



PREGNANCY, DISABILITY AND **YOUR RIGHTS**

A WHITE PAPER PRESENTED BY

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PREGNANCY, DISABILITY AND YOUR RIGHTS

California's employment laws offer broad protections for women with pregnancy-related disabilities, and those protections are becoming even broader as the laws change.

In 2009, a woman named Ana G. Fuentes Sanchez was working as a cleaning agent for a company called Swissport when her doctor told her she needed to be on bed rest until she delivered to protect her own health and the health of her unborn child.

She was still early in her pregnancy and the bed rest requirement meant she would not be able to perform her job for months. She asked for a leave of absence. Swissport granted it. She received four

months plus another three weeks of vacation and sick time that she'd accrued.

When that leave time was up, Sanchez was still months from her delivery date. She needed more time to remain on bed rest. However, Swissport wouldn't allow it. Without even a discussion, the company fired her. Ms. Sanchez sued. Her lawsuit claimed that Swissport had discriminated against her based on her pregnancy and pregnancy-related disability, among other things. The case –

Sanchez v. Swissport – went through the California court system until it reached the 2nd District Court of Appeal.¹

The problem was that Ms. Sanchez and her employer disagreed about how the law protected her. Both parties knew that multiple laws protect pregnant women and that Swissport was required to give Ms. Sanchez leave. However, they disagreed on how the laws intersected.

The court looked at the relationship between two laws: the California Fair Employment and Housing Act (FEHA) and the Pregnancy Disability Leave Law (PDL), which was contained within the broader provisions of the FEHA. The FEHA prevents employers from discriminating against employees based on things like sex, physical disabilities and medical conditions. It also requires employers to provide reasonable accommodations for their

employees' known disabilities, unless doing so would cause the employer undue hardship. The PDL was more specific: It required employers to give employees disabled by pregnancy up to four months of leave.

Swissport claimed that PDL caps pregnancy-disability leave to four months. The company never disputed that it fired Ms. Sanchez after four months of leave; it simply argued that it had the right to.

Ms. Sanchez and the Court of Appeals disagreed. The PDL's requirements, the court said, were in addition to the FEHA. After the four months of leave guaranteed by the PDL had ended, Swissport was still required to provide Ms. Sanchez with a reasonable accommodation (i.e., more leave time) for her pregnancy-related disability under the FEHA, unless doing so would be an undue hardship.

What's the lesson? California has very broad protections for women who suffer complications that result in pregnancy-related disability. The laws that prevent pregnancy discrimination often intersect with pregnancy disability leave regulations in ways that can be challenging to understand. In some ways, the law is still developing as courts, attorneys, employers and employees work to interpret it. But, overall, California employees – especially pregnant women, their partners and growing families – are more protected than ever before.

This is critically important because mandatory bed rest has become increasingly common for women experiencing high-risk pregnancies, and thousands of women each year find themselves in exactly Ms. Sanchez's position.

According to information published in the American Journal of Obstetrics & Gynecology, as many as 95 percent of obstetricians recommend activity restriction or bed rest in some form. Physicians order bed rest in as many as 20 percent of pregnancies, which affects approximately 800,000 women each year.²

There are many reasons a health care provider may order bed rest or other restrictions, such as limits on the time spent standing or the amount a woman may lift. These range from preeclampsia to gestational diabetes, a history of miscarriage or stillbirth, slow fetal growth or possible preterm delivery of multiples. Each situation is unique, and many different circumstances afford women legal protections.



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Your legal protections aren't just limited to time for bed rest. The law also protects women who experience severe morning sickness, difficult childbirth and other complications related to pregnancy, including disabling postpartum depression.

The Law Has Changed, And It's Doing More To Protect Pregnant Women

In December 2012, existing legal protections for pregnant women and their families became even broader as the law changed. The California Fair Employment and Housing Commission adopted new and amended regulations that addressed employees' pregnancy rights under the FEHA. Those regulations can be found at Title 2, California Code of Regulations (CCR), Subchapter 6, Sections 7291.2 to 7291.18. They outline California's Pregnancy Disability Leave law. Pregnancy Disability Leave (PDL)

In California, an employee may now take up to four months of job-protected time off for a pregnancy-related condition under pregnancy disability leave (PDL).³ However, employers are also required to

treat employees on PDL the same as employees on other types of disability leave in terms and conditions of employment. That means that an employee may take longer than four months if her employer provides more than four months of leave as part of its own policies for temporary disabilities or in a union contract, or as a reasonable accommodation for a disability.

Employees are not required to take all of that PDL time off at once. The law allows for something called intermittent leave for pregnancy-related disabilities. This kind of leave might be a few hours, days, weeks or months at a time, as needed.

For example, you may take a few hours off each day to cope with severe morning sickness. You may also take leave to attend doctor's appointments or to receive other prenatal care.

If you do need a large block of time off for a serious pregnancy-related disability, like one that requires bed rest, remember that you're not limited to four months of PDL. In addition to your PDL time, your employer is required to make a reasonable accommodation for your pregnancy-related disability. Several courts have said that time off for bed rest is a reasonable accommodation.⁴

Pregnancy-Related Accommodations

Under the law, employers are required to do more than just offer time off for PDL; an employer must approve your request for reasonable accommodation if your request is based on your health care provider's advice and the request is medically advisable.

But what does *reasonable* mean? The word carries a special legal significance. Judges determine whether the requested accommodation is reasonable by looking at a series of factors on a case-by-case basis. These factors include your medical needs, the length of time for which you need the accommodation and your employer's legally permissible past and current practices, as well as other factors.⁵

Reasonable accommodations can take many forms, including modified duties, sitting in a chair instead of standing, carrying a water bottle or being able to take frequent bathroom breaks. In some cases, a reasonable accommodation can mean being transferred from one department to another, safer department.

WHAT IS PREGNANCY-RELATED DISABILITY?

The law has a very specific definition. Under the CCR §7291.2(f), a woman is disabled by pregnancy if she, in the opinion of her health care provider, cannot perform any one or more of the essential functions of her job because of her pregnancy or cannot perform any one of her job functions without undue risk to herself, to her pregnancy or to other people.

You should know this one important fact:

When your employer makes a reasonable accommodation that does not involve you working less or taking leave – an accommodation like changing your work duties to something safer – the law says that it should not affect your separate right to take up to four months of pregnancy disability leave.⁶

Bonding Leave: Your Right To Time With Your New Baby

In California, eligible mothers and their partners can also take up to 12 weeks of bonding leave

under a separate law called the California Family Rights Act (CFRA), which is our state's version of the Family and Medical Leave Act. The law offers protections in many different situations, but the one most common for new parents is leave from work to bond with a newborn baby at any time before the baby turns 1 year old.

Your rights to take disability leave under the PDL or to seek reasonable accommodations under the FEHA do not limit your right to bond with your baby. Even if you have been disabled during – or after – your pregnancy, you are still entitled to 12 weeks of unpaid, job-protected leave to bond with your child within one year of the birth.

Does The Law Protect Me?

Know that not all employers must comply with the regulations that protect pregnant women and growing families. Most employers are required to follow the regulations, but some are not. So, how can you determine whether you are protected by the Pregnancy Disability Leave provisions under the FEHA or by the CFRA?

- If your employer has more than five employees, you are eligible for pregnancy disability leave under the FEHA. You need not have worked for a minimum period of time or minimum hours to be protected by the FEHA.
- If your employer has more than 50 employees within a 75-mile radius of your workplace, you have worked for your employer for at least one year, and you have worked for more than 1,250 hours this year (an average of 40 hours a week), you are protected by the CFRA.

Pregnancy Disability and Bonding Leave for California Mothers



The law is complex, and its application depends on the facts of the situation. The only way to know for sure whether you are protected by the law is to seek legal counsel.

At our law office, we have advocated for employees in hundreds of discrimination-related cases. Experience has taught us that employers often misinterpret the law when making workplace decisions and their mistakes can have permanent, negative consequences for employees.

California employees who suffer complications during pregnancy need to know that the law offers broad protections. Like Ms. Sanchez, you should seek a lawyer's help and fight back when those protections are denied.

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