sectors paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting. This means that at best, a father can have fourteen (14) days of paid paternity leave if his wife is willing to reduce her paid maternity leave to 98 days. If they are not married, the father can only have seven (7) days.

Sad to say, this counterpart benefit granted to men is very insignificant and only perpetuates the antiquated notion that childcare is a woman's primary responsibility. Women should be given ample time to take care of their newborn babies because they have the natural instinct and ability to do so. Their bodies are designed for this purpose whereas men's bodies are not. Hence, there is no need to give men a significant period of paternity leave since they can only be expected to render assistance in a nominal way, if at all. Such flawed reasoning confined women in the domestic sphere for centuries.

Parenting is not an inborn talent that women instantly have. Rather, it is a skill that can be learned by both women and men. Given enough opportunity and support, both women and men can learn to be good caregivers. It does not need rocket science to prove that if the 105-day maternity leave is divided between the mother taking 98 days and the father taking 7 days, the likely result is for the former to develop greater expertise in childcare than the latter. This can eventually lead to a mutual desire, whether expressly agreed or quietly assumed, for the former to take on more childcare responsibilities and for the latter to take on less as his confidence in his own competence gradually erodes. It must be remembered that seven (7) days can be allocated to the father only at the option of the mother but will they decide to do so if the father does not know how to soothe a crying baby? Or when an alternative caregiver, such as the mother's sister, or any other female member of the family who is likewise presumed to be a more competent caregiver because of her gender, is available to help? This competence gap will inevitably continue throughout the child's growing up years giving more reasons for mothers to be tied up at home and less opportunities to engage in gainful employment, invest in professional development and advance in their chosen career.

Gender Discrimination in the Workplace

From the point of view of employers, the likelihood of longer and repeated job interruptions for female employees of reproductive age can make them less desirable than male workers who do not undertake as much leaves. Women are likely to be perceived as more devoted to their family's needs rather than their work responsibilities and therefore less deserving of promotions. It must be noted that the law removed the previous limit of maternity leave benefit to four (4) instances in a woman's lifetime which can make it an even more onerous situation for small- and even medium-sized firms, not to mention a scary possibility with our current rate of population growth for a third world country beset with lingering economic woes.

Dismissing the concerns expressed by the ECOP and PCCI is therefore plain naiveté. The non-discrimination clause in the law itself was phrased lamely, to the point of being useless, *to wit*: "[n]o 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" (Section 16). The provision does not prohibit discrimination against hiring women per se. It only prohibits non-hiring of women for the specific purpose of avoiding their maternity leave benefits. Any other discriminatory reason for non-hiring does not appear to be proscribed. For instance, non-hiring of women because they are likely to refuse overtime work, weekend duty, or travel assignments in view of their family responsibilities is not proscribed.

Sadly, there is no relief available in the Labor Code which provides protection against discrimination of women employees in this wise:

> *Art. 135. Discrimination prohibited. It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.*

> *The following are acts of discrimination:*
>
> *Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and*
>
> *Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.*

It is clear from the phraseology of the Labor Code that protection against discrimination only sets in when a woman has already become an employee, not before. This is precisely the reason why we still see job advertisements explicitly stating preference for male applicants. Even if we eventually outlaw express discrimination in hiring preferences, it will still be very difficult to penalise latent discrimination in the mind of employers who will often be preoccupied with the need to protect their profit margin.

In sum, the burden of the law's recognition of women's maternal function as a social responsibility was erroneously lodged upon private employers instead of making it our collective obligation as a people. It would have been more appropriate had the law required the national government and the Social Security System to cover the entire cost of the maternity leave benefit because the health and well-being of our women who will bear the next generation is a collective obligation of the entire nation. Putting it on the shoulders of employers will only subject public interest to private control.

Still Wanting on Several Fronts

The law's shortcomings are also evident on several facets. For instance, the expanded maternity leave benefit does not apply in cases of adoption. While adoption does not require a period of physical recovery for the adoptive mother, the process requires her and her spouse or partner to devote sufficient time for the integration of their adopted child into the family. If the adopted child is an infant, the care and nurturing that it would need would be the same as that which is required by a newborn biological child of the adopters. The absence of maternity leave benefits for adoptive parents only indicates inadequate state support for adoption which, ironically, is the best way to address the sensitive issue of abortion in a country that remains divided on the subject of contraception.

A similar situation arises for a couple who begot a child through scientific intervention, as in the case of employing a surrogate mother. While the surrogate mother can avail of the benefits of the law, the contractual mother does not, even if, like an adopter, she needs time to nurture the child once it is turned over to her, usually within the first few days of life if not immediately after birth.

The law likewise failed to acknowledge the reality that caring for a newborn becomes more challenging when its parents already have other children. The average size of the Filipino family is still five (5). When a second child is born while the first child is still a toddler, the difficulty is doubled. The challenges are even more profound when a third child is born while its siblings are still very young. The law would have been more sensitive to this increasing burden if the maternity leave featured proportionate increase depending on birth order and then stopped the benefit after four (4) instances, as it were in the old law. After all, if the intention is really to promote the health and well-being of mothers and their children, the law should refrain from indirectly encouraging too many pregnancies.

Similarly, there is lack of sensitivity to the additional burden that results from multiple births. Section 7 of the Implementing Rules and Regulations provide that "the female worker shall be paid only one maternity benefit, regardless of the number of offspring, per childbirth/delivery", as if caring for twins or triplets is just as easy as caring for one baby.

There is even greater lack of sensitivity to the reality that there is no parental leave available after the period of maternity leave has been completed. The law provides that the "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" (Section 3). One must recall that a baby's need for close attention from its parents is not limited to the period immediately after birth. For instance, the law apparently forgot that babies need regular appointments with doctors and dentists.

The American Academy of Pediatrics recommends a "periodicity schedule" of well-child visits for the purpose of tracking a child's growth and development and preventing ailments from infancy through childhood and into adolescence. The recommended schedule of well-child visits start on the first week of life (3-5 days old) followed by visits on the 1st month, 2nd month, 4th month, 6th month, 9th month, 12th month, 18th month, 24th month, 30th month and 36th month. After the child's 3rd birthday, the visits can be reduced to once a year until the age of 21.

On the other hand, the American Academy of Pediatric Dentistry recommends that a child be seen by a pediatric dentist when the first tooth appears, or no later than his or her first birthday, to prevent dental problems. Thereafter, regular dental visits are recommended every six months.

The expanded maternity leave is now generous in duration but the fact that it must be availed continuously, without supporting parental leave, makes the law insufficient. It is submitted that deferrals should be allowed, say a week or two may be reserved for contingencies for as long as the same are still availed within a year from delivery. Without this option, working parents can only look up to the 5-day service incentive leave provided under the Labor Code for workers who already rendered at least one year of service in their current employment in order to have sufficient time to bring their children to the above recommended visits. Some workplaces are fortunate to have collective bargaining agreements that provide employees with paid vacation leave but this is not universal. Lest we forget, these appointments with medical professionals are only one of the many reasons why new mothers are likely to incur absences from work. The most common reason is when her designated caregiver, say a paid nanny or babysitter, is suddenly not available. There are, in turn, a thousand and one reasons that can make such a babysitter renege on her prior commitment to the new mother.

Failing the Women that Needed it Most

Finally, the provision exempting certain establishments and enterprises from paying the full maternity leave benefit greatly diminished the assistance granted by the law to the women that needed it most. For instance, retail or service establishments regularly employing not more

than ten (10) workers are exempted from paying the salary differential of their women employees who will only receive the usual benefit that they are entitled under the SSS. Similarly exempted are micro-business enterprises engaged in the production, processing or manufacturing of products or commodities and whose total assets are not more than three million pesos (P3,000,000.00)(Section 5-c).

It must be remembered that these establishments are almost always dominated by women workers. It is usually within these business settings that many low-skilled women workers are able to find full-time or part-time employment. Regrettably, the law only pretends to echo the constitutional mandate to protect and promote the rights and welfare of all working women (Section 2). Rather, it has singled out the great majority of women in blue collar employment and deprived them of the benefit available to women in white collar jobs. If this law is a genuine tool for social justice, it should have required the SSS to shoulder the entirety of the maternity leave benefits of women employed in distressed establishments, in small-scale retail or service operations, and in micro-business enterprises. Again, public interest has been placed under private control.

Conclusion

The expanded maternity leave law appeared great on the surface but proved gravely insufficient when viewed from many other angles. To some extent, it succeeded in supporting motherhood but it woefully forgot to give the same importance to fatherhood. Thus, instead of normalizing parenthood to convince employers that workers with family responsibilities, whether female or male, need to be supported and appreciated, the law singled out women of childbearing age and showered them with special treatment at the expense of the employer. In the meantime, many self-righteous groups have been quick to denounce businesses for their instinctive response to protect their profit margin and for not fully accepting their "social responsibility". We seem to have conveniently forgotten that it is actually our collective obligation as a people; that we should all share equitably in promoting the health and well-being of the future generation of Filipinos.

The result of this folly in the hiring attitude of employers is looming before us. Throughout history, our labor laws have never grown enough teeth to protect women from discriminatory hiring practices. Today, women will all the more be viewed as a divergence from the image of the ideal worker. Their repeated absences will make them appear as liabilities to the workplace. They will find it even harder to get promoted; even more difficult to break away from gender stereotypes that burdened them for so long. More than ever, they will be deemed as mothers first and workers second, regardless of their skills, talents and hard work.

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