AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 3 TITLE 22 GUAM CODE ANNOTATED RELATIVE TO THE GUAM FAMILY AND MEDICAL LEAVE ACT; AND TO ADD A NEW ARTICLE 7 TO CHAPTER 3 TITLE 22 GUAM CODE ANNOTATED RELATIVE TO CHILD SCHOOL-RELATED LEAVE.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 6 is added to Chapter 3, Title 22 of the Guam Code Annotated to read:

"ARTICLE 6

GUAM FAMILY AND MEDICAL LEAVE ACT.

§ 3601. Title.
§ 3602. Eligibility Requirements
§ 3603. Definitions.
§ 3604. Leave Requirements.
§ 3605. Continuation of Benefits
§ 3606. Certification of Leave to Care for Child, Spouse, or Parent"
§ 3601. Title. This Article may be cited as the Guam Family and Medical Leave Act.

§ 3602. Eligibility Requirements.

(a) Except as provided in subparagraph (b) of this section, it shall be an unlawful employment practice for any employer, as defined in §3603(c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,000 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subparagraph shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave.

(1) In any case in which the necessity for leave as defined under § 3603(c)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave as defined under §§ 3603(c)(2) or 3603(c)(3) is foreseeable based on planned medical treatment, the employee:
(A) Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, or health care provider of the parent, son, or daughter of an employee’s spouse, as appropriate; and

(B) Shall provide the employer with not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(b) Notwithstanding subparagraph (a) of this section, it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs fewer than 25 employees in Guam.

§ 3603. Definitions.

For the purposes of this Article 6:

(a) “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

   (1) Under 18 years of age.

   (2) An adult dependent child.

(b) “Employer” means either of the following:

   (1) Any person (including any individual, association, partnership, corporation, company, entity, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an
employee) who directly employs 25 or more persons to perform services for a wage or salary.

(2) The government of Guam, and any governmental entity, department, agency, commission, instrumentality, or public corporation, but excluding the United States Government. The government of Guam and each respective governmental entity, department, agency, commission, instrumentality, or public corporation acting as an employer under this Article shall be responsible for the development of the necessary rules and regulations to ensure that the intent of this Article is followed and implemented pursuant to the Administrative Adjudication Law under Chapter 9, Title 5 Guam Code Annotated, or other applicable law.

(c) “Family care and medical leave” means any of the following:

(1) Leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

(2) Leave to care for a parent, spouse, or child of an employee, or a parent or child of the spouse of an employee, who has a serious health condition.

(3) Leave because of an employee’s own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(d) “Employment in the same or a comparable position” means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.
(e) “FMLA” means the federal Family and Medical Leave Act of 1993 (P.L. 103-3), as amended.

(f) “Health care provider” means any of the following:

(1) A person who is licensed to practice medicine under the provisions of Article 2 (“Physician’s Practice Act”), Chapter 12, Title 10 Guam Code Annotated; or an individual licensed to practice medicine in another state or jurisdiction who directly treats or supervises the treatment of the serious health condition for which leave under this Article is taken.

(2) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(g) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(h) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(1) Inpatient care in a hospital, hospice, or residential health care facility.

(2) Continuing treatment or continuing supervision by a health care provider.

§ 3604. Leave Requirements.

(a) An employer shall not be required to pay an employee for any leave take pursuant to §3602(a), except as required by subparagraph (b) of this section.

(b) An employee taking a leave permitted by §3602(a) may elect, or an employer may require the employee, to substitute, for leave allowed under §3602(a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee’s own serious
health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

§ 3605. Continuation of Benefits.

(a) During any period that an eligible employee takes leave pursuant to §3602(a) or takes leave that qualifies as leave under the FMLA, the employer shall maintain and pay for coverage under a “group health plan,” as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA or under §3602(a) commences, at the level and under the conditions coverage, if any, would have been provided if the employee has continued in employment continuously for the duration of the leave; provided that the employee shall continue to pay for the employee’s share of insurance premiums at the same level that would have applied if the employee has continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a “group health plan” beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subsection for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.
(2) The employee’s failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under §3602(a) or other circumstances beyond the control of the employee.

(b) Any employee taking leave pursuant to §3602(a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under §3605(a), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in §3602(a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at his or her discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, except as otherwise provided in this Article or subparagraph (c) of this section, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

(c) For purposes of pension and retirement plans, an employer shall not be required to make employer or employee contribution payments during the period of unpaid leave, and the unpaid leave period during which plan payments
are not made shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension or retirement plan may continue to make contributions at his or her own expense in accordance with the terms of the plan during the period of the unpaid leave, and the employer may make corresponding employer contributions if required in accordance with the terms of the plan.

(d) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

§ 3606. Certification of Leave to Care for Child, Spouse, or Parent.

(a) An employer may require that an employee’s request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(1) The date on which the serious health condition commenced.
(2) The probable duration of the condition.
(3) An estimate of the amount of time that the health care provider believes the employee needs to care or the individual requiring the care.
(4) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.
(b) Upon expiration of the time estimated by the health care provider in §3606(a)(3), the employer may require the employee to obtain recertification, in accordance with the procedure provided in §3606(a), if additional leave is required.

§ 3607. Certification of Leave for Employee’s Health Condition.

(a) An employer may require that an employee’s request for leave because of the employee’s own serious health condition be supported by a certification issued by his or her health care provider. That certification shall be sufficient if it includes all of the following:

(1) The date on which the serious health condition commenced.

(2) The probable duration of the condition

(3) A statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.

(b) The employer may require that the employee obtain subsequent recertification regarding the employee’s serious health condition on a reasonable basis, in accordance with the procedure provided in §3607(a), if additional leave is required.

(c) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this § 3607, the employer may require, at the employer’s expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph §3607(a).

(d) The second health care provider designated or approved under §3607(c) shall not be employed on a regular basis by the employer.

(e) In any case in which the second opinion described in §3607(c) differs from the opinion in the original certification, the employer may require, at the
employer’s expense, that the employee obtain the opinion of a third health care
provider, designated or approved jointly by the employer and the employee,
concerning the information certified under §3607(a).

(f) The opinion of the third health care provider concerning the information
certified under §3607(a) shall be considered to be final and shall be binding on
the employer and the employee.

(g) As a condition of an employee’s return from leave taken because of the
employee’s own serious health condition, the employer may have a uniformly
applied practice or policy that requires the employee to obtain certification from
his or her health care provider that the employee is able to resume work.
Nothing in this paragraph shall supersede a valid collective bargaining
agreement that governs the return to work of that employee.

§ 3608. Miscellaneous Provisions

(a) It shall be an unlawful employment practice for an employer to refuse to
hire, or to discharge, fine, suspend, expel, or discriminate against, any
individual because of any of the following:

(1) An individual’s exercise of the right to family care and medical leave
provided by §3602(a).

(2) An individual’s giving information or testimony as to his or her own
family care and medical leave, or another person’s family care and
medical leave, in any inquiry or proceeding related to rights guaranteed
under this section.

(b) This Article shall not be construed to require any changes in existing
collective bargaining agreements during the life of the contract.

(d) Leave provided for pursuant to this Article may be taken in one or more
periods. The 12-month period during which 12 workweeks of leave may be
taken under this Article shall run concurrently with the 12-month period under
the FMLA, and shall commence on the date leave taken under the FMLA
commences.
(e) In any case in which both parents entitled to leave under §3602(a) are
employed by the same employer, the employer shall not be required to grant
leave in connection with the birth, adoption, or foster care of child that would
allow the parents family care and medical leave totaling more than the amount
specified in §3602(a).
§ 3609. Reinstatement.
(a) Notwithstanding §3602(a), an employer may refuse to reinstate an
employee returning from leave to the same or a comparable position if all of the
following apply:
(1) The employee is a salaried employee who is among the highest paid
10 percent of the employer’s employees employed on Guam.
(2) The refusal is necessary to prevent substantial and grievous economic
injury to the operations of the employer.
(3) The employer notifies the employee of the intent to refuse
reinstatement at the time the employer determines the refusal is
necessary under §3609(a)(2).
(b) In any case in which the leave has already commenced, the employer
shall give the employee a reasonable opportunity to return to work following
the notice prescribed by §3609(a)(3).
(c) Leave taken by an employee pursuant to this Article shall run
concurrently with leave taken pursuant to the FMLA, or with other non-FMLA
leave taken pursuant to the employer’s leave policies if such leave also qualifies
for leave pursuant to this Article. The aggregate amount of leave taken
pursuant to this Article or the FMLA, or both, shall not exceed 12 workweeks in a 12-month period. The aggregate amount of leave taken pursuant to this Article or other non-FMLA leave taken pursuant to the employer’s leave policies if such leave also qualifies for leave pursuant to this Article, or both, shall not exceed the greater of 12 workweeks in a 12-month period, or the maximum amount allowed for the non-FMLA leave taken pursuant to the employer’s leave policies.

(d) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this Article.”

Section 2. A new Article 7 is added to Chapter 3, Title 22 of the Guam Code Annotated to read:

“ARTICLE 7

LEAVE FOR CHILD SCHOOL-RELATED PURPOSES

§ 3701. Title.

§ 3702. Definitions.

§ 3703. Leave for Child School-Related Purposes.

§ 3701. Title. This Article may be cited as the Child School-Related Leave Act.

§ 3702. Definitions.

(a) For purposes of this Article, the following terms have the following meanings:

(1) “Parent” means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child.

(2) “Child” (plural: “children”) and “employer” shall have the same definitions as set forth in § 3603 of Title 22 Guam Code Annotated.
(3) “Child care provider or school emergency” means that an employee’s child cannot remain in a school or with a child care provider due to one of the following:

(A) The school or child care provider has requested that the child be picked up, or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up from the school or child care provider.

(B) Behavioral or discipline problems.

(C) Closure or unexpected unavailability of the school or child care provider, excluding planned holidays.

(D) A natural disaster, including, but not limited to, fire, earthquake, or flood.

§ 3703. Leave for child school-related purposes.

(a) (1) An employer shall not discharge or in any way discriminate against an employee who is a parent of one or more children of the age to attend preschool, kindergarten, or grades 1 to 12, inclusive, for taking off up to 40 hours each year, for the purpose of either of the following child-related activities:

(A) To find, enroll, or reenroll his or her child in a school or with a licensed child care provider, or to participate in activities of the school or licensed child care provider of his or her child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence of the employee. Time off pursuant to this subparagraph shall not exceed eight (8) hours in any calendar month of the year.
(B) To address a child care provider or school emergency, if the employee gives notice to the employer.

(2) If more than one parent of a child is employed by the same employer at the same worksite, the entitlement under paragraph (1) of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the employer, such that another parent may take a planned absence simultaneously as to that same child under the conditions described in paragraph (1) only if he or she obtains the employer’s approval for the requested time off.

(b) (1) The employee shall utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section, unless otherwise provided by a collective bargaining agreement. An employee also may utilize time off without pay for this purpose, to the extent made available by his or her employer.

(2) Notwithstanding paragraph (1), in the event that all permanent, full-time employees of an employer are accorded vacation during the same period of time in the calendar year, an employee of that employer may not utilize that accrued vacation benefit at any other time for purposes of the planned absence authorized by this section.

(c) The employee, if requested by the employer, shall provide documentation from the school or licensed child care provider as proof that he or she engaged in child-related activities permitted in subdivision (a) on a specific date and at a particular time. For purposes of this subdivision, “documentation” means whatever written verification of parental participation the school or licensed child care provider deems appropriate and reasonable.
Section 3. Effective Date. The provisions of this Act shall become effective upon enactment.

Section 4. Severability. *If* any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.