

# CLIENT NEWS BRIEF

## Exhaustion of Leave Under Pregnancy Leave Laws Does Not Preclude An Employee's Right To Additional Leave Under Disability Laws

In *Sanchez v. Swissport Inc.* (2013) 21 Cal.App.4th 1331, the California Court of Appeal considered a case of first impression regarding the interplay between pregnancy disability leave under the state Pregnancy Disability Leave Law (PDLL) and leave that may be granted to an employee as a reasonable accommodation pursuant to the California Fair Employment and Housing Act (FEHA).<sup>1</sup> Specifically, the Court held that an employee who has exhausted her four-month entitlement to leave under the PDLL may require an employer to consider her request for additional leave as a disability accommodation under FEHA.

In this case, Ana Sanchez was employed by Swissport, Inc. when she became pregnant. One month into the pregnancy, she was diagnosed with a high risk pregnancy and was placed on bed rest. Swissport authorized Ms. Sanchez to take a temporary leave of absence of approximately nineteen weeks, during which she exhausted her accrued vacation time and the four months of PDLL leave. According to Ms. Sanchez, Swissport knew that she needed a leave of absence through her due date, and that she would have returned to work after giving birth. She contended that she would need only minimal work accommodations upon her return. When Ms. Sanchez's temporary leave expired in her seventh month of pregnancy, Swissport summarily determined that she was unable to perform the essential job functions of her position and abruptly terminated Ms. Sanchez's employment.

Ms. Sanchez later sued Swissport under various causes of action, including the "failure to accommodate and engage in a timely, good faith interactive process." The lawsuit alleged that Swissport should have considered her request for an extended leave of absence until she gave birth, which would not have created an undue hardship for Swissport. In its defense, Swissport asserted that FEHA did not obligate it to consider another leave of absence for Ms. Sanchez because it had afforded her with all of the leave mandated by the PDLL, which necessarily satisfied all of its FEHA obligations to accommodate Ms. Sanchez's disability. Agreeing with Swissport, the trial court dismissed the lawsuit. Ms. Sanchez appealed.

The Court of Appeal overturned the trial court's decision, concluding that Swissport's compliance with the PDLL did *not* equate to its compliance with all other requirements of FEHA. The Court said that, under the PDLL, an employee disabled by pregnancy is entitled to up to four months of disability leave regardless of any hardship to her employer. (Gov. Code § 12945(a).) In addition, FEHA entitles a woman disabled by pregnancy to the protections afforded any other disabled employee, which includes a

March 2013  
Number 14



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<sup>1</sup> Human Resource professionals should be mindful that a leave of absence may also be considered a reasonable disability accommodation under the federal Americans with Disabilities Act (ADA).

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reasonable accommodation that does not impose an undue hardship to the employer. (Gov. Code § 12940). The Court emphasized that the plain language of the PDLL is clear and provides remedies that “augment, rather than supplant those set forth elsewhere in the FEHA,” and that the four months PDLL leave is an entitlement “in addition to” any other entitlements under the FEHA. Notably, the Court also indicated in a footnote that its holding was further supported by the recently promulgated FEHA Disability Accommodations Regulations.<sup>2</sup>

Under *Sanchez v. Swissport*, an employer must engage in an ADA/FEHA interactive process after an employee’s statutory PDLL leave has been exhausted in order to determine whether a reasonable accommodation is warranted for the employee’s continuing pregnancy, pregnancy-related conditions, and/or childbirth. Accommodations should be considered on a case-by-case basis and, in some circumstances, may include an extended leave of absence.

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<sup>2</sup> (Cal. Code Regs., tit. 2, § 7291.14 (eff. Dec. 30, 2012) (stating that “(t)he right to take pregnancy disability leave under Government Code section 12945 and these regulations is separate and distinct from the right to take a leave of absence as a form of reasonable accommodation under Government Code section 12940”).)