

CLIENT NEWS BRIEF

FEHC Delivers New Pregnancy Disability Leave Regulations

The Fair Employment and Housing Commission (FEHC) has adopted new pregnancy disability leave regulations (PDL Regulations) which could affect you as an employer. The revised PDL Regulations include significant additions, deletions, and modifications. The following provides a brief overview of the most substantive changes.

Four Months Defined. The revised PDL Regulations provide clarification regarding the four months of leave an employee is entitled to receive due to disability because of "pregnancy".

- The four months applies to each pregnancy, not to a calendar or work year.
- The four months must be equal to the amount of time the employee would normally work within four calendar months following the commencement date of her leave (one-third of a year equaling 17.3 weeks or 122 days).
- The leave does not have to be continuous. An employee may take the leave on an "intermittent" basis. If any employee takes intermittent leave, the employer must account for that leave time in increments of no more than one hour.
- If an employer has a policy which provides greater benefits, including leave time in excess of four months, for similarly situated employees with other temporary disabilities, then the employer must apply such policy to employees temporarily disabled by pregnancy and grant them the extended benefits.

Disabled by Pregnancy Defined. The definition of "disabled by pregnancy" has been expanded to include a non-exclusive list of conditions, including "morning sickness" or the need to take time off for: prenatal or postnatal care; bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression; childbirth; loss or end of pregnancy; or recovery from childbirth, loss or end of pregnancy.

Reasonable Accommodations Must be Provided. Employers are required to provide reasonable accommodations for a pregnant employee, if requested. A reasonable accommodation is any change in the work environment or in the way a job is customarily done that is effective in enabling an employee to perform the essential functions of the job. Granting reasonable accommodations does not eliminate the employee's right to take four months of leave. However, if a reduced work schedule is provided, the employer may apply the reduction to the four months as intermittent leave.

Medical Certification Required. Employers may require written medical certification from the employee as a condition of granting reasonable accommodation, a transfer to a less strenuous or hazardous position, or pregnancy disability leave. The PDL Regulations include a form that may be completed by the employee's healthcare provider to certify the employee's medical need for the requested transfer, reasonable accommodation or pregnancy disability leave.

April 2013
Number 20



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Right of Reinstatement. An employee who takes leave is guaranteed a right to return to the same position, or, under certain circumstances, a comparable position. An employer must provide, upon the request of an employee, a written guarantee of reinstatement. In addition to these requirements, the revised PDL Regulations prevent the employer from arguing a “hardship” as a basis for denying reinstatement.

Notice Requirements. Employers are required to provide employees with advanced notice of their rights and obligations, as well as the obligations of the employer. This notice:

- Must be delivered to any employee who has informed the employer of her pregnancy, or has made inquiries regarding reasonable accommodations, transfers or pregnancy disability leave.
- Must be posted electronically, such as on the webpage of the employer, or in a reasonably conspicuous place where employees congregate
- Must be in the employee handbook if the employer maintains such a document.

Insurance Coverage. Employers are required to maintain and pay for health care coverage for an eligible female employee who takes pregnancy disability leave, at the level of coverage that she would have been provided if she was working.

Perceived Pregnancy. The new PDL Regulations include protections against harassment and discrimination based on “perceived pregnancy”.

These new regulations provide many additional protections to a pregnant employee and clarify previously uncertain terms. Employers need to evaluate each employee situation on a case by case basis. It is advisable to review your policies and employee manuals to ensure conformity with the new regulations.

If you have any questions regarding these new regulations, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).