

May 16, 2016; Balancing Family, Work Time

Ben Franklin once wrote that “In this world nothing can be said to be certain, except death and taxes.” He died long before the Guam Legislature was established. If Ben were living today, I suspect he’d reissue his statement to read something like this: “In this world nothing can be said to be certain, except death, taxes, and the fact that as we get closer to elections, the Guam Legislature will churn out more legislative bills.”

Now, don’t get me wrong. I’m not complaining. I’m simply making an observation. Candidates need to get their names out in the public. Introducing new bills is one way to gain publicity at a critical time in the campaign cycle. For this reason, I always anticipate that senators will introduce bills that have some public appeal as the campaign season heats up. I haven’t been disappointed.

Because a number of these bills are relevant to my topic of life, love, and the law, I want to highlight some of them. A few weeks ago I wrote about Bill 291-33, the Uniform Deployed Parents Custody and Visitation Act. This week, I’m turning my attention to Bill 298-33, the Guam Family and Medical Leave Act recently introduced by Senator Brant McCreadie. The law closely resembles the federal Family and Medical Leave Act of 1993, but extends coverage beyond federal employees to employees of state and local governments, as well as some private companies.

This legislation empowers certain employees to strike a balance between their work obligations and family responsibilities. Under the bill, certain employees may take up to 12 weeks of unpaid leave per year to address urgent medical matters. Employers who don’t permit the employee to take leave may be charged with an unlawful employment practice. Here are some of the details.

Eligible employees include those who work for a GovGuam entity or for a private company that employs 25 or more people on Guam. The employee must have worked 12 months or more for the employer and clocked at least 1,000 hours of service during the previous 12 months.

An employee may request leave for the following reasons:

1. Because of the birth of the employee’s child, or placement of a child with the employee through foster care or adoption. The employee must submit the leave request at least 30 days in advance unless there are unusual circumstances.
2. To care for the employee’s parent, spouse, or child who has a serious health condition. The employee must submit a certification by a healthcare provider that includes the date when the serious health condition began, the probable duration of the condition, an estimate of time the employee will be needed to care

for the person, and a statement that the condition requires the assistance of a family member.

3. Because the employee has a serious health condition that prevents him/her from performing the required tasks. A certification from a healthcare provider similar to the one discussed above must be submitted.

A serious health condition is defined as “an illness, impairment, or physical or mental condition that involves either of the following:

- Inpatient care in a hospital, hospice, or residential healthcare facility.
- Continuing treatment or continuing supervision by a healthcare provider.”

Under some circumstances, the employee might be able to elect, or be required by the employer, to substitute vacation leave or sick leave for leave granted under the Act.

During the 12 weeks of leave, the employer must continue to maintain and pay its share of the employee’s group health plan and the employee must continue to pay his/her share. The employer isn’t required to pay into the employee’s retirement plan during the period of unpaid leave.

The Act provides the employee with the following safeguards during the family care and medical leave period:

- The employee shall retain employee status with the employer.
- Leave shall not constitute a break in service for purposes of determining seniority as it relates to layoff, recall, promotion, job assignment, and seniority-related benefits, such as vacation.
- With noted exceptions, upon return to work the employee must be reinstated to same or comparable position, at the same rate of pay, and at the same or similar geographic location as the position held before the leave.

The Act also requires employers to allow parents or guardians to take up to 40 hours each year to assist in school-related activities such as enrolling a child in school or daycare provider, participating in school activities, or addressing a school emergency. The employee may be required to use vacation, personal leave, or leave without pay.

The Act’s economic and manpower impact, especially on small companies, could be substantial. Consequently, we can anticipate a lively debate on this bill.