



## Position Paper on the Proposed 100-Day Maternity Leave Law Filed in the 17<sup>th</sup> Congress of the House of Representatives

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Pursuant to its Constitutional mandate to recommend to Congress effective measures to promote human rights<sup>1</sup> and as the Gender and Development Ombud tasked to ensure the promotion and protection of the rights of women, the Commission on Human Rights respectfully submits the Position Paper on House Bill 4113, entitled, "An Act Increasing the Maternity Leave Period to One Hundred (100) Days for Female Workers in the Government Service and in the Private Sector, and Granting an Option to Extend for an Additional Thirty (30) Days Without Pay".

The Philippines' duty to protect and promote the rights of working women is enshrined in the 1987 Constitution of the Republic of the Philippines which mandates the State to provide safe working conditions for women, taking into account their maternal functions.<sup>2</sup>

Recognizing the role of women in nation building, the Philippines enacted Republic Act 9710 otherwise known as the Magna Carta of Women which promotes the empowerment of women to pursue equal opportunities with men and condemns the discrimination of women in all forms and promotes the elimination of discrimination against women. To do this, the State shall develop policies to address the inequality in the economic, political, social, and cultural life of women and men. The Magna Carta of Women defines Discrimination Against Women as a "gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field"<sup>3</sup>, citing the failure to provide for measures that would address gender-based disadvantages which restrict the enjoyment of rights, opportunities, and benefits of women as a form of discrimination.

As part of the Magna Carta of Women's objective of fostering the rights of women, employers are mandated to grant a maternity leave benefit of two (2) months with full pay to female employees who have "rendered continuous aggregate employment service of at least six (6) months for the last twelve (12) months".<sup>4</sup>

The Social Security Act of 1997<sup>5</sup> and the Labor Code of the Philippines<sup>6</sup> also support the rights of working women to a maternity leave of two (2) months.

Further, the rights of working women are also recognized and protected by the international treaties signed by the Philippines. The Universal Declaration of Human

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1 Article 13 Section 18(6) of the 1987 Philippine Constitution.

2 Article 13 Section 14 of the 1987 Philippine Constitution.

3 Section 4(b) of the Magna Carta of Women.

4 Section 18 of the Magna Carta of Women.

5 Section 14-A of the Social Security Law.

6 Article 133 of the Labor Code of the Philippines.

Rights (UDHR) recognizes that regardless of gender, all are equal before the law and all have the right to be protected from discrimination.<sup>7</sup>

In addition, the International Covenant on Civil and Political Rights (ICCPR) also prohibits and safeguards all persons from all forms of discrimination. The ICCPR mandates the state parties to undertake all necessary measures to ensure the rights of each individual.<sup>8</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the most comprehensive international agreement on the basic human rights of women, recognizes that the role of women in procreation should not be a basis of discrimination. Further, the Convention recognizes that both parents have a shared responsibility in the upbringing of children.<sup>9</sup>

Article XI of the CEDAW mandates state parties to undertake all appropriate measures to eliminate the discrimination of women in the field of employment, particularly on "the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction". To ensure the women's protection from discrimination, especially on the grounds of marriage and pregnancy, member states are mandated to:

2(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

2(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

2(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

2(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

House Bill No. 4113, the consolidated substitute bill to House Bills 152, 472, 483, 509, 580, 1046, 1382, 1644, 1912, 2838, 3224, 3445, 3513, 3645 and 3650, seeks to expand the maternity leave period to one hundred (100) days for both government and private female workers. The bill also grants an additional optional thirty (30) day leave without pay.

The Commission on Human Rights, as a National Human Rights Institution and a Gender Ombud under the Magna Carta of Women, fully supports the passage of House Bill 4113 in the 17<sup>th</sup> Congress. It is high time that the government revisits its policy in maternity leave to make it progressive and bring into realization its obligation to provide special assistance and care to motherhood and childhood, thus bringing the country in line with the rest of the world.

The maternity leave is used by the mothers to prepare for the coming childbirth and for their recovery so that they may be able to provide adequate care for their children before returning to work. The Maternity Protection Convention, 2000 (C183) is the most recent international labor standard on maternity protection. Under the revised version of the Maternity Protection Convention, member states are required to enact measures that

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7 Article 7 of the Universal Declaration of Human Rights.

8 Article 26 of the International Covenant on Civil and Political Rights.

9 Preamble of the Convention on the Elimination of All Forms of Discrimination Against Women.

would ensure the rights of working women who are currently pregnant or who have recently given birth. These rights include entitlement to paid maternity leave and maternal and child health care. As for maternity leave, the Convention sets the minimum maternity leave to a period of fourteen (14) weeks.<sup>10</sup> The Philippines, despite not ratifying the convention, is a member state to the International Labour Organization (ILO). In Recommendation No. 191, ILO encouraged member states to expand the maternity leave period to “at least 18 weeks”.<sup>11</sup>

Eighty-five percent (85%) of the countries across the world provide a maternity leave of at least twelve (12) weeks or more. Of these, fifty-three percent (53%) comply with the standard on maternity leave set by the Convention while nineteen percent (19%) provide a maternity leave of more than eighteen (18) weeks.<sup>12</sup>

In the Asia and the Pacific, eighty-two percent (82%) of the countries provide for at least 12 weeks of maternity leave. Half of these countries require 12-13 weeks of maternity leave while twenty-nine percent (29%) stipulate 14-17 weeks. On the other hand, eighteen percent (18%) of the countries in the Asia and the Pacific provide for less than 12 weeks of maternity leave, namely – Brunei-Darussalam, Malaysia, Nepal, Papua-New Guinea, and the Philippines.<sup>13</sup>

Studies show that women are seventy-three percent (73%) less likely to need a caesarean section if they are on maternity leave during their ninth month of pregnancy. In addition, when women immediately return to work after giving birth, they are less likely to establish breastfeeding within the first month.<sup>14</sup> Breastfeeding is a great source of nutrition for the development of the baby. Should the expansion of the maternity leave period be approved, mothers will be granted more time to breastfeed their babies and bond with them. Mothers will also benefit from the additional time to breastfeed their babies. Studies show that through breastfeeding, the uterus returns to its normal size faster, blood loss is lessened, and the risk of cancer is reduced.<sup>15</sup> Further, if mothers are able to provide the breastmilk for their babies, families will no longer have to buy milk formulas. Resulting in more budget for the families’ other needs.

In view of the foregoing, the Commission respectfully submits its comments and recommendations on House Bill 4113:

1. The bill, though greatly appreciated, has no teeth to implement its provisions due to the lack of a penal provision. Such being the case, the Commission recommends the adoption of a penal provision to ensure compliance to the provisions of the bill and redress in case of violation.
2. For the formulation of the implementing rules and regulations under Sec. 15 of the bill, the Commission on Human Rights, as the Gender Ombud, should be consulted together with the Civil Service Commission, Department of Labor and Employment, Government Service Insurance System, and the Social Service System.

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10 Article 4 (1) of the ILO Convention No. 183 – Maternity Protection Convention, 2000 (No. 183).

11 Section 1 of Recommendation No. 191 – Maternity Protection Recommendation, 2000 (No. 191).

12 International Labour Organization. (2013). *Working Conditions Laws Report 2012*. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_235155.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_235155.pdf).

13 Ibid.


14 Longer Paid Maternity Leave Almost a Reality for Pinoy Mothers. Available at <http://www.pchrd.dost.gov.ph/index.php/news/library-health-news/5190-longer-paid-maternity-leave-almost-a-reality-for-pinoy-mothers>.

15 Longer Paid Maternity Leave Pushed for Working Moms. Available at <http://www.gmanetwork.com/news/lifestyle/healthandwellness/301108/longer-paid-maternity-leave-pushed-for-working-moms/story/>.

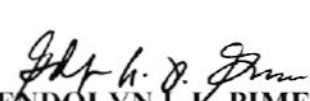
3. Similarly, the Commission, should be included in the periodic review process (Sec. 14) which will be conducted every four (4) years by the SSS and every three (3) years by the CSC, as provided for in Sec. 14 of the bill.
4. The Commission highly recommends the creation of a new law that would provide for a parental leave which shall be available upon consumption of the maternal leave. The parental leave shall be shared by the father and the mother, without loss of former employment, seniority or social allowances.<sup>16</sup> While the maternity leave is important for the preparation and recovery after childbirth of the mother, the presence of the father in the early stages of the children's lives is likewise beneficial to the family. The Commission believes that introducing the parental leave would be an effective tool in promoting gender equality and eradicating gender myths and stereotypes at home and at the workplace.

In conclusion, the Commission on Human Rights recognizes the importance of paid maternity leave in the promotion of the health and welfare of women and her new born child and in protecting women from gender-based discrimination in the field of employment. The proposed 100-Day Maternity Leave Law will pave the way for raising the bar in the protection of women in terms of employment and health and for providing quality care to their newborn. The initiative will not only signify its commitment to protecting and promoting women's human rights but also a significant indication that the government is cognizant and supportive of the plight of the working families.

**ISSUED** this 16<sup>th</sup> day of July 2018, Quezon City, Philippines.

  
**JOSE LUIS MARTHA C. GASCON**  
Chairperson

**KAREN S. GOMEZ DUMPIT**  
Commissioner

  
**GWENDOLYN L. PIMENTEL-GANA**  
Commissioner

  
**LEAH C. TANODRA-ARMAMENTO**  
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**ROBERTO EUGENIO T. CADIZ**  
Commissioner

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<sup>16</sup> Recommendation No. 165, Paragraph 22(1) of the International Labor Organization states "Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded".