

Four-Month Leave for California Pregnancy Disability is Beginning, Not End, of Employer's Obligation

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An employee who was disabled as a result of her pregnancy and had exhausted all leave under California Pregnancy Disability Leave Law ("PDLL") and the California Family Rights Act ("CFRA") was entitled to additional leave as a reasonable accommodation under the California Fair Employment and Housing Act ("FEHA"), the California Court of Appeal has ruled in a case of first impression. *Sanchez v. Swissport, Inc.*, No. B237761 (Cal. Ct. App. Feb. 21, 2013).

Background

Ana G. Fuentes Sanchez worked as a cleaning agent for Swissport, Inc. when she became pregnant. Shortly thereafter, Sanchez was diagnosed with a high-risk pregnancy and required bed rest for the remainder of her pregnancy. Swissport granted Sanchez 19 weeks of leave, consisting of leave under the California Pregnancy Disability Leave Law, California Family Rights Act, and accrued vacation time. On July 14, 2009, Swissport terminated Sanchez from employment. She had exhausted all available leave, was still on bed rest, and was unable to perform the essential functions of her position.

Sanchez sued Swissport for failing to accommodate her pregnancy-related disability in violation of the California Fair Employment and Housing Act. The company asked the trial court to dismiss the case, arguing, "The pregnancy disability statutes and regulations are clear: pregnancy disability leave is capped at four months. Sanchez was permitted all of the pregnancy leave to which she was entitled, and her employment was terminated only when that leave expired and she was not able to return to work." The trial court agreed with the company and dismissed the case. Sanchez appealed.

Applicable Law

The PDLL provides that "[i]n addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940," an employer must "allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work ." Cal. Gov't Code § 12945(a)(1).

The FEHA prohibits an employer from discriminating on the basis of sex, physical disability, or medical condition, among other things. Cal. Gov't Code § 12940(a). "Sex" is defined to include "[p]regnancy or medical conditions related to pregnancy." Cal. Gov't Code § 12926(q)(1). The FEHA also requires an employer to provide reasonable accommodation for an employee's known disability, unless the employer demonstrates that the accommodation would produce "undue hardship... to its operation." Cal. Gov't Code § 12940(m).

No Cap on Leave

Swissport argued that Sanchez was entitled to a maximum leave period of four months under the PDLL, and once that period is used up, she was entitled to no other protection under the FEHA. The Court concluded that Swissport's argument was "contradicted by the plain language of the PDLL," which provides that its remedies

“augment, rather than supplant, those set forth elsewhere in the FEHA.” Cal. Gov’t Code § 12945(b). The Court also noted that its ruling was supported by the new Pregnancy Disability Leave Regulations, effective December 30, 2012, which provide that the “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. At the end or depletion of an employee’s pregnancy disability leave, an employee who has a physical or mental disability (which may or may not be due to pregnancy, childbirth, or related medical conditions) may be entitled to reasonable accommodation under Government Code section 12940.” Cal. Code Regs., tit. 2, § 7291.14.

The Court concluded that Sanchez could pursue her claims for pregnancy-related disability discrimination based on her termination, as well as on the company’s denial of additional leave as a reasonable accommodation and its failure to engage in the interactive process to determine an effective accommodation.

* * *

Following *Sanchez*, California employers may be required to provide leave for pregnancy, pregnancy-related disabilities, and even baby bonding for much longer than the length of a typical pregnancy. An employee disabled by pregnancy or pregnancy-related conditions may take up to four months of pregnancy disability leave under the PDL and may take additional leave as a reasonable accommodation for any pregnancy-related disability under the FEHA. After giving birth, the employee also may be entitled to another 12 weeks of CFRA leave if such leave has not otherwise been exhausted.

Consequently, California employers should review their leave of absence policies to ensure that they are consistent with California law. Employers also should review their policies and practices regarding reasonable accommodation and the interactive process to confirm that they cover pregnancy-related disabilities.

If you have any questions about this or other workplace developments, please contact Jamerson “Jamie” Allen in San Francisco, at (415) 394-9400 or AllenJ@jacksonlewis.com, Mark S. Askanas, at (415) 394-9400 or AskanasM@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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