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CUBA 1

Act: Employment of Women before and after Childbirth

Ley reglamentando el seguro de Salud y Maternidad. 15 de diciembre de 1937. (Gaceta Oficial, 17 de diciembre de 1937, año XXXV, núm. 313, tomo VI, pág. 10061.)

Act to issue regulations respecting health and maternity insurance. Dated 15th December, 1937.

[EXTRACTS]

I. It shall not be lawful for a woman to be employed during the six weeks next following her confinement by any individual engaged in commerce or by any partnership (whether commercial or not), company carrying on a public service, association, co-operative society or mutual benefit society. The same provision shall apply to the State, provinces and municipalities, official bodies or organisations and all other institutions which although not of an official character are constituted under the protection of the laws of the Republic.

II. A pregnant woman shall have the right to absent herself from work if she produce at duly authenticated medical certificate stating that her confinement will probably take place within six weeks.

If the medical practitioner makes a mistake in estimating the date of confinement, and this event takes place on a date later than the date which has been indicated, the leave of absence before the confinement shall be deemed to be prolonged until the date of the confinement, provided that the supplementary period shall not exceed three weeks and that the total period shall not exceed nine weeks.

If a woman absents herself from work, she shall notify her employer, who shall forthwith note the fact in the maternity register and shall further enter in the margin of the said register or in the column opposite the name of the female wage-earning or salaried employee in question the date on which she leaves her work for the above-mentioned reason.

III. While absent from her work in accordance with the preceding sections, a woman shall be paid benefit for her maintenance during the period before and after her confinement; the said benefit shall be paid by the provincial health and maternity office in the area of which the employer is domiciled and shall not be less than one peso twenty-five centavos nor more than four pesos a day. The amount of the benefit shall be governed as far as possible by the remuneration earned by the woman, and shall be the equivalent thereof; in cases of intermittent employment the calculation shall be based on the average amount earned during the last two months' work, subject in every case to the minimum and maximum amounts mentioned above.

IV. The benefit shall be paid by the provincial public health and maternity offices on behalf of the health and maternity fund, which shall derive its moneys from the following sources:—

- (a) contributions equal to one-fourth per cent. of the salaries, wages or commission earned each month by salaried and wage-earning employees;

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- (b) one-half per cent. of the total amount of the sums paid monthly by the employers in the form of wages, salaries, commission or other payments to their employees, whether permanent or not;
- (c) the fines, additional payments and other penalties imposed by the laws of the Republic, whether issued before this Act or hereafter.

The contributions mentioned under (a) of this section shall be deducted by the employers on the occasion of the payment of wages, salaries, etc., and shall be paid together with sums mentioned under (b) before the twenty-sixth day of the next month to the collecting agencies of the provincial office in the area of which the employer is domiciled.

V. For the purposes of the provisions of the preceding section every employer shall register himself with the provincial office in the area of which his head office is established.

VI. For the purposes of the registration mentioned in the preceding section and of the obligations imposed by (a) and (b) of section IV, "employer" (patrono) shall mean any individual engaged in commerce or any partnership (whether commercial or not), company carrying on a public service, association, co-operative society or mutual benefit society, who or which for the purpose of his or its activities employs persons for fixed pay, by the piece or job or on a commission or allowance in money or in kind; and "salaried employee" (empleado) and "wage-earning employee" (obrero) shall mean any person, irrespective of sex, who receives remuneration in any of the above-mentioned forms for services performed for an employer as aforesaid.

VII. If a woman contributor entitled to benefit dies, the weekly instalment of benefit awaiting payment and the benefit to which she would be entitled under this Act shall be paid to the person responsible for the maintenance of the child to which she has given birth.

VIII. Payment of benefit under the health and maternity insurance system shall be subject to the condition that the wage-earning employee concerned has paid contributions to the provincial office for five months of twenty-six days each during the last two years; in employment by the piece or job the woman must have paid during the same period (i.e. during the last two years) contributions corresponding to a total sum of 104 pesos received as pay, provided that a part of the said contributions was paid at some time before the confinement and within the six months immediately preceding the making of the claim.

The benefit shall cease to be paid if the contributor engages in employment while in receipt of benefit.

IX. Pregnancy shall not constitute a reason for the dismissal of a woman; if a woman absents herself from her work before and after her confinement, the employer shall be bound to keep her post open for her.

X. If a female wage-earning or salaried employee is unable to go to work owing to pregnancy, she shall notify the National Women's and Children's Labour Office in the Ministry of Labour and submit a medical certificate as evidence thereof. The said Office shall forthwith send a provisional notice to the employer and require the medical officers of the provincial health and maternity office (or, in default of such medical officers, a medical officer of the Directorate of Hygiene and Social

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Welfare in the Ministry of Labour) to forward a report, and the said medical officer shall examine the woman in question and submit a report on the case. If the reason alleged is established, a time limit shall be fixed within which the woman must return to her employment and the employer shall be duly notified thereof. It shall not be lawful to dismiss the employee in question within this time limit, even if her employment and pay are suspended.

XI. In addition to pecuniary benefit under the health and maternity insurance system, every female wage-earning or salaried employee shall be entitled to attendance by a medical practitioner or midwife, according to her choice, at the time of her confinement. The fees of the said medical practitioner or midwife shall be paid by the provincial health and maternity office in accordance with the scale previously fixed by it.

XII. When the provincial health and maternity offices have made provision for medical attendance and hospital accommodation, a technical service shall be set up to supervise the utilisation of these benefits; in this case a woman shall not be entitled to choose a medical practitioner or midwife for her confinement unless she is resident in a locality which is at such a distance from a hospital that she is unable to go there. In such cases the medical practitioner or midwife chosen shall be bound to forward the medical record of the lying-in woman together with such particulars as the medical services may request.

XIII. Every salaried or wage-earning employee who has contributed for not less than ten months to the provincial health and maternity office shall enter in the register thereof the name of his wife or unmarried consort, with a view to her receiving in the event of her confinement the sum of twenty-five pesos from the provincial health and maternity office.

The Central Health and Maternity Board shall issue regulations respecting the conditions for acquiring the right to the above-mentioned sum and the procedure for claiming it.

When provision has been made for hospital accommodation, the provincial health and maternity offices with the approval of the Central Board may replace the payment of the sum of twenty-five pesos mentioned in the first paragraph of this section by hospital accommodation, which shall be granted to the wife or unmarried consort of the wage-earning or salaried employee under the same conditions as to an employed woman contributor. Nevertheless, the cases mentioned in the first sentence of the preceding section shall be taken into account as exceptions.

Management of the Health and Maternity Fund.

XIV. The following bodies shall be set up for the management, administration and supervision of the women workers' health and maternity insurance system and the hospitals, medical services and similar institutions established in accordance with this Act:—

- (a) the Central Health and Maternity Board;
- (b) provincial health and maternity offices (one in the chief town of each province) and municipal sub-offices.

The last-mentioned bodies shall begin operations as soon as the provincial offices have established their hospital services.

Central Board.

XV. [The Central Board is an advisory and supervisory institution with power to issue regulations subject to the approval of the Ministry of Labour.]

XVI. [Duties of the Central Board are *inter alia* to assist the provincial offices financially, organise the medical services, hospitals and crèches, and conclude contracts with public and private hospitals and curative institutions.]

XVII. [Composition of the Central Board—nine members, including two representatives of employers and two of employees.]

XVIII. [The term of office of the members of the Central Board and provincial offices shall be three years.]

XIX. [Attendance fees of members of the Central Board.]

Provincial offices.

XX. [Duties of the provincial offices—collection of contributions, dealing with applications, etc.]

XXI. [Composition of the provincial health and maternity offices—seven members, including two representatives elected by the employers' organisations in the province concerned, and two representatives of the employees' organisations in the province concerned, appointed at a meeting convened for this purpose by the Ministry of Labour.]

XXII. [Election of honorary secretaries of the provincial offices.]

Relations between the Minister of Labour, the Central Health and Maternity Board and the provincial offices.

XXIII. [The Minister of Labour is responsible for the general direction of the bodies set up by this Act.]

XXIV. [All agreements concluded by the Central Board or provincial offices respecting the organisation of medical services, etc., are subject to the approval of the Minister of Labour.]

XXV. [All agreements concluded by the Central Board respecting technical questions (the organisation of the medical services, etc.) must be submitted to the Minister of Public Health and Poor Relief for his approval.]

Moneys of the Central Board and provincial offices.

XXVI. The provincial health and maternity offices shall derive their moneys from the following sources:—

- (a) the contributions paid in accordance with this Act by the employers and employees in the province concerned;
- (b) the fines, supplementary payments and other penalties imposed under the laws in force for contraventions of the legislation respecting maternity;
- (c) the assets in the possession of the provincial health and maternity offices on the date of the promulgation of this Act; and
- (d) gifts and bequests to the said offices.

XXVII. The Central Health and Maternity Board shall derive its moneys from the following sources:—

- (a) the reserve fund constituted by 20 per cent. of the surplus moneys of the provincial health and maternity offices as shown in the balance-sheets drawn up on 31st December, 1936, which they shall remit by cheque together with the said balance-sheets to the Central Health and Maternity Board;
- (b) the reserve fund shall further include 10 per cent. of the moneys collected by the provincial health and maternity offices, which they shall remit to the Central Board within the first ten days of each month.

50 per cent. of the 10 per cent. mentioned in the preceding subparagraph shall accrue to the reserve fund, and the remainder shall be utilised for the general expenses of the Central Board.

XXVIII. Legislative Decree no. 405 of 12th November, 1935, and Legislative Decree no. 503 of 8th January, 1936, which deal with the collection and deposit of moneys and the checking of expenditure, shall apply to the provincial offices and shall be extended to the Central Board.

XXIX. Legislative Decree no. 781 of 28th December, 1934¹, Presidential Decree no. 87 of 5th April, 1935², and all other legislative provisions contrary to this Act are hereby repealed.

XXX. This Act shall not apply to persons employed in agricultural operations and their employers; "agricultural operations" shall mean the sowing, tending, harvesting or gathering of crops of every kind which are the direct products of the soil in an agricultural undertaking, and the raising and tending of animals of every kind in such undertakings, and likewise the work of transporting such products and animals from any place where they are produced or any ranch to another place in the same or another agricultural undertaking by means of animal power.

General provisions.

1st. Every document which must be issued in connection with the rights and remedies established by this Act shall be exempt from stamp duty, provided that it is expressly mentioned in the application that the said document is issued exclusively for the above-mentioned purpose. Applications in writing claiming rights or making appeals shall likewise be exempt from stamp duty.

2nd. Entries in the registers of births, deaths and marriages and certified extracts therefrom which are made for the purpose of enforcing the rights granted by this Act shall be exempt from fees when requested by the provincial office.

3rd. The penalty for every contravention of the provisions of this Act other than those of the last paragraph of section IV shall be a fine of 30 pesos for the first offence, 100 pesos for the second offence and 500 pesos for every subsequent offence.

¹ Legislative Decree concerning the employment of women before and after childbirth. Legislative Series, 1934 (Cuba 5); amendment, 1935 (Cuba 1, B).

² Decree no. 787, to issue regulations under L. D. no. 781 of 28th December, 1934. Legislative Series, 1935 (Cuba 1, A).

4th. If an employer fails to deposit the prescribed amount within the time limit specified in the last paragraph of section IV, he shall be liable to payment of a supplement equal to 5 per cent. of the amount due.

5th. On the expiry of a fortnight reckoned from the end of the said time limit the employer shall be liable to a fine of 10 pesos if the amount due is less than 50 pesos, a fine of 20 pesos if the amount due is more than 50 pesos but less than 100 pesos, and a fine equal to the amount originally due if it is more than 100 pesos.

6th. The criminal magistrate of the place where the contravention was committed shall be competent in every case to impose the penalties mentioned in this Act; for this purpose Order no. 213 of 1900 shall apply.

7th. The office of salaried employee, official or member of the Central Health and Maternity Board or of a provincial office shall not be incompatible with each other or with any other office under the State, a province or a municipality.

8th. The employers' and employees' representatives and all other members of the executive committees of the maternity funds shall continue to hold their office on the new bodies, i.e. the provincial health and maternity offices, provided that they have been confirmed in office for three years, except where this Act provides otherwise as regards membership of the provincial offices.

Concluding provision.

This Act shall come into operation on the date of its publication in the *Gaceta Oficial* of the Republic.

Transitional provision.

[The executive committees of the maternity funds set up under Legislative Decree no. 781 are to remain in office pending the setting up of the new bodies.]

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