

SANCHEZ, Erlina C.
Re: Adoption; Maternity Leave

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RESOLUTION NO. 02-0194

Erlina Sanchez, Department Head, Office of the City Human Resource Management Office, City of Zamboanga, in a letter addressed to the Civil Service Commission Regional Office (CSCRO) No. IX, Zamboanga City, requests opinion on whether an adoptive parent is entitled to maternity benefits. Said letter has been forwarded to the Commission Proper for appropriate action.

Pertinent portions of the letter of Sanchez state, as follows:

“The undersigned, single and holding a permanent appointment in the City Government of Zamboanga, as City Human Resource Management Officer, wish to inform your good office that sometime in January 1996 I took custody of a baby girl barely 3 days old, a few days after she was delivered and eventually officially adopted her on March 11, 1999 per grant of a Special Proclamation No. 399 (4457) which this petitioner filed on November 5, 1998.

“Under Sec. 34 of R.A. 8552 (Domestic Act of 1998) re: Maternity Leave Benefits, which stipulates:

“That adoptive parents shall with respect to the adopted child, enjoy all the benefits to

which biological parents are entitled. Maternity and Paternity and other benefits given to biological parents upon the birth of a child shall be enjoyed if the adoptee is below seven (7) years of age as of the date the child is placed with the adopted parents through the Pre-Adoptive Placement Authority issued by the department.

“However, Civil Service Commission Memorandum Circular No. 41, series of 1998 does not categorically mention the grant of Maternity Leave Benefits to single adoptive parent.

“In view thereof, may I therefore, respectfully seek your opinion as to whether or not I am entitled to this Maternity Leave Benefits as embodied under Sec. 34 of R.A. 8552.”

Records show that Sanchez sent a letter to the CSCRO No. IX seeking opinion on whether she is entitled to maternity leave benefits as embodied in Section 34 of Republic Act No. 8552. The CSCRO No. IX made a comment regarding the issue and forwarded the same with the letter of Sanchez, to the Commission Proper for further evaluation in as much as the issue being raised is one of first impression.

In its comment on the issue, the CSCRO No. IX states, as follows:

“Apparently, the spirit behind such provision is to allow the adopted child and adoptive parent to develop a bonding. In this case, however, the need to develop that bonding no longer appears necessary as the adopted child has been with the adoptive parent since 1996.

"Moreover, looking closely into the provisions of the law and reconciling Sec. 34 of the IRR with Sec. 12 of RA 8552 reveals that the privilege granted to adoptive parents ensues only when a pre-adoption placement authority has been issued where the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship.

"In the instant case, however, the order of adoption has long been issued, thus, the purpose of the law may no longer apply."

Applicable to the issue is **CSC Resolution No. 00-0765 dated March 24, 2000** which states, as follows:

"On the basis of the aforementioned Section 34 of the Implementing Rules and Regulations (IRR) of Republic Act No. 8552, the grant of maternity benefits to a female adoptive parent may be allowed even without categorical mention of the same in CSC Memorandum Circular No. 41, s. 1998. The provision in the abovestated IRR which was issued pursuant to the following provisions of law, is sufficient, to wit:

'Section 24. Implementing Rules and Regulations. --- Within six (6) months from the promulgation of this Act, the Department [referring to DSWD], with the Council for the Welfare of Children, the Office of the Civil Registry, the Department of Justice, Office of the Solicitor General, and two (2) private individuals representing child-placing and child-caring agencies shall formulate the necessary guidelines to make the provisions of this Act operative.'

"Under the rules on administrative law, rules and regulations issued by administrative authorities pursuant to the powers delegated to them have the force and effect of law. They

are binding on all persons subject to them and the courts will take judicial notice of them.

“The Commission takes cognizance of the need of the adopted child and adoptive mother to develop a bonding similar to that between the biological child and his mother. This opportunity can best be offered by the maternity leave benefit provided by the IRR.

“Considering that proposed adoptive parent Tan has been granted Pre-Adoption Placement Authority effective March, 1999 and the person to be adopted is below seven (7) years of age, the Commission is of the opinion that Tan is entitled to enjoy the maternity benefits granted under Section 34 of the Implementing Rules and Regulations issued pursuant to Republic Act No. 8552.” (Emphasis supplied)

The Commission notes that Sanchez has been in custody of the child since 1996 and officially adopted the child on March 11, 1999. Strictly applying the provisions of Section 34, IRR of R.A. 8552, in relation to Section 12 of R.A. 8552, it appears that the purpose for the grant of maternity leave to adoptive parents is to enable the child and the adoptive parent to adjust psychologically and emotionally to each other and establish a bonding relationship **before the grant of the petition for adoption**. Specifically, **Section 12 of R.A. 8552** provides, as follows:

“SEC. 12. Supervised Trial Custody. – No petition for adoption shall be finally granted until the adopter(s) has been given by the court a supervised trial custody period for at least six (months) within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter(s).”

Adoption is defined as the process of making a child, whether related or not to the adopter, possess in general the rights accorded to a legitimate child. [1] **The philosophy behind adoption statutes is to promote the welfare of the child and every reasonable intendment should be sustained to promote that objective.** Moreover, the rules on leave, being a social legislation, should be construed liberally in order to accomplish its intended purpose.

The requisite for the grant of maternity benefits to an adoptive parent, that is, the adoptee is below seven (7) years of age as of the date the child is placed with the adopted parents through the Pre-Adoptive Placement Authority, is satisfied in the case of Sanchez and her adopted child. Computing from the records at hand, it appears that the child was only three (3) years old when the adoption was granted in 1999 and about five (5) years old today. Thus, before the child was officially adopted until the decree of adoption was granted and up to this day, the child is below seven years of age. However, there is no record that Sanchez availed of maternity leave during the pre-adoption of the child.

There is a reason why the law provided for maternity benefits to an adoptive parent of a child below seven (7) years old. The age of a child from one (1) to seven (7) years are crucial and tender years and it is at this time when he/she requires most attention and guidance. As stated, the rules on leave should be interpreted liberally in order to carry out its intent. Moreover, the philosophy behind adoption statutes is to promote the welfare of the child. As previously recognized by the Commission, the intent for the grant of maternity leave to an adoptive parent is to provide an opportunity for the child and the adoptive parent to develop a bonding similar to that between the biological child and his/her parent. The ‘bonding’ between parent and child is not an instant process but is developed through the time spent together. As the child in this case is below seven (7) years old, it is not too late to grant the adoptive parent the opportunity (which was not previously granted) to enhance her bonding with her adopted child.

WHEREFORE, premises considered, it is hereby ruled that Erlina C. Sanchez is still entitled to maternity benefits as provided under Section 34 of the IRR of Republic Act No. 8552, in accordance with CSC Memorandum Circular No. 41, s. 1998.

Quezon City, February 6, 2002

(Signed)

J. WALDEMAR V. VALMORES
Commissioner

(Signed)

KARINA CONSTANTINO-DAVID
Chairman

(Signed)

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

Cps/agr/PVP/CM04-2002
FPG/KPZ/X3/X14/d12/jrl

[1] PARAS, Civil Code of the Philippines, Thirteenth Edition, Volume I, p. 597