

Magna Carta for Women

Republic Act No. 9710

Primer

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Purpose

This primer aims to provide readers an easy guide to learning, understanding, and defining what are the rights of Filipino women provided for by law and the state measures on recognizing and enforcing these rights.

What is the Magna Carta of Women?

The Magna Carta of Women aims to eliminate all forms of discrimination against women through policies that recognize, protect, and promote women's rights. [R.A. 9710, Sec. 2]

The law aims to empower women by bridging the gap caused by gender-based distinctions that restrict women's participation in social, economic, political, and cultural development of the Philippines. This is in line with the provision of the Universal Declaration of Human Rights that all human beings are free and equal in dignity and rights. [R.A. 9710, Sec. 3]

What is the State's policy in relation to the Magna Carta for Women?

The state recognizes the important role that women fulfill in nation building. The Magna Carta for Women promotes empowerment of women and pursues equal opportunities for women and men. This means that the State obliterates any structures that perpetuate discrimination, inequality and forms of abuse that will hinder or suppress a woman from exercising her rights. [R.A. 9710, Sec. 2]

What are the duties of the State in relation to the Magna Carta for Women?

1. To implement necessary mechanisms to enforce these rights and adopt legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic; social, and cultural realms; [R.A. 9710, Sec. 2]
2. To ensure the full integration of women's concerns in the mainstream of development, by providing ample opportunities for the enhancement and development of their skills for productive employment; [R.A. 9710, Sec. 2, par. 5]

3. To be answerable for the observance and implementation of human rights in accordance with international law and our Constitution;
4. To implement measures promoting the coherent and integrated implementation and enforcement of this Act and stop discrimination against and advance the rights of women; [R.A. 9710, Sec. 5, par. 3]
5. The State shall be up to date with and be guided by progressive developments in human rights of women under international law and design of policies, laws, and other measures to promote the objectives of this Act. [R.A. 9710, Sec. 5, par. 4]

What if the State fails to do all the above-mentioned declarations?

If they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicators in accordance with the rules and procedures provided by law.

What are the rights protected by the Magna Carta for Women?

1. Right to be protected from violence
2. Right to protection and security in times of disasters, calamities, and other crisis situations
3. Right to participation and representation
4. Equal access in education, scholarship, and training
5. Women participation in Sports
6. Women participation in the Military
7. Nondiscriminatory and Nonderogatory Portrayal of Women in Media and Film
8. Women's Right to Health
9. Special Leave Benefits for Women
10. Equal Rights in All Matters Relating to Marriage and Family Relations

How will these rights be protected?

1. How can women be protected from all forms of violence, including those committed by the State?

- Increase to at least 50-50 ratio of men and women in the recruitment and training of women in the Police Force, Forensics, Medico-Legal, Legal/Judicial Services, and Social Work Services; [R.A. 9710, Sec. 11 (a)]
- Security in a situation of emergency, armed conflict and militarization; [R.A. 9710, Sec. 9 (b)]
- All government personnel, LCEs, Appointing Authorities and Executive Managerial positions involved in the protection and defense of Women shall undergo the mandatory training on Gender and Human Rights; [R.A. 9710, Sec. 9 (a)]
- All Barangays shall establish a VAW Desk and VAW programs and services shall be ensured at all times. [R.A. 9710, Sec. 9 (d)]

2. How can women be protected and secured in times of disaster, calamities, and other crisis situations?

- The National, Regional and Local Disaster Coordinating Councils shall ensure the participation of women in the development of gender-responsive disaster management.
- During disaster, calamities, and crises, LGUs and concerned agencies shall develop and implement a gender-responsive and right-based work and financial plan (sexual violence, safety in evacuation centers). [R.A. 9710, Sec. 10]

3. How can the rights of women to participation and representation be protected?

- Capacitate women employees to strengthen their qualifications and performance for 3rd level positions;

- Increase participation of women of at least 40% to all development councils; [R.A. 9710, Sec. 11 (a)]
- Representation of women or women's group in policy and decision-making bodies in the international, national and local bodies; [R.A. 9710, Sec. 11 (c)]

4. How can women get equal treatment before the law?

- Repeal or amend the existing laws that are discriminatory to women:
 - Family Code Art. 14 - Giving preference to the father's consent to the marriage of children between 18 and 21;
 - FC Art. 96 - Giving preference to the husband's decision on the administration of conjugal properties;
 - FC Art. 211 - Giving preference to the husband's decision over the persons of their common children;
 - FC Art. 225 - Giving preference to the husband's decision on the exercise of legal guardianship over the property of unemancipated common child;
 - FC Art. 55 - repeated physical abuse and grossly abusive conduct as ground for legal separation;
 - Revised Penal Code Art. 333 - On adultery and concubinage;
 - RPC Art. 220 - on the definition of vagrants and prostitution;
 - RPC Art. 351 - On premature marriages;
 - Art. 247 - on death inflicted under exceptional circumstances;
 - LGUs shall review existing ordinances and policies, repeal or amend them accordingly.

Nothing in this section shall preclude the recommendation for the passage of new laws.

5. How can women be given equal access in education, scholarship, and training?

- For DepEd, CHED and TESDA to develop and promote gender-sensitive curriculum, instructional materials, capacity building for faculty and personnel; [R.A. 9710, Sec. 32 (d)]
- Enrollment of women in non-traditional skills training in vocational and tertiary levels shall be encouraged; [R.A. 9710, Sec. 13 (b)]
- Expulsion and non-readmission of women faculty and students shall be prohibited; [R.A. 9710, Sec. 13 (c)]
- Pregnant students shall be assisted while in the school of available support services and counseling to ensure completion of their studies.

6. How can the State encourage participation of women in Sports? [R.A. 9710, Sec. 14, par. 1]

- Train more female coaches for girls and women's teams;
- Conduct activities such as sports clinics and seminars for potential female leaders, coaches and teachers at least once year;
- Provide equal incentives and awards for both men and women for any competition;
- Provide sufficient funds and equal opportunities for women athletes and coaches.

7. How can women in military, police and other similar services be free from discrimination? [Sec. 15, par. 1-3]

- Grant same privileges and opportunities on pay increases, benefits awards and remunerations;

- Equal consideration in the area of field assignment, functions and peacekeeping duties where women can exercise and develop their full potentials;
- Consideration on women's physical and biological built in physical fitness tests as requirements for entry, promotion or schooling;
- Accord women and men have the same capacity to act and enter into contracts, including marriage, except for such positions where a marriage ban for a specific period of time is required for both men and women; [R.A. 9710 IRR, Sec. 18(a), par. 6(b)]
- Provide the benefits under existing laws such as maternity leaves, solo parent privileges, and leaves due to gynecological disorders; [R.A. 9710 IRR, Sec. 18 (a) par. 6(b)]
- Ensure the rights of women in the military and police to decent and separate facilities and personal protective equipment to ensure their safety; [R.A. 9710 IRR, Sec. 18 (a) par. 9]
- Establish a child care facility, breastfeeding room for military, police and other women employees; [R.A. 10028]
- Increase the quota to 20% for females to PMA, OCS, PNPA, PPSC; [R.A. 9710 IRR, Sec. 18(b)]
- Concerned agencies should support women in the military in training and peacekeeping operations.

8. How can the portrayal of women in media and film be non-discriminatory and non-derogatory?

The dignity of women and their roles and contributions in all spheres of private and public life shall be promoted through the following:

- OPS shop provide overall direction, guidance and monitoring as lead agency of government mass media;

- Enhancement of programming, production and image making that present women's needs, issues and concern;
- Allocation of space, airtime and resources for the airing of advertisements that promote women's human rights;
- Ensuring that in all school of journalism, information and communication and national media federation and association, the gender equality are integrated in the human resource development;
- Self-regulatory for media, television, cable, film and advertising shall also ensure compliance with the Act;
- Creation of Local Media Board in all LGUs to monitor the implementation shall be encouraged to monitor the implementation.

9. *How can women's right to health be protected?*

- Access to Comprehensive Health Program;
- Maternal care (prenatal, delivery and post-natal, infant health and nutrition);
- Promotion of Breastfeeding and Proper Nutrition for lactating mothers;
- Responsible, ethical, legal, safe, and effective family planning;
- Family and State collaboration in youth sexuality education and health services without prejudice to the duty of the parent to educate their children;
- Prevention and Management of Sexually Transmitted Infections (STI), Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS);
- Prevention and management of reproductive tract cancers and other gynecological conditions and disorders;
- In case of VAWC victims, comprehensive health services shall be provided (psychosocial, therapeutic, medical, and legal interventions);

- Care of elderly women;
- Management, treatment, and intervention of mental health problems of women and girls;
- Comprehensive health information and education on all aspects of women's health with due regard to:
 - Natural and primary right and duty of parent in rearing the youth
 - Legal, ethical, safe and effective family planning methods including fertility awareness

Section 17 of the Magna Carta of Women recognizes that the right to health of a woman is qualified by various factors, including the "right of the spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood." Hence, it takes into consideration the concern that, when the right to health of a married woman will have implications on her rights and obligations as a wife and/or a mother, her right to health is important to her not merely as an individual woman but as a spouse and as a parent. [Imbong vs. Ochoa Jr., G.R. No. 204819, April 8, 2014]

10. *What are the special leave benefits for women?*

- Any female employee in the public and private sector regardless of age and civil status shall be entitled to a special leave of 2 months with full pay based on her gross monthly compensation due to surgery caused by gynecological disorders with the following conditions:
 - She has rendered at least 6 months continuous employment service;
 - In the event of extended leave, she may use her earned leave credits;
 - This special leave shall be non-cumulative and non-convertible to cash.

11. *How can women get equal rights in all matters relating to marriage and family relations?*

- The DSWD, DOH, and POPCOM shall set standards and develop gender-fair modules on marriage, family relations, and family effectiveness.
- LGUs shall:
 - Provide trainings and seminars on the popularization of rights and obligations of spouses towards each other, to reduce and prevent the stereotyping of roles, multiple burden and subordination of women;
 - Pre-marriage counseling programs;
 - Advocacy on the moral obligation and responsibility in assuring the rights and well-being of their children, including number and spacing of children;
 - Include in the trainings and seminars in barangays the Family Code.

The Magna Carta recognizes the Marginalized Sector

Who are the Marginalized?

It refers to the disadvantaged or vulnerable persons or groups who are mostly living in poverty and have little or no access to land and other resources as well as basic social and economic services such as health care, education, water and sanitation, employment and livelihood opportunities, housing, social security, physical infrastructure, and the justice system. [R.A. 9710, Sec. 4(d)]

What are examples of marginalized groups?

Marginalized groups include but not limited to:

- small farmers and rural workers;
- fisherfolk;
- urban poor government workers;
- non-profit organization workers;

- self-employed;
- paid and unpaid family workers in household enterprises;
- micro-entrepreneurs;
- operators of sari-sari stores;
- migrant workers;
- indigenous peoples;
- Moro;
- minors;
- persons 18 years of age or over but unable to fully protect themselves from abuse or neglect because of their mental or physical condition;
- senior citizens, persons with disabilities; and
- solo parents. [R.A. 9710, Sec. 4(d), par. 1-12]

What are the rights of women living within marginalized sectors?

The rights of women living within marginalized sectors include education and training, livelihood, credit, capital and technology, food security and productive resources, housing, decent work, information, representation, and social protection. [R.A. 9710, Sec. 20-27]

Penalties for Violation of the Magna Carta for Women

Who will be liable if the violation is committed by any government office, including government-owned and controlled corporations and local government units?

The persons liable are those directly responsible for the violation as well as the head of the agency or local chief executive.

What are the penalties for persons liable if the violation is committed by a government office?

The sanctions under administrative law, civil service or other appropriate laws as recommended by the Commission on Human

Rights to the Civil Service Commission and the Department of the Interior and Local Government.

What happens when violence has been proven to be perpetrated by the agents of the State?

The violence shall be considered aggravating offense with corresponding penalties which would depend on the severity of the offense.

What is the penalty if the violation is committed by a private entity or individual?

The person directly responsible for the violation shall be liable to pay damages.

Can the offended party pursue other remedies aside from those provided in the Magna Carta of Women?

YES. The offended party may avail of other remedies under the law and can invoke any of the other provisions of existing laws, especially those that protect the rights of women.

CRIMINAL LAW: For Women

Violence against Women and Children (Republic Act No. 9262)

What is referred to as Violence Against Women (VAW)?

It is any act of gender-based violence that results or is likely to result in physical, sexual or psychological harm or suffering to women including threats or such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life. Gender-based violence is any violence inflicted on women because of their sex.

What are the acts prohibited under the R.A. 9262?

1. Causing Physical Harm to the woman or her child;

2. Threatening to cause the woman or her child physical harm;
3. Attempting to cause the woman or her child physical harm;
4. Placing the woman or her child in fear of imminent physical harm;
5. Compelling the woman or her child to engage in an act wherein the woman or her child has the right to object;
6. Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
7. Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
8. Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child.
9. Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

What are examples of acts of compelling the woman or her child to engage in an act wherein the woman or her child has the right to object?

1. Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
2. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
3. Depriving or threatening to deprive the woman or her child of a legal right;

4. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties.

What are examples of acts engaging in a conduct that alarms or causes substantial emotional or psychological distress to the woman or her child?

1. Stalking or following the woman or her child in public or private places;
2. Peering in the window or lingering outside the residence of the woman or her child;
3. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
4. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
5. Engaging in any form of harassment or violence.

Anti-Mail Order Spouse Act of 2015

What acts are punishable under the Anti-Mail Order Spouse Act of 2015?

1. To carry on a business transaction for the purpose of matching Filipino women to foreign nationals either on a mail order basis or personal introduction.
2. To advertise. Publish, print or distribute any brochure. Flier or propaganda to promote the prohibited acts.
3. Soliciting or enlisting in any manner or introducing any Filipino woman to become a member of any association whose objective is to match women for marriage to foreign nationals.
4. The use of postal service or websites on the internet to promote prohibited acts.

Anti-Sexual Harassment Act of 1995 (Republic Act No. 7877)

Anti-Sexual Harassment Act of 1995 (Republic Act 7877) – This law declares the illegality of any acts involving unwelcome sexual advances, requests for sexual favors in exchange of any favor in the workplace.

What is sexual harassment?

Sexual harassment is an imposition of misplaced “superiority” which is enough to dampen an employee’s spirit and her capacity for advancement. It affected her sense of judgment; it changes her life. [Domingo vs. Rayala, G.R. No. 155831, February 18, 2008]

Who may commit sexual harassment?

It may be committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act. [R.A. 7877, Sec. 3]

Therefore, a rank and file employee cannot commit sexual harassment against a manager. Should this happen, then the proper remedy of the victim here would be to file a criminal charge or to settle things in some administrative manner.

When is work-related sexual harassment committed?

When a superior demands, requests, or otherwise requires any sexual favor from a subordinate in a work environment, regardless of whether or not the demand is accepted.

There are three requisites:

1. The sexual favor is made as a condition for some favor like hiring or continued employment or promotion;
2. that the refusal to grant the sexual favor will result in discrimination, denial or reduction of employment opportunities and the impairment of the employee's rights or privileges; or
3. that the demand for sexual favor results in an intimidating, hostile, or offensive environment for the employee. [R.A. 7877, Sec. 3]

Must the demand for sexual favor be direct?

NO. In the case of *Domingo vs. Rayala*, the act of holding and squeezing the victim's shoulders, running his finger across her neck, and tickling her ear, having inappropriate conversations with her, giving her money allegedly for her expenses with the promise of future privileges, all of which clearly constitute an unspoken request for a sexual favor. Therefore it need not be direct but can be implied from the acts of the offender. [*Domingo vs. Rayala*, G.R. No. 155831, February 18, 2008]

Anti-Rape Law

Maria Clara Doctrine; Rape committed on Prostitutes and Marital rape

What is the Maria Clara Doctrine?

It is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless abuse had actually happened. This is due to a belief that the offended party would not have positively stated that intercourse took place unless it did actually take place. [People vs. Taño, et al., G.R. No. L-11991, October 31, 1960] However this doctrine was criticized in the case of *People vs. Amerela* wherein the court declared that this ruling borders on the fallacy of non-sequitur. [People vs. Amarela, G.R. Nos. 225642-43, January 17, 2018]

However Atty. Amparita Sta. Maria opined that the Maria Clara doctrine should not be abandoned on the basis of being a logically flawed premise. It must instead be uniformly applied, removed from its patriarchal origins, and replanted as (a) a doctrine that embodies the experiences of women, (b) a doctrine that strengthens our Anti-Rape laws by encouraging victims to come forward and tell their stories, and (c) a rule of evidence consistent with our international obligations and domestic legislation on women's rights to freedom from gender bias and discrimination. [Sta. Maria, *Ateneo Law Journal* Vol. 67]

Can a Prostitute be a victim of Rape?

YES. Even prostitutes can be victims of rape. It bears stressing that in rape, the moral character of the victim is immaterial, the essence of rape being the act of having carnal knowledge of a woman without her consent. [People vs. Olimba, G.R. No. 185008, September 22, 2010]

Can another spouse be a victim of rape by his/own spouse?

YES. "Husbands do not have property rights over their wives' bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape. This is the clear State policy expressly legislated in Section 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353 or the Anti-Rape Law of 1997. Clearly, it is now acknowledged that rape, as a form of sexual violence, exists within marriage. A man who penetrates her wife without her consent or against her will commits sexual violence upon her, and the Philippines, as a State Party to the CEDAW and its accompanying Declaration, defines and penalizes the act as rape under R.A. No. 8353. [People vs. Jumawan, G.R. No. 187495 April 21, 2014]

What is Date Rape Drug?

Date rape drug is a drug which facilitates rape by causing temporary inhibition or memory loss. Alcohol is often used for this. Drugs or alcohol can make a person confuse with what is happening, less able to defend themselves against unwanted sexual contact, or unable to remember what happened. [US Office on Women's Health, Date Rape Drugs (2019)]

The Supreme Court had a chance to rule on date rape drug with rape cases. This Court finds that Caga did have sexual intercourse with "AAA" when she was asleep and still under the influence of alcohol. The case thus falls under the second paragraph of rape: "when the offended party is deprived of reason or is otherwise unconscious." It is altogether immaterial that the prosecution's evidence failed to establish the presence of physical force, threat, or intimidation because, as the evidence at bar shows, Caga raped an unconscious and extremely intoxicated woman - a fact that was duly alleged in the Information and duly established by the prosecution's evidence during the trial. In the case at bench, physical force, threat or intimidation is not necessary, for the simple reason that an unconscious and extremely intoxicated woman cannot freely and voluntarily give her consent to engaging in sexual intercourse. [People vs. Caga, G.R. No. 206878 August 22, 2016]

Anti-Bullying Act of 2013

What are acts that amount to Bullying?

Bullying refers to any severe or repeated use by one or more students of:

- a written, verbal or electronic expression,
- a physical act or gesture; or
- any combination thereof. [R.A. 10627, Sec. 2]

Bullying is directed to another student that has the effect of:

- actually causing or placing such student in reasonable fear of physical or emotional harm or damage to his property;
- creating a hostile environment at school for the other student;
- infringing on the rights of the other student at school; or
- materially and substantially disrupting the education process or the orderly operation of a school; such as, but not limited to, the following:
 - Any unwanted physical contact between the bully and the victim like punching, pushing, shoving, kicking, slapping, tickling, headlocks, inflicting school pranks, teasing, fighting and the use of available objects as weapons;
 - Any act that causes damage to a victim's psyche and/or emotional well-being;
 - Any slanderous statement or accusation that causes the victim undue emotional distress like directing foul language or profanity at the target, name-calling, tormenting and commenting negatively on victim's looks, clothes and body; and
 - Cyber-bullying or any bullying done through the use of technology or any electronic means. [R.A. 10627, Sec. 2]

CIVIL LAW: For Women

Marriage

With respect to the founding of a family, Section 19(c) of Republic Act No. 9710, otherwise known as the "Magna Carta of Women," provides that women shall have equal rights in all matters relating to marriage and family relations, including

the “joint decision on the number and spacing of their children.” [Imbong vs. Ochoa Jr., G.R. No. 204819, April 8, 2014]

May a premarital intimate relationship, an abhorrent act?

NO. The voluntary intimacy between two (2) unmarried adults, where both are not under any impediment to marry, where no deceit exists, and which was done in complete privacy, is neither criminal nor so unprincipled as to warrant disciplinary action. [Inocente vs. St. Vincent Foundation for Children and Aging, Inc., G.R. No. 202621, June 22, 2016]

Divorce

Q: How does Magna Carta for women affect the interpretation of our law on recognition of divorce?

In 2009, Congress enacted Republic Act No. 9710 or the Magna Carta for Women, which provides that the State “shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.” This necessarily includes the second paragraph of Article 26 of the Family Code. Thus, Article 26 should be interpreted to mean that it is irrelevant for courts to determine if it is the foreign spouse that procures the divorce abroad. Once a divorce decree is issued, the divorce becomes “validly obtained” and capacitates the foreign spouse to marry. The same status should be given to the Filipino spouse. [Racho vs. Tanaka, G.R. No. 199515, June 25, 2018]

Q: May a divorce filed by a Filipina against a foreign spouse be recognized?

YES. In the case of Republic vs. Manalo, a Filipino citizen was married to a Japanese National. The couple filed for divorce in Japan and the Filipino petitioned to have their marriage canceled. In remanding the case to the trial court, the Court noted that the burden was on the Filipino to prove

that the divorce was validated by Japanese law as well as her former husband’s capacity to legally remarry. [Republic vs. Manalo, G.R. No. 221209, April 24, 2018]

Can a natural born Filipino file for divorce within the Philippines?

YES.

Divorce by li’an.-Where the husband accuses his wife in court of adultery, a decree of perpetual divorce may be granted by the court after due hearing and after the parties shall have performed the prescribed acts of imprecation (li’an).

Divorce by khul’.-The wife may, after having offered to return or renounce her dower or to pay any other lawful consideration for her release (khul’) from the marriage bond, petition the court for divorce. The court shall, in meritorious cases and after fixing the consideration, issue the corresponding decree.

Divorce by tafwid. If the husband has delegated (tafwid) to the wife the right to effect a talaq at the time of the celebration of the marriage or thereafter, she may repudiate the marriage and the repudiation would have the same effect as if it were pronounced by the husband himself.

For Muslim women, Article 52 chapter three of the Sharia law provides for divorce by faskh. The court may, upon petition of the wife, decree a divorce by faskh on any of the following grounds:

- a. Neglect or failure of the husband to provide support for the family for at least six consecutive months;
- b. Conviction of the husband by final judgment sentencing him to imprisonment for at least one year;
- c. Failure of the husband to perform for six months without reasonable cause his marital obligation in accordance with this code;
- d. Impotency of the husband;

- e. Insanity or affliction of the husband with an incurable disease which would make the continuance of the marriage relationship injurious to the family;
- f. Unusual cruelty of the husband as defined under the next succeeding article; or
- g. Any other cause recognized under Muslim law for the dissolution of marriage by faskh either at the instance of the wife.

No-Spouse Employment Policy

Q: Can a No spouse policy be implemented?

Generally speaking, it shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated. [Art. 134, Labor Code]

However, such policy can be validly implemented if the employer can prove that reasonable demands of the business requires a distinction based on marital status and there is no better or acceptable policy which would better accomplish the business purpose and a possibility of conflict of interest exists. This is known as the Bona Fide Occupational Qualification Rule (BOQR). [Duncan Assoc. Of Detailman-PTGWO vs. Glaxo Wellcome Phil. Inc., G.R. No. 162994, September 17, 2004, cited in UST Golden Notes (2018)]

Q: May an international flight stewardess be discharged on account of her marriage?

NO, for being violative of the clear mandate in Article 134 of the Labor Code with regard to discrimination against married women. Article 134 is not intended to apply only to women employed in ordinary occupations. In the case of *Zialcita vs. PAL*, the termination is not legal and the policy of PAL against marriage is patently illegal. Requiring that prospective flight attendants must

be single and that they will be automatically separated from the service once they marry was declared void. [*Zialcita et. al., vs. PAL*, RO4-3-3398-76, February 20, 1977, as cited in the UST Golden Notes (2018)]

Child Support

What is support?

Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. [Art. 194 Par. 1, Family Code]

How is the amount of support determined?

As to the amount, it is proportional to the resources or means of the giver and the necessities of the recipient. The father and the mother may agree on the amount and manner of payment of child support.

What if there was no agreement?

The matter shall be left with the courts however its decision is never final, considering that support is based on the child's needs, which may change, and the parent's capacity to pay, which may also change. [Pension and Gratuity Management Centre vs. AAA, G.R. No. 201292, August 1, 2018]

What happens when two or more persons are obliged to give support?

Article 199 of the Family Code provides for an order of preference in case two or more persons demand support:

1. Spouse
2. Descendants of nearest degree (Nephews and Nieces)
3. Ascendants of nearest degree (Uncles, Aunts, Grandparents)

4. Brothers and Sisters (Siblings)

In such order, shall it be determined who between two or more persons shall be preferred to give support first.

The same order of preference shall also be observed in case two or more persons are demanding support from some legally obliged to provide it.

However, if the demand for support is initiated by both the spouse and the children, the children shall be preferred. [Art. 200, Family Code]

Can an adult still be entitled to support?

YES. Even if a person is beyond the age of majority (18 years old) he/she may still demand support for his education, and that shall include schooling and transportation expenses. [Article 194 par. 2, Family Code]

Can illegitimate children be entitled to support?

YES. Article 70 of the Family Code provides that parents have the legal duty to support their children, whether legitimate or illegitimate.

Can brothers and sisters who are illegitimately related support each other?

YES. Under Article 196 of the Family code Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent. However there could be no entitlement to support if the claim for support arose from a cause imputable to the fault of the claimant.

Treatment of Girls in Conflict with Law

“Child” is a person under the age of eighteen (18) years. While “Child at Risk” refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and

social circumstances. Some of the examples mentioned in the law are: being abandoned or neglected, and living in a community with a high level of criminality or drug abuse.

How is a girl child in conflict with the law treated under the justice system?

The girl shall undergo a diversion program wherein the child's degree of remorse, ability of the parents to supervise her, the point of view of the victim and if there are available in which the girl child can be admitted for rehabilitation.

What is the age of criminal responsibility?

The age of criminal responsibility is 18 years of age; 17-15 years of age if the child acted with discernment.

To whom diversion program is applicable to?

For children who are 17-15 years of age who acted with discernment.

What happens to children who are 15 years and below?

They are to be immediately released or committed to a youth care facility.

Rules on Diversion Program:

If the crime the child committed is penalized with imprisonment of not more than 6 years, mediation, family conferencing and conciliation, or other indigenous modes of conflict resolution in consonance with restorative justice shall be facilitated by the law enforcement officer or Punong Barangay with the assistance of the Local Social Welfare District Officer (LSWDO) or members of the Barangay Council for the Protection of Children (BCPC). Both the child and his/her family shall be present.

If it is a victimless crime with an imposable penalty of 6 years or less, LSWDO shall develop a

diversion program in coordination with the BCPC. Both child and parent shall be present. If the penalty exceeds 6 years, diversion shall be determined by the courts.

Solo Parents Act

Scenario: Ivey and her husband met an accident which unfortunately led to the husband's passing. Ivey was consoled by her lawyer friend Ina who told the former that she was now a Solo Parent. Ina pointed out that to help her raise her child, the Solo Parents Act had provisions granting certain benefits.

Who are considered as Solo parents?

1. A woman who has given birth (and has decided to keep and raise the child) as a result of rape and other crimes against chastity even without a final conviction of the offender.
2. A parent left with the sole responsibility of parenthood due to:
 - a. Death of a spouse
 - b. A court or church declaration of annulment or nullity of marriage and he or she is entrusted with the children custody
 - c. De facto separation or legal separation from spouse for at least one (1) year so long as he or she is entrusted with custody of the children
 - d. A public medical practitioner certifies the physical and/or mental incapacity of a spouse
 - e. Spouse serving a sentence for a criminal conviction for at least one (1) year.
3. An unmarried parent who has decided to keep his or her child or children instead of giving them up to a welfare institution or other caregivers.

4. Any other person solely providing parental care and support to a child or children.
5. Any parents whose income falls below the poverty threshold set by the National Economic Development Authority (NEDA) are eligible for all of the benefits and privileges, subject to the assessment of the DSWD worker in the area.
6. Any family member who assumes the responsibility of providing parental care and support in place of the head of the family as a result of
 - a. Prolonged absence;
 - b. Disappearance;
 - c. Abandonment; or
 - d. Death of the parents or solo parent. [R.A. 8972, Sec. 3]

What are the benefits that a Solo Parent may avail of?

1. Rights against workplace discrimination on account of solo parent status,
2. Flexible work schedule provided that individual and company productivity will not be affected.
3. Parental leave of not more than seven (7) working days every calendar year for solo parents who have rendered at least one (1) year of service.
4. Medical Assistance by way of DOH-developed health care program for solo parents and their children.
5. Housing Benefits in low-cost housing projects with liberal terms of payment.
6. Educational Benefits through availment of scholarship programs for basic, tertiary, technical skills/education, and other non-formal education programs for solo parents and their children. This program is developed by DECS, CHED, and TESDA.
7. Livelihood Training that teaches value orientation, business management, seed capital provision, or job placement.

8. Parent Effectiveness Services where single parents are taught about early childhood development, health care, behavior management, and rights and duties of parents and children.
9. Counseling Services for individual, peer group, or family counseling, focusing on the resolution of role conflicts and personal relationships.
10. Stress Management Strategies that involve stress debriefing assistance in case the solo parent went through abuse and other crisis situations.
11. Special Projects for solo parents and children in need of protection which include medical care, temporary shelter, legal assistance, crisis management, self-concept or ego-building, and spiritual enrichment

LABOR LAW: For Women

Persons covered under the classification of certain women workers

1. Any woman who is permitted or suffered to work:
2. With or without compensation;
3. In any night club, cocktail lounge, clinic, bar or similar establishment; massage
4. Under the effective control or supervision of the employer for a substantial period of time; and
5. Shall be considered as an employee of such establishment for purposes of labor and social legislation. [Art. 136, Labor Code]

What are instances of discriminatory acts against women employees?

1. Discrimination in pay - Payment of a lesser compensation including wage, salary or other forms of remuneration and fringe benefits, to a female employee

as against a male employee. [Labor Code, Art. 135(b)]

2. Discrimination in employment opportunity - favoring a male employee over a female employee with respect to promotion, assignment, transfer, training opportunities, study and scholarship grants solely in account or their sexes. [Labor Code, Art. 135(b)]
3. Discrimination in hiring - favoring a male applicant with respect to hiring where the particular job can equally be handled by a woman;
4. Discrimination in dismissal - favoring a male employee over a female employee with respect to dismissal of personnel or the application of the last in / first out principle or other retrenchment policy of the employer. [UST Golden Notes citing Poquiz, 2012].
5. Stipulating, whether as a condition for employment or continuation of employment:
 - a. That a woman employee shall not get married; or
 - b. If she gets married shall be deemed resigned or separated; or
 - c. Actual dismissal on account of marriage. [Labor Code Art. 136]

How did the Magna Carta for Women protect the rights of Women workers?

The Magna Carta for women has expressly disallowed the discharge any woman for the following reasons:

1. For the purpose of preventing her from enjoying any of the benefits provided by law.
2. On account of her pregnancy, or while on leave or in confinement due to her pregnancy.

Pregnancy

Article 135 of the Labor Code and recent jurisprudence declares that an employee cannot be dismissed on account of her pregnancy and its related ailments.

In the case of Del Monte Philippines, Inc. vs. Velasco, the Court concurs with the CA likewise ruling that respondent's sickness was pregnancy-related and, hence the petitioner cannot terminate respondent's services. [Del Monte Philippines, Inc. vs. Velasco, G.R. No. 153477, March 6, 2007]

What if an employee conceals her pregnancy and incurs absences without official leave?

NO. Absence on account of childbirth can hardly be considered a forbidden act or a dereliction of duty; much less does it imply wrongful intent on the part of the employee. [Lakpue Drug, Inc. vs. Belga, G.R. No. 166379, October 20, 2005]

What are the penalties that the employer may suffer for violation of the said provisions?

The offender would be subject to the penalties provided under Article 288 of the Labor Code, the general penalty clause under said code. Fine: Not less than P1,000 nor more than P10,000; or Imprisonment: not less than 3 months or more than 3 years, or both, at the discretion of the court.

Special Leave for Women

How long is a special leave for women and are they paid while on such leave?

YES. For two (2) months with full pay from her employer based on her gross monthly compensation following surgery caused by gynecological disorders, provided that she has rendered continuous aggregate employment service of at least six (6) months for the last 12

months. This two-month leave is in addition to leave privileges under existing laws. [D.O. 112-11, Sec. 1(a)]

What are included as gynecological disorders?

Disorders that would require surgical procedures of female reproductive organs such as the vagina, cervix, uterus, fallopian tubes, ovaries, breast, adnexa and pelvic floor. It includes hysterectomy, ovariectomy, and mastectomy. [D.O. 112-11, Sec. 1 (b)]

What are the requirements to be entitled to special leave?

1. She has rendered 6 months of continuous aggregate employment service within 12 months prior to the surgery
2. She has filed an application for special leave in accordance with Section 3
3. She has undergone surgery due to gynecological disorders as certified by a competent physician. [D.O. 112-11, Sec. 2]

When should the application be filed?

1. Within a reasonable time before the surgery
2. Within a time period provided by company regulations and by the Collective Bargaining Agreement [D.O. 112-11, Sec. 3]

- ***Prior application is not required in emergency cases***

- Prior application for leave shall not be necessary in cases requiring emergency surgical procedure provided:
 - Employer shall be informed verbally or in written form within a reasonable period of time
 - Further, after surgery, the employee after the surgery or

the recuperating period shall file her application.

Maternity Leave (Expanded)

Who are eligible?

To qualify for the grant of maternity leave benefit, the female worker must meet the following requirements:

- a. She must have at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of childbirth, miscarriage, or emergency termination of pregnancy.

In determining the female member's entitlement to the benefit, the SSS shall consider only those contributions paid prior to the semester of contingency; and

- b. She shall have notified her employer of her pregnancy and the probable date of her childbirth, which notice shall be transmitted to the SSS in accordance with the rules and regulations it may provide [Implementing Rules and Regulations of R.A. 11210 Sec. 1 Rule VI].

Notice Requirement

The notification process for SSS-covered female workers and/or members and employers shall be governed by the following rules:

1. The female member, upon confirmation of pregnancy, shall immediately inform her employer of such fact and the expected date of childbirth;
2. The employer shall, in turn, notify the SSS through the prescribed manner;
3. The above rules notwithstanding, failure of the pregnant female worker to notify the employer shall not bar her from receiving the maternity benefits, subject

to guidelines to be prescribed by the SSS; and

4. Self-employed female members, including those in the informal economy, OFWs and voluntary SSS members may give notice directly to the SSS [Implementing Rules and Regulations of R.A. 11210, Sec. 2, Rule VI]

What Benefits are Granted?

For employees in the PUBLIC sector:

1. Paid leave benefit granted to a qualified female worker in the public sector, for One Hundred Five (105) days for live childbirth, regardless of the mode of delivery, plus fifteen (15) days paid leave if the female worker qualifies as a solo parent
2. Sixty (60) days paid leave in case of miscarriage and emergency termination of pregnancy

For employees in the PRIVATE sector:

1. For the duration of One Hundred Five (105) days for live childbirth, regardless of the mode of delivery, plus additional fifteen (15) days paid leave if the female worker qualifies as a solo parent
2. Sixty (60) days paid leave for miscarriage and emergency termination of pregnancy:
 - a. Employed female workers shall receive full pay which consists of (1) SSS maternity benefit computed based on their average daily salary credit and
 - b. salary differential to be paid by the employer, if any.

Can the leave be extended?

YES. An option to extend for an additional thirty (30) days without pay in case of live childbirth.

Will it matter if the female worker gets pregnant frequently for the purposes of availing such benefit?

NO. Maternity leave shall be granted to a qualified female worker in every instance of pregnancy, miscarriage or emergency termination of pregnancy regardless of frequency.

Can Maternity leave benefits be granted even after termination of employment?

YES. Maternity leave with full pay shall be granted even if the childbirth, miscarriage, or emergency termination of pregnancy occurs not more than fifteen (15) calendar days after the termination of an employee's service, as her right thereto has already accrued. Such period is not applicable when the employment of the pregnant woman. [R.A. 11210, Sec. 8]

Health care services for pre-natal, delivery, postpartum and pregnancy-related conditions granted to female workers, particularly those who are neither voluntary nor regular members of the SSS, as governed by the existing rules and regulations of the Philippine Health Insurance Corporation (PhilHealth).

What is the role of Local Government Units in implementing the Magna Carta for Women?

LGUs shall implement gender responsive local ordinances that promote the comprehensive health of girls, such as:

- Gender and Development (GAD) code
- Reproductive Health Code

It shall formulate Resource Development Plan that will ensure the following:

- Sufficient number of skilled health professionals to attend all deliveries
- Availability of qualified and capable health service providers

The LGU shall also:

- Develop and allocate budget for health programs
- Monitor the implementation of health programs
- Enhance Parent Effectiveness Services and Programs to include continuing education on gender-based violence in every barangay such as:
 - VAWC (Violation against women and children)
 - Rape
 - Incest
 - Prostitution
 - Trafficking
- Coordinate with DOH on the provision of health services
- Strengthen the Local Health Board by:
 - Developing an award system to encourage excellent performance on women's health programs.
 - Organizing communities/ dialogues with the private sector to implement health programs for women and girls.
- Encourage to strengthen advocacy, participation and assist the LGUs on the implementation of the health programs.

Comprehensive Health Information and Education shall include:

- Sexuality education in public and private schools;
- Sexuality education for parents to enhance communication with their children;
- Trainings for health service providers; and
- Teen centers for health and sexuality education and counseling.

LGBT Rights in relation to Magna Carta

What is LGBT?

LGBT is the acronym for lesbian, gay, bisexual and transgender. These are persons with diverse sexual orientation and gender identity (SOGI).

Why is LGBT relevant for Magna Carta for Women?

Currently, the women of the LGBT community experience abuse and violence (ranging from subtle jokes to extreme forms of stigma and assault) from their families, neighbors, educational/training institutions and even from government institutions. They also experience lost of economic opportunities due to discrimination in employment such as an outright refusal to hire applicants on the ground of their SOGI.

Does Magna Carta for Women recognizes LGBT rights?

YES. The Magna carta of women recognizes that all individuals are equal as human beings by virtue of the inherent dignity of each human person. Therefore no one should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.

It also promotes the rights of women enlisted personnel in the military, police and similar services. That those women who are qualified shall not be denied of promotion to the highest non-commissioned officer position in the military, police and similar services solely on the basis of sex and sexual orientation.

What is sexuality?

When we talk about sexuality, the Magna carta of women defines sexuality as the expression of a person's thoughts, feelings, sexual orientation and relationships, as well as the biology of the sexual response system of that person.

Rights of the LGBT recognized

These recognized rights spring from the Philippine Constitution which provides that "The State values the dignity of every person and guarantees full respect for human rights." [Art. II, Sec. 11, 1987 Constitution]

It also guarantees every person the right to be free from discrimination and the right to freedom of expression, and the right to organize associations.

Philippine jurisprudence disregards religious opposition to promotion of LGBTI rights, and abides by the principle of non-discrimination, does not consider homosexuality as illegal, and upholds expressions of homosexuality as a protected constitutional right.

Are there limitations on the protection of LGBT rights?

These rights however, absent the national legislation that solely protect the rights of LGBT and ordinances across all local government units mandating the protection from discrimination on the basis of SOGI, that women rights belonging from this community cannot be concluded to be fully protected by law.

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