Machado Meyer

LABOR AND EMPLOYMENT

THE TREATMENT THAT MUST BE ADOPTED BY COMPANIES WITH RESPECT TO THE ADOPTION OF CHILDREN BY HOMOAFFECTIVE COUPLES AND HOW THE BRAZILIAN SOCIAL SECURITY SERVICE HAS BEEN HANDLING THE ISSUE

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Cristiane Masuno and André Graça The traditional concept of a family has undergone, over time, public and private transformations as a result of the interest by and the new reorganization of society. In addition to the traditional family, formed by the marriage between a man and a woman, new customs and values have been introduced...

"The traditional concept of a family has undergone, over time, public and private transformations as a result of the interest by and the new reorganization of society. In addition to the traditional family, formed by the marriage between a man and a woman, new customs and values have been introduced.

The valuing of human rights, the globalization, the respect for the human being, in view of the dignity and rights inherent to one's personality, require the recognition of new family arrangements in the form of stable unions, cohabitation, single parenthood, homoaffective relationships, and intersexual states, respecting the intrinsic differences that make up human beings." [1]

Considering what has been said by Dr. Adriana Maluf (2010, p.5) and in view of the dynamism that characterizes social relations the social relations dynamics and the advancement of the concepts, ideals and rules of social conduct, the legislation, from time to time, has to be changed in order to contemplate the new reality. An example of these changes was that, starting with Resolution No. 175/2013, the civil registry offices began to formalize homoaffective marriage and prohibited competent authorities from refusing a marriage license and/or its celebration as well as refusing to convert a common-law marriage into marriage between same gender individuals.

As homoaffective couples have been legally recognized as a family, certain rights were also extended to them, such as, for example, the possibility of adoption.

In 2015, Supreme Court Justice Carmen Lúcia issued a decision ensuring to homosexual couples the possibility of adopting children, on the grounds that a decision to the contrary would violate the Federal Constitution, which values the equality of all.

Since the possibility of adopting children is guaranteed to homoaffective couples, another question is then raised: are the guarantees provided for in labor and social security rules in adoption cases equally applicable?

Law No. 12,873 of 2013 changed labor and social security rules so as to grant paid maternity leave to women or men in the case of adoption. This Law changed the rules in order to adapt them to new forms of family entities, thus allowing the extension of the right to paid maternity leave to individuals from families formed by homoaffective l couples.

These changes also extended to adoptive parents the benefit of paid leave of equal duration, regardless of the age of the adopted child.

The benefit of paid maternity leave, for a period of 120 days, will be paid by the employer or by the Social Security Service to the adoptive father or mother, regardless of sexual orientation. The benefit will be due to any of the adoptive parents, without order of preference, and will be paid for 120 days. It is due to only one of the adoptive parents, without any restriction for homoaffective couples.

The Consolidated Labor Laws were amended so that the maternity leave of 120 days be granted to any man or woman who adopts or obtains legal custody, whether or not the employee is in a heterosexual or homoaffective relationship.

The question posed above should be answered in the affirmative: when a child is adopted or legal custody is granted, the adoptive parents are ensured the right to 120 days of maternity leave and the receipt of maternity pay, regardless of the couple's sexual orientation.

[1] MALUF, Adriana Caldas do Rego Freitas Dabus. Novas modalidades de família na pós-modernidade. Tese (Doutorado)- Faculdade de Direito da USP. São Paulo, Apr. 16, 2010. Available at: <http://www.teses.usp.br/teses/disponiveis/2/2131/tde-31012011-154418/pt-br.php> Accessed 18 december 2016.