COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

ANN KOCHIS,
Complainant,

v. DOCKET NO. 02-SEM-04100

MASSACHUSETTS DEPARTMENT
OF SOCIAL SERVICES,
Respondent.

ORDER OF THE FULL COMMMISSION

This matter is before us for review pursuant to 804 CMR 1.20(3)(b). The Complainant, Ann Kochis ("Kochis"), filed the instant complaint with the Commission on December 5, 2002. The Complainant alleged that the Respondent, Massachusetts Department of Social Services ("DSS"), denied her certain benefits related to her maternity leave, thereby subjecting her to unequal terms, conditions and privileges of employment because of her gender in violation of G.L. c. 151B, §§ 4(1) and (11A), and the Massachusetts Maternity Leave Act, G.L. c. 149, §105D, ("MMLA"). Respondent asserts that it granted Complainant maternity leave benefits consistent with the requirements of the MMLA and its collective bargaining agreement and in compliance with the law. [1]

I. Procedural Background

On December 18, 2006, the Investigating Commissioner certified two questions of law under the Massachusetts Maternity Leave Act for hearing on stipulated facts. The Hearing Officer concluded that a hearing was not required to resolve what she

---

[1] The Complainant abandoned her claim under G.L. c. 151B, § 4(1).

determined to be significant questions of law and policy, thus certifying the questions directly to the Full Commission for resolution, pursuant to 804 CMR 1.20(3) (b).[2]

The questions of law presented are:

1. "Whether the Massachusetts Maternity Leave Act, (G.L. c.149, §105D), requires an employer to provide an employee who is giving birth to twins double the length of maternity leave".

2. "Whether the Massachusetts Maternity Leave Act, (G.L. c.149, §105D), requires an employer who provides gratuitous paid benefits to employees on family leave pursuant to the terms of a negotiated collective bargaining unit agreement to provide double the allocation of such paid benefits for an employee who gives birth to twins".

II. Undisputed Facts

In 2002, Complainant, Ann Kochis, an employee of Respondent, Department of Social Services and a member of SEIU, Local 509, was pregnant with twins. On December 12, 2001, Kochis requested twenty seven (27) weeks of family leave and informed her employer of her anticipated due date of February 24, 2003. Kochis' request for family leave was granted and she, in fact, took twenty seven (27) weeks of leave. Under the Collective Bargaining Agreement (CBA) between DSS and Kochis' union SEIU, a bargaining unit employee who takes family leave is allowed ten days of paid leave. Also under the CBA, an employee who takes family leave in conjunction with the birth of a child is allowed to accrue sick and vacation leave for the first eight weeks of such leave. Neither of these benefits is required by the MMLA. G.L. c.149, §105D.

[2] The parties also submitted a Joint Request for a Ruling from the Full Commission.

Pursuant to the CBA, DSS granted Kochis ten days of paid leave and allowed her to accrue sick and vacation leave for the first eight weeks of her family leave.

Kochis contends, however, that under the MMLA she is entitled to double benefits for the birth of twins and therefore, DSS is required to double the benefits due her under the CBA. Kochis requested and claims that consistent with her reading of the MMLA, she is entitled to twenty (20) days of paid leave and accrual of sick and vacation leave benefits for the first sixteen (16) weeks of her maternity leave. DSS denied her request, arguing that neither the CBA nor the MMLA mandate such a result.

For reasons discussed below, the Full Commission need not reach the first certified question, and as to the second, concludes that whether Kochis is entitled to additional benefits under the CBA involves a question which is outside the scope of the protections afforded under the MMLA, and we therefore do not answer it.

III. Analysis

The first certified question is whether the MMLA requires an employer to provide an employee who gives birth to twins sixteen rather than eight weeks of maternity leave. The statute guarantees eight weeks of maternity leave to a female employee "for the purpose of giving birth or for adopting a child…" G.L. c.149, §105D. The statute and MCAD regulations are silent on the issue of whether a female employee is entitled to multiple benefits for multiple births at one time. However, the issue is addressed in the Question and Answer section of the Commission's Guidelines on the MMLA:

> **Question 6:** Employee gives birth to twins. She demands 16 weeks of leave, on the grounds that she has given birth twice. Must Employer give her the 16 weeks?
> **Answer:** Yes. An employee who gives birth to twins has given birth two times and is entitled to eight week of leave for each child.

§ XI, Hypothetical Questions and Answers under the MMLA.

This hypothetical situation addressed in the Commission's MMLA Guidelines suggests that a woman who gives birth to twins is entitled to double benefits under the MMLA. These Guidelines represent the Commission's interpretation of the MMLA. See, Global Naps v. Martha Awiszus, et. al., 457 Mass. 489, 494-495 (2010). While MCAD Guidelines are entitled to substantial deference, they do not carry the force of law. Id. This particular Guideline has not been reviewed by the state's appellate courts, nor has a decision on the legal issue it presents been rendered. Notwithstanding, assuming that the Guideline is a correct statement of the law, and that Kochis was entitled to sixteen weeks of leave, we need not reach the issue in this case, because Kochis was granted twenty seven weeks of maternity leave, more than double the eight weeks of leave she claims she is entitled to under the MMLA. DSS, therefore, has complied with the statutory requirements of the MMLA, whether Kochis is entitled to double the MMLA leave benefits for giving birth to twins or not. Resolution of this matter does not require that the Commission decide at this time whether the MMLA requires an employer to provide sixteen weeks of maternity leave, rather than eight weeks to an employee who gives birth to twins.

The second certified question is whether DSS, which gratuitously provides greater benefits under the CBA to employees on family leave than required by the MMLA, must, consistent with the MMLA, provide double benefits when the employee gives birth to twins. Kochis argues that because the MCAD Guideline provide for double leave under the MMLA for the birth of twins, DSS is similarly required to double her paid leave and accrual of vacation and sick leave benefits granted by the CBA. Disputes arising from a

CBA's provision of benefits which exceed the requirements of the MMLA, however, are not within the "purview" of the MMLA, and consequently, "not afforded the protections covered by the statute." Global Naps, 457 Mass. at 497. The MMLA specifically states that it is not intended to modify, add to, or otherwise interfere with "gratuitous" family leave benefits agreed to between an employer and a union: "[n]othing in this section shall be construed to affect any bargaining agreement or company policy which provides for greater or additional benefits than those required under this section." G.L. c.149, §105D. Paid leave and accrual of sick and vacation leave for the first eight weeks of leave, are benefits provided under the CBA, not by the MMLA.[3] Therefore, "[t]hese additional benefits are separate from the protections afforded under the MMLA", and not actionable under that statute. Id. at 498. Kochis' recourse is elsewhere, under the dispute mechanism(s) set forth in her collective bargaining agreement or for breach of contract or other common law court action. Id.[4]

---

[3] G.L. c. 149, §105D provides that "[s]aid maternity leave may be with or without pay at the discretion of the employee". It also provides, "[s]uch maternity leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave, and any other advantages or rights of her employment incident to her employment position; provided, however, that such maternity leave shall not be included, when applicable, in the computation of such benefits, rights, and advantages; and provided, further, that the employer need not provide for the cost of any benefits, plans, or programs during the period of maternity leave unless such employer so provides for all employees on leave of absence. Nothing in this section shall be construed to affect any bargaining agreement or company policy which provides for greater or additional benefits than those required under this section".

[4] Discrimination because of pregnancy is also a form of sex discrimination under G.L. c. 151B, § (1) and 11(A). Kochis abandoned her claim for sex discrimination and therefore, we do not address this separate basis of liability.

For the reasons stated above, we hereby order that the complaint in this matter be dismissed.

SO ORDERED, this 13th day of September , 2010

_____
MALCOLM MEDLEY
Chairman

_____
SUNILA THOMAS-GEORGE,
Commissioner