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YOUR LEGAL RIGHTS

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Pregnancy and your rights at work

It has been estimated that more than 80 percent of all married women experience at least one pregnancy, and an increasing number of unmarried women are also deciding to become pregnant. Therefore, as more women permanently enter the labor force, the effect of pregnancy on employment rights and benefits has become a major issue for workers. In 1979, the Pregnancy Discrimination Act, an amendment to Title VII of the 1964 Civil Rights Act, went into effect. In recent years major changes in state law have also occurred. While both State and Federal law provide significant protection to pregnant workers, as with many other areas in employment, the law is only a complement to, not a substitute for, a strong collective bargaining agreement.

The Law Generally

Title VII of the 1964 Civil Rights Act makes it unlawful to discriminate against employees on the basis of sex. Without an overriding justification, an employer's treatment of pregnant workers differently from employees who are similarly able or unable to work amounts to sex discrimination and is a violation of law. For instance, an employer cannot refuse to hire a woman because she is pregnant. Nor can a woman be fired or denied a promotion because of pregnancy. And an employer cannot require that she take a leave of absence as long as she is able to work, unless there are very convincing job-related reasons.

In short, the law requires that pregnant workers be treated the same as other employees. Thus, any leave or benefit rights guaranteed workers in a collective bargaining agreement must be extended to employees who are pregnant. For purposes of illustration, the discussion below will utilize the current agreement between IBEW 1245 and PG&E to demonstrate the impact of the law on *Utility Reporter* readers.

Sick Leave, Disability, and Health Benefits

Under Federal law if an employer grants leaves of absence, whether paid or unpaid, or any kind of sick leave or disability benefits to temporarily disabled employees, the employer must also grant its pregnant employees similar leaves or benefits for pregnancy-related disabilities. Long-term disabilities that may arise from pregnancy must also be treated like other long-term disabilities.

California Government Code §12945 provides that an employer must grant a requested leave of absence for a pregnancy or childbirth-related disability, if necessary, for "a reasonable time," but in no event longer than four months. Reasonable time means the period of disability caused by pregnancy or childbirth. An employee may use accrued vacation time as part of this leave.

What does all this mean for employees covered by the PG&E contracts? First, accrued, paid sick leave is a right under the agreements. Since an arbitration decision in 1975, PG&E employees have been able to use their sick leave for pregnancy leave. The women in that case were given six months leaves of absence and one used her vacation time, after the Company refused the employees use of their accumulated sick leave. The arbitrator decided that the contract incorporated the Equal Employment Opportunity Commission (EEOC) guidelines established under Title VII. Thus, because the law demanded equality of treatment, the collective bargaining agreement required that the Company allow the use of sick leave for pregnancy.

Second, the collective bargaining agreements provide that unpaid leave shall be granted for "urgent or substantial personal reasons." Under State law and PG&E policy, unpaid leaves of absence will be granted to pregnant employees when necessary.

For workers covered under state disability insurance and who provide doctor's certification, the state will pay a percentage of the employee's income in benefits for four weeks before, and six weeks after, a normal birth. Further, if the mother wishes to nurse and her job in some way disables her breasts, then she is eligible for disability benefits. The law requires private disability plans to at least equal state benefits. Thus, PG&E must pay benefits under its plan for the same period of time. The Company has agreed that it will accept a doctor's certification that a pregnant employee (or new mother) is disabled for purposes of sick leave and/or disability benefits.

California Unemployment Insurance Code § 2626 states that complications of pregnancy or childbirth which prevent an employee from working may render that employee eligible for disability benefits up to the maximum period allowed. Check with your doctor and the State Employment Development Department if you believe you are eligible. And if you are covered by a PG&E plan, the law would require the plan to pay benefits for the maximum period for continued pregnancy-related disabilities just as it would pay for any other long-term disability.

Under EEOC guidelines any health insurance plan an employer offers to its employees must cover pregnancy-related medical conditions. But spouses of male employees need not be covered at the same rate as female employees. Until recently the EEOC guidelines did require that the same level of coverage for medical expenses paid under the plan generally to dependent spouses be extended to pregnancy-related expenses for dependent spouses. In January of this year, however, a U.S. District Court in Virginia overruled this aspect of the guidelines. Until Congress or a higher court takes a different position, an employer may not have to provide pregnancy-related disability benefits for spouses, even if it provides spouses with other types of disability benefits. PG&E's medical plans do provide maternity benefits for dependent spouses, however.

Light Work

Some employers allow temporarily disabled workers to take on reduced tasks during the period of disability. Although the law does not require the employer to provide alternative work for pregnant employees, once again, if the employer regularly provides light duty for other similarly disabled workers, it must be provided to pregnant employees.

The collective bargaining agreements with PG&E state that the Company shall, if practical to do so, offer disabled workers "light work" at the rate of pay for that work. This provision gives the Company discretion to deny such work but it would be a violation of the law for the Company to regularly offer "light work" to other employees unable to do their full job, but regularly deny "light work" to pregnant employees doing the same type of job. In the past, pregnant employees in the field at PG&E have been given office work when they could no longer fulfill their other job duties. Pregnant employees might request this as an option to leaving work entirely if it is practical for them and the Company.

Returning to Work

Just as an employer cannot generally require a leave of absence for a pregnant employee, the employer cannot require that the new mother remain on a leave for a period of time following the birth. If you are able to work, you must be allowed to return. PG&E "expects" mothers who have normal births to return to work in six weeks: that is, when standard disability payments would normally be exhausted.

Under the law, if an employer provides accrued seniority for workers on leave or disability, then similar seniority must be offered to new mothers returning to work. In the collective bargaining agreements with PG&E, neither authorizes leaves of absence nor sick leave or disability interrupt an employee's length of service with the Company. The same rules apply to returning mothers who are regular employees.

Child Care

At present, the job rights of parents who must care for their children is uncertain. But just as with other aspects of the law, a new mother (and maybe even a father) may be entitled to time off for child care, if the employer regularly grants extended leaves for other sorts of personal, non-medical reasons. Because this area of the law is uncertain, though, employees desiring child care leave should first discuss this with their union and employer.

Several years ago the California Supreme Court ruled that an unemployed worker who is available for work, but refuses the offer of a job because he or she must provide child care, is eligible for unemployment benefits. The unemployed person must demonstrate, though, that no reasonable alternatives exist to personally providing child care.

Conclusion

This brief review of the law should make clear that while pregnant employees must be treated equally with other employees, the best protection for pregnant workers will continue to be strong collective bargaining agreements which provide good benefits for all employees. If you have questions or problems concerning your rights, be sure to consult your union representative.