THE WOMAN LABOR LAW

The Woman and Child Labor Law with its "equal pay for equal work" feature has been one of the two most fundamental pieces of legislation ever passed for women during the decade. The first of these measures was that granting the right of suffrage to women. Hence, from political equality the female sex has advanced to economic equality, so that now our women do not only have the right to vote and be elected to public office just like our men, but for work of equal value they are entitled to get the same pay as our male workers.

Emiliano Morabe

Unfortunately, this economic equality envisioned by our women is but an illusion. Because of the law, hundreds of women are denied or eased out of employment. This fact is admitted even by department of labor sources.

Employers are not entirely to blame for this ironic situation, for the law supposed to be for the benefit of women is turning out, in actuality, to be an anti-women legislation. The law's glaring defects call for scrutiny and reexamination.

The Woman and Child Labor Law, which is known as Rep. Act No. 679 as amended by Rep. Act No. 1161, contains two provisions which have scared many employers from employing women. The first requires the payment of maternity benefits to women who become pregnant during work (Sec. 8(c)) and the second prohibits the discharge of women except for misconduct (Sec. 12(c)). Under the latter provision, it would be unlawful for an employer to discharge any women worker for causes not attributable to the fault of such woman worker.

It is not my intention to suggest the removal of the maternity protection afforded by law to women. I personally believe our women workers need such a protection. However, there is validity in the complaint of owners or managers of the average and marginal firms who are required to pay maternity benefits in addition to sickness benefits under the Social Security Act. They claim that women workers, bed-ridden for maternity reasons, are no different from other workers who become sick and are entitled to sickness benefits. Both are paid during the period of their disability or unproductiveness. Yet, as far as the employer is concerned, he must pay more for women workers because he has to grant them maternity as well as sickness benefits.

Personally, I see nothing wrong in combining maternity with social security benefits. The Philippines is about the only country where these two benefits are dealt with separately. Even the United States, where private enterprises are relatively more prosperous and more economically sound than ours, does not have such maternity law as we have. In fact, the International Labor Organization has advocated for the inclusion of maternity allowance "within the framework of sickness insurance." (Art. 667 of the ILO Labor Code). The Havana Resolution concerning the conditions of employment of women provides that "maternity allowance should be provided by means of a social insurance scheme."

If the Social Security System can invest in projects that have nothing to do with social security, obviously because it is saddled with enormous accumulated funds, I cannot understand why it should not be able to pay for the maternity benefits of women workers. After all, employers' contributions make up a major portion of the SSS fund.

The other highly objectionable feature of the Woman and Child Labor Law is Sec. 12(c) which penalizes an employer for dismissing a woman worker for causes not attributable to her fault. While apparently there seems to be nothing wrong with this provision, in actual operation it puts an employer in an economic straight-jacket and may even be considered a "business suicide."

The phrase "for causes not attributable to the fault of the worker" has assumed a definite meaning and interpretation. These causes may

be a natural lag in the business, closing of a establishment because of lack of raw materials or reduction in demand and other similar causes. (Congressional Record for the Senate, Vol. 1, pp. 322-323)

Literally interpreted, Section 12(c) may mean that an employer cannot dismiss women workers even if the establishment in which they are employed has become bankrupt for legitimate business or economic reasons, or has been wiped out by fire or other catastrophic event. As she does not commit any misconduct, a woman worker is therefore almost employed for life. She cannot be dismissed even if the employer is forced to close his business because of a business depression. Simply because this cause is not attributable to her fault! Can one, therefore, blame an employer for being extra cautious in hiring women workers?

Aside from causing a patent injustice to an employer, this provision in the Woman and Child Labor Law is also discriminatory to men workers.

Discrimination in favor of women may be justified by (1) the nature of the employer's business and (2) the character of the work. (Miller v. Wilson, 235 U 375; State v. Bunting affirmed in 243 US 426) On these considerations are based our existing laws regulating the hours of women in certain industries or in jobs involving the lifting of heavy objects.

A sweeping discrimination against male workers, without any consideration to the nature of the job, such as is provided in the law above-mentioned, is unfair to men. Furthermore, it is unconstitutional and violative of ILO Convention No. 111, to which the Philippine government is a signatory. This ILO convention prohibits any discrimination in employment by reason of sex and other considerations.

This provision is unfair and discriminatory to men because it gives women a greater security of tenure than what prevailing law gives to men. Where the conditions of the work or the job are the same, there should be no difference in the fixity of tenure for both women and men workers. In fact, it is for this reason of equality that women have advocated — and which the law has granted — equal pay for work of equal value for both men and women workers. A law that gives women greater security of work than men under identi-

cal conditions would constitute class legislation.

Perhaps the main purpose of Sec. 12(c) is to prevent the apparent discrimination against the employment of women by reason of their married status or sex. These circumstances (married status and sex) are, indeed, beyond the fault of women workers and should not be a motive for their discharge. While such may be the intention of Congress in passing the amendments to the Woman and Child Labor Law (Sec. 12(c)), the actual wordings of the law do not reflect this intention of the Legislature.

The present Woman and Child Labor Law should be amended in order to eliminate the disastrous effects of its objectionable features not only upon the employment of women but also upon the administration's industrial expansion program. Any unreasonable or oppressive labor law only serves to discourage, instead of encourage, industries from expanding or from making further investments, which are necessary for the creation of more job opportunities for the people.

The amendment to the law should consist in (1) the transfer of the responsibility for payment of maternity benefits from the private employers to the Social Security System (2) the rewording of Section 12(c) so as to punish only the dismissal of women workers by reason of their sex or married status, and by placing women workers on the same level as men in cases of economic lay-offs or dismissals.

In passing these amendments, the present Congress would be doing a real service to our women, because then the prevailing prejudice they have against the employment of women, which most employers wouldn't dare admit openly would be removed, and a new era of real "economic equality" for our women workers would be ushered.

"Theobold, I don't believe you've been listening to a word I've said."

"Oh; I beg your pardon, dear. I thought you were rehearsing your speech for the Woman's Club." — Judge.