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New California Pregnancy Disability Leave Rules Put to the Test

Effective December 30, 2012, California implemented various changes to its Pregnancy Disability Leave Law (PDLL), which are beginning to be put to the test.

The new regulations expand when an employee may be considered "disabled" due to pregnancy, child birth, or a related medical condition, to include: prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, and any related medical condition.

Other changes include the duty to accommodate standard, which is now based on a "medically advisable" standard rather than a "medically necessary" standard. This change has created some confusion among employers, considering that the "medically necessary" standard is used by employers in accommodating other types of disabilities.

A woman who takes pregnancy disability leave is also entitled to take leave under the California Family Rights Act (CFRA), if eligible. In other words, a woman who is eligible for CFRA leave could take up to four months of pregnancy disability leave and could also be entitled to 12 weeks of CFRA leave to bond with the baby or for another CFRA-qualifying event.

Further, in a recent case, a California appeals court held that the new regulations provide employees with the right to take pregnancy disability leave in addition to their right to take leave under the CFRA *and* the Fair Employment and Housing Act (FEHA).

In Sanchez v. Swissport, Inc., the plaintiff was put on bed rest due to a high-risk pregnancy. The plaintiff was subsequently terminated after seven months, once her leave under the PDLL and the CFRA ran out, even though she had actually not yet given birth. The lower court ruled in favor of the employer, but the appellate court reversed, reasoning that the PDLL makes clear that "its remedies are 'in addition to' those governing pregnancy, childbirth, and pregnancy-related medical conditions set forth in the FEHA" and that the purpose of the PDLL is to provide women disabled by pregnancy the protections afforded to any other disabled employee. Otherwise, the court noted that "the PDLL would serve to cap the maximum leave a pregnancy-disabled employee could take at four months, regardless of whether any additional leave constituted a reasonable accommodation that would impose no undue hardship on the employer."

Should you have any questions concerning pregnancy leave or other accommodations under California law or otherwise, please feel free to contact Brad Harvey, Stacie Caraway, Jennifer Terry, or any other member of our Labor and Employment Law Practice Group.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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