

(H. B. 2330)

(No. 47)

(Approved June 13, 2007)

AN ACT

To amend subsection 4 of Section 10.1 of Article 10 of Act No. 184 of August 3, 2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” in order to extend the right to paternity leave to all employees adopting a minor, whether jointly with their spouses or individually; and for other purposes.

STATEMENT OF MOTIVES

Throughout the years, the Legislature has grown aware of the importance of allowing for the growth and strengthening of the family as an institution. The above being the guiding principle, the Legislature has developed legislation which in turn adjusts to the changes our society continually experiences.

In the year 2002, Act No. 165 of August 10 was approved, which amended Act No. 5 of October 14, 1975, known as the “Public Service Personnel Act.” Said Act provided for, among other matters, a paternity leave in order for men to be involved, since birth, in the development and rearing of their children, so that they may establish strong affective bonds to last a lifetime.

Act No. 5, *supra*, was subsequently repealed by Act No. 184 of August 3, 2004, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico.” Said Act No.

184, *supra*, also included men's right to paternity leave, to consist of five (5) working days as of the date of birth of their child. This statute also grants maternity leave to all female employees who adopt a minor at pre-school age, following the provisions established in the Act. However, it failed to include paternity leave for those male employees who decide to adopt, whether jointly with their spouse or individually.

Article 133 of the Puerto Rico Civil Code governs matters concerning the number of adopters and also provides for cases in which a spouse may adopt individually and for cases in which the adoption should be done jointly. To those ends, Article 133 of the Civil Code establishes the following:

“Article 133.—Number of Adopters; Joint Adoption or Individual Adoption in Case of Marriage.—

No one may be adopted by more than one person, except when the adopters are married to each other, in which case they shall adopt jointly.

A spouse may adopt individually in any of the following cases:

1. When wishing to adopt the minor child of the other spouse.
2. When separated from his/her spouse for at least two (2) months prior to the date the petition is filed, in which case the other spouse shall be notified of the petition.

The subsequent reconciliation of the married couple shall not impair the right of the petitioner to adopt individually, except when, by mutual agreement, the married couple may adopt jointly if the court so decrees, always giving prime consideration to the welfare and comfort of the adoptee.

3. When the legal capacity of the spouse of the adopter has been restricted by judicial decree, and for the duration of said restriction, in which case, the other spouse shall be notified of the petition.

The court shall have discretion to resolve situations such as those provided in this Article, always using as a guide its decision, the welfare and convenience of the minor.”

Aside from establishing that a person may adopt individually, the Puerto Rico Civil Code does not specify that the person to adopt is to be a woman or a man. Therefore, men, the same as women, are entitled to present a petition for adoption. Nevertheless, under Act No. 184, *supra*, only women are extended the right to a leave when adopting a minor. Men do not have this right.

On the other hand, as per the Statement of Motives of repealed Act No. 165, *supra*, it is the public policy of and a compelling interest for our government to preserve family unity and prevent the disintegration of the family, while seeking not to incur gender discrimination. For this reason, we must continue to approve those measures which encourage the involvement of women as well as of men in family life and which allow for greater equality between the genders.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Subsection 4 of Section 10.1 of Article 10 of Act No. 184 of August 3, 2004, as amended, is hereby amended to read as follows:

“Article 10.—Fringe Benefits.—

Section 10.1.—

Given that fringe benefits constitute an area so needed by and with such transcendental effect on public employees, in order to maintain a uniform and fair human resources administration, the following norms are hereby established:

Fringe benefits shall be:

1. Vacation leave.—

...

2. Sick leave.—

...

3. Maternity leave.—

...

4. Paternity leave.—

a. Paternity leave shall comprise a period of five (5) work days as of the date of birth of the child.

b. ...

c. ...

d. ...

e. ...

f. ...

g. The employee who, jointly with his spouse, adopts a minor of pre-school age, meaning a minor of five (5) years of age or under who is not enrolled in a school, pursuant to legislation and legal procedures in effect in Puerto Rico or in any jurisdiction of the United States, shall be entitled to paternity leave, to consist of a period of five (5) days, as of the date notice is given of the judicial decree on adoption and the minor is simultaneously received into the family unit, which shall be attested to in writing. When claiming this right, the employee shall certify that he is legally married, in applicable cases, and that he has not been involved in domestic violence, a sexual offense, or child abuse. Said certification shall be provided by presenting the form required by the agency for such purposes, which shall in addition bear the signature of the spouse.

An employee who individually adopts a minor of pre-school age, meaning a minor of five (5) years of age or under who is not enrolled in a school, pursuant to legislation and legal procedures in effect in Puerto Rico or in any jurisdiction of the United States, shall be entitled to paternity leave, to consist of a period of eight (8) weeks, as of the date notice is given of the judicial decree on adoption and the minor is simultaneously received into the family unit, which shall be attested to in writing. When claiming this right, the employee shall certify that he has not been involved in domestic violence, a sexual offense, or child abuse.

Clauses (d), (e), and (f) of this subsection shall apply equally in those cases in which the employee requests the benefits of the leave established in the preceding paragraphs.

...”

Section 2.—This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 47 (H.B. 2330) of the 5th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection 4 of Section 10.1 of Article 10 of Act No. 184 of August 3, 2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” in order to extend the right to paternity leave to all employees adopting a minor, whether jointly with their spouses or individually; and for other purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 30th of August of 2007.

Francisco J. Domenech
Director