Reproductive Safety and Pregnancy:  
Sample Fire Department Policy Language

Following are excerpts from maternity leave, parental leave and reproductive safety policies in use by various fire departments in the U.S. They are provided here as examples of language that might be considered for adoption by other fire departments.

Each excerpt has been included because it illustrates one or more of the points discussed elsewhere in WFS’ information packet on firefighter reproductive safety. Each in itself does not necessarily constitute a comprehensive policy. It is very important that any policy in place in one fire department not simply be adopted wholesale by another department. Developing a reproductive safety policy for any fire department requires input and the best judgment of all involved, as well as advice from legal counsel.

Note: Some of the following policies require an employee to report her pregnancy to the employer. Others appear to impose requirements on the pregnant employee that are not placed on the employee who is injured off duty. The legality of such requirements in the United States is questionable under the Pregnancy Discrimination Act, particularly following the Supreme Court’s decision in Johnson Controls.

Policy Language

Sample #1:

When a member of the department is diagnosed as pregnant, it is advisable that the member inform her supervisor. The Chief of Department will then find a light duty position for the member. It is not mandatory that the member inform the supervisor or take a light duty position. It is the opinion of the department that there is a risk of causing damage to a developing fetus if it is exposed to the noxious chemicals encountered at a fire or hazardous materials incident. At this time, it is unclear whether or not a birth defect caused by such exposure would be covered under Worker’s Compensation; therefore, the department urges caution in this area.

When a member and her treating physician decide that she can no longer work, the member will be allowed up to six weeks of administrative time, with pay. If additional time is needed, the member may use her vacation and accumulated sick leave. She may apply to the Civil Service Commission for leave without pay, if need be, of up to one year.

Sample #2:

Employees shall immediately notify the Personnel Officer of any medical or physical condition, including pregnancy, which in the employee’s opinion renders them unable to safely and competently perform their assigned duties, and shall provide a medical certificate from their attending physician. Once an employee is no longer able to safely and competently perform assigned duties because of a medical or physical condition, they shall be reassigned to duties consistent with medical or physical limitations.

The Fire Department’s policy has been to allow at least a six-month unpaid leave of absence for the employee following the birth of her child, with the employee’s job to be (held for her). Depending on the situation, employees with a proven track record with the City could receive approval for up to a one-year leave of absence, where such leave will not significantly impair the operations of the Fire Department. Fathers of newborn children will be allowed to take advantage of the same unpaid leave policies.
Sample #3:

**POLICY:** The City and the Fire Department recognize pregnancy as a normal occurrence in a woman’s life and therefore establish this policy to implement the provision of light-duty assignments for female employees unable to perform their normal job assignment due to pregnancy and related conditions. All limited-duty assignments will be based on Department needs and on the member’s physical limitations as determined by her treating physician.

**RESPONSIBILITY:** The member shall report her condition... immediately after it has been medically diagnosed. The Department shall provide a limited-duty assignment.

Sample #4:

Pregnancy is identified as a short-term disability and will be treated as such. Pregnancy leave is granted for pregnancy, childbirth or related medical conditions associated with birth. Once the child is born and the employee is determined by a physician to be healthy and able to return to work, the pregnancy leave ends.

Employees who qualify for pregnancy leave must make application in advance of its use. The employee’s physician must submit a written statement confirming the employee’s pregnancy and, if applicable, information concerning the employee’s inability to report for work or to perform the duties and responsibilities of the position. A pregnant employee with the doctor’s permission may work as long as she is medically able.

Temporary transfers to less strenuous or hazardous jobs to accommodate pregnancy, childbirth or related conditions may be granted when positions are available.

The employee may remain on leave as long as her physician deems medically necessary. When the employee returns to work, she will be reinstated in her former position.

Sample #5:

It is the employee’s right to continue working when she is pregnant, or when he or she is involved in attempting to conceive a child. The employee may request non-hazardous duty, and this duty will be assigned without loss of pay or benefits. At such time as the firefighter can no longer perform firefighting duties, she will be reassigned into a non-hazardous position. Once the firefighter is no longer pregnant or attempting to conceive, she or he will be reinstated into the position held prior to being pregnant or attempting to conceive.

Sample #6:

Modified Work: The City provides short-term, modified work for all employees who are temporarily disabled by occupational or non-occupational injuries (including pregnancy). The purposes are to facilitate recovery, prevent deterioration of work skills, demonstrate concern, minimize loss of human resources and reduce costs. Because of the City’s varied work activities, some type of work can usually be found to meet the injured employee’s capabilities.

The modified work program begins once the physician has specifically identified the employee’s medical restrictions. Once the City doctor has verified the restriction, Personnel and the employee’s supervisor will develop a modified work program in compliance with the medical information. It is the employee’s responsibility to notify his/her treating physician of the modified work program. The Personnel Department will monitor the program to assure minimal lost time due to personal or industrial injuries.
Sample #7:
Temporary reassignments to alternate, non-hazardous duty within a classification will be granted upon written request to the Fire Chief by the employee. All alternate non-hazardous assignments shall be based upon Department needs and physical limitations determined by member’s attending physician.

While assigned to a combat position, pregnant employees will be required to wear the specified uniform and all safety equipment. While assigned to alternate non-hazardous duty or a non-combat position, the pregnant employee may wear civilian clothing or the maternity uniform.

While on alternate, non-hazardous duty, the employee will participate in department-level training or classes that other fire personnel are undergoing, as long as the class activities do not pose any risk to the employee.

Sample #8:
Policy
Employees may request leave for pregnancy or childbirth under the terms and conditions applied to other temporary, non-duty related disabilities.

An employee must not be forced to go on light duty or leave at an arbitrary point during a pregnancy. If a supervisor believes the employee is incapable of performing the duties of her position, a fitness-for-duty evaluation may be requested. When the employee's pregnancy presents a safety issue to herself, co-workers, or the public, she may request a light duty assignment or take leave.

The pregnant employee will continue to wear her official uniform until the uniform becomes uncomfortable. At that time the employee will be given guidelines for providing her own acceptable maternity clothing.

Procedure
When the employee deems it appropriate, she should notify her supervisor after receiving confirmation of pregnancy.

The pregnant employee will be issued a medical evaluation of work status form. The form must be taken to the health care provider on the employee's initial visit. The employee must review the form with the health care provider and have it signed. The completed form must be returned to the employee's supervisor at the next work shift.

The supervisor will verify that the employee has been informed of all of her options. Those options will include: continuing to work her duty assignment until her pregnancy interferes with her job performance or would have adverse consequences to the safety of herself, her co-workers or the public; taking leave or leave without pay; or requesting a light duty assignment. If she is granted a light duty assignment she will still be eligible to participate in a physician supervised physical training program.

The employee will notify her supervisor of her intent to request leave, including the type of leave, approximate dates, and anticipated length of absence. This notification should be made at least 30 days prior to the anticipated date the leave is to begin.
Sample contract language addressing maternity concerns

Maternity Leave
It is recognized that reproductive health can be affected adversely by the conditions encountered in firefighting.

A. Provisions for Pregnancy
1. When a member becomes pregnant, it is strongly advised, though not required, that she report her condition to her supervisor.

2. Once a member has provided the department with verification of her pregnancy from her own doctor, she shall be offered a non-hazardous duty assignment within the department.

3. A member is not required to accept a light duty assignment. She is, however, encouraged to do so because of the unpredictable nature of emergency response. There is potential risk to a pregnant woman and/or her developing fetus from activities associated with normal operational duties including firefighting, hazardous materials response, and EMS exposures.

4. A member who is pregnant has the option of using any or all of her accumulated leave to date, including sick and vacation time. After all such time has been used, an employee may be granted an additional leave of absence, without pay, for up to 150 calendar days.

5. After giving birth, or at the termination of the pregnancy, the member shall be returned to her previously held position upon approval from her personal physician. Such verification of readiness to work shall be in writing. This verification shall be given to the designated City Physician for a fitness for duty physical. This provision shall not supersede contractual language in the event of layoffs.

6. If a member becomes temporarily disabled as a result of pregnancy or childbirth, light duty may be offered during the time of disability and recovery.

7. An employee who is unable to return to work at the end of the 150-day leave of absence will be granted up to an additional 215 days of leave without pay upon providing medical documentation acceptable to the City of her inability to work. Employees who require any portion of this additional 215 days will be eligible to return to the first available position at the same or lower rank held prior to maternity leave. If an employee assumes a lower ranking position under the terms of this provision, she will receive the corresponding pay rate.

8. The City will pay one half of the City’s share for employee health, life and dental insurance for up to three months while the employee is on unpaid maternity leave. After the employee has returned to regular suppression duty and has been at work for six pay periods, the City shall reimburse the employee for the other half of the City share of insurance premiums actually paid during the three-month period.

9. Employees who are on leave of absence without pay in excess of 365 days due to pregnancy relinquish all rights to automatic re-employment in any capacity.
B. Hazardous Exposures

Hazardous exposures for both men and women during the time of conception can adversely affect the outcome of a pregnancy. Any member shall be offered a light duty assignment for a maximum of 30 calendar days per year if specifically requested for the purpose of lowering risks at conception.

C. Parental Leave
The Federal Family and Medical Leave Act states that male and female members shall be allowed leave for the birth or adoption of a child into the family. The City’s policy also outlines allowed leave for these purposes...

D. Benefit Provisions
All wages, benefits, and seniority of the former position shall continue to accrue for the employee on light duty.

E. Definitions
1. Personal physician: Physician from whom the employee is authorized to get medical verification.

2. Light duty: Non-hazardous duty in the City available to all full-time, permanent, and probationary workers; guaranteed, but not required.

2. Reproductive health: Wellness of women and men with respect to conception, fetal care, and childbirth.
Reproductive Safety for Hazardous-Duty Personnel

Some fire departments have adopted more comprehensive policies that recognize the reproductive risks of firefighting and EMS to all firefighters, male and female. Such policies permit light duty or unpaid leaves for employees in hazardous jobs when they are pregnant, breast-feeding, or attempting to conceive. Following is an example of this type of policy.

PURPOSE:
To protect the employee’s right to work during pregnancy or while conceiving or lactating

POLICY:
It is the employee’s right to continue working while she is pregnant. Firefighters and EMT’s who are pregnant and are physically capable of performing their jobs may, at their discretion, remain in active-duty positions, and are not required to report their pregnancy to the employer.

While it is not the obligation of the employer to protect the fetus, the employer nonetheless recognizes that firefighting and EMS duties present reproductive risks to employees and their offspring. Firefighters and EMT’s who are pregnant, breast-feeding an infant, or attempting to conceive, will be assigned to non-hazardous duty if they request it or present a letter from their physician advising that they should be so assigned.

If at any time the employee wishes to meet with the Fire Chief to discuss a non-hazardous duty assignment, it is a private matter between the two parties. A union representative may attend at the employee’s request.

Pregnant firefighters who, on the advice of a physician, can not continue working in any capacity will be granted leave in accordance with the department’s pregnancy leave policy, or may use their own sick leave and/or vacation time, at their option.
Pregnancy in the Fire Service: Vice President Mass, on behalf of the Committee, recommended the following be adopted: The IAFF believes that pregnancy in the fire service should not be treated any differently than any other medical condition in the fire service that may inhibit a fire fighter’s ability to perform his/her job. The fire department should have a designated physician who must be responsible for advising all fire fighters with regard to their reproductive health and suitability for various duties. The IAFF believes that the fire department has the responsibility to counsel all employees – male and female – about the potential reproductive risks to themselves and the health risks to their potential offspring. Any fire fighter who becomes pregnant must be offered the opportunity at any time during the pregnancy to be voluntarily removed from fire fighting duties and other duties involving the hazards of physical stress that might endanger the fetus, and be reassigned to other duties without loss of pay or benefits. At such time as the fire fighter can no longer be medically certified as being capable of performing the fire fighter duties, the fire fighter should be reassigned to other duties. At such time as the fire fighter is no longer pregnant, the fire fighter must be reinstated to the position held prior to being pregnant.

Motion was Seconded and Adopted unanimously.
A sample fire department medical release that takes care to inform the physician as to the specific risks and hazards of firefighting. Any such form used in cases of pregnancy must also be used for all other firefighters being treated for any potentially disabling medical condition.

To the Physician:

In the interest of maintaining a fully fit and ready firefighting force, we need your assistance and opinion when treating one of our employees for any illness, injury or medical condition which could affect her or his full work capability. In order to maintain consistency and compliance with disability and pension laws, it may be necessary for you to consult with our department physician. If this becomes necessary, you will be contacted by department administrative staff and given necessary information. Should you have any questions, please call us.

This is to certify that________________________ Title________________ has been under my care since _______________ for _______________________________ (condition, injury or illness)

A. Operations division firefighters are required to maintain physical fitness and be prepared to participate physically in any duties required to control all types of emergency fire and/or rescue operations. Full-duty tasks and functions include:

1. Pulling heavy hose lines up two or three flights of stairs.
2. Going long hours without sleep (24 or more).
3. Driving engines and other emergency apparatus on interstate highways and through heavy traffic under emergency conditions with red lights and sirens.
4. Being exposed to toxic fumes and heated gases.
5. Being exposed to overheating, chilling and wet clothing.
6. Being roused out of a sound sleep by a fire alarm bell.
7. Climbing ladders and operating from heights.

Is the current condition of the firefighter such that he/she is able to fully function in all of the above capacities? Yes______ No ______

If no, which area(s) is/are limited, and what is/are the limiting factor(s)?

If yes, please date and sign release to full duty.

Signature:__________________________________ Date: ___________________________

B. In some cases of limited disability, depending upon the employee’s abilities, we may, for short periods of time, find limited duties for the employee. Examples of limited duty include answering telephones, clerical help, taking inventory, messenger service, public speaking, etc.

Is the current condition of the firefighter such that he/she is able to function in all limited-duty capacities? Yes______ No ______

If no, when do you anticipate release to limited duty?

If yes, please date and sign release to limited duty.

Signature:__________________________________ Date: ___________________________

Comments:
Congratulations on the upcoming birth of your child! We wish you and your baby well. The purpose of this packet is to inform you of your rights under the law and provide you with information regarding the possible risks involved in remaining on the line in fire suppression or EMS while pregnant. We want you to be able to make an informed decision regarding what is best for you and your child.

What laws cover pregnancy?

In 1978, the Pregnancy Discrimination Act was passed by Congress as an amendment to Title VII of the Civil Rights Act of 1964. The purpose of the Pregnancy Discrimination Act (PDA) was to prevent arbitrary and discriminatory treatment of pregnant workers. It assures you that we will do for you, as a pregnant worker, at least as much as we do for the employee who is injured off duty.

In 1987, the Supreme Court ruled in California Federal Savings and Loan Association v. Guerra and further clarified the PDA. Employers may legally do more for the pregnant worker than for the worker injured off duty.

In 1991, the Supreme Court ruled in United Automobile Workers v. Johnson Controls, Inc. Their ruling stated that “Decisions about the welfare of future children must be left to the parents who conceive, bear, support and raise them, rather than to the employers who hire those parents.”

These decisions by the Supreme Court allow you to remain on the job as long as your condition does not affect your job performance or pose a threat to you, your co-workers or the public. The Supreme Court rulings also allow us, upon your request, to guarantee reassignment to a non-hazardous job.

What are the risks involved?

Enclosed are three articles covering some of the known risks involved in reproduction, pregnancy and nursing while exposed to toxins. Research involving fire fighters and the unique hazards and toxins to which fire service personnel are exposed is limited when addressing the specific issue of potential harm to a fetus or to the eggs or sperm prior to conception. While the choice is clearly a very personal one, we encourage you to request a light duty assignment when you learn you are pregnant in order to provide a safer environment for you and your baby.

Two of the enclosed articles were published in the American Journal of Industrial Medicine in 1991. The authors studied the reproductive hazards of firefighting in both men and women. One of the studies addressed non-chemical hazards; in summary, the risks to reproduction from these hazards include heat, noise, and physical exertion. These three exposures may affect fertility, cause fetal loss, and/or affect the growth of the fetus. The raising of the core temperature was found to be the most hazardous factor for both women and men. Exposure to some viral agents can also pose a significant risk to the fetus.

The second article addressed chemical hazards. It contains tables indicating the reproductive toxicities of many chemicals, including mutagenic and carcinogenic findings. The chemicals
listed are not inclusive of all potential chemical exposures, nor have the effects of all chemicals listed been tested on humans or tested in a fire environment. Carbon monoxide is present at virtually every fire; the authors discuss how this gas is even more dangerous to a fetus than it is to an adult.

The final article enclosed discusses pollutants in human breast milk. While this article does not address firefighters or the toxins present in fires, it does explain that there are risks involved in breastfeeding when the mother is exposed to toxins.

[I have received the material contained within the Maternity Package and acknowledge receipt of such by my signature.]

Signature_______________ Date____________
Medical Considerations of Firefighter Pregnancies

The job of firefighting presents many potential hazards to healthy reproduction. It poses physical hazards such as drastic temperature variations, extreme and unpredictable physical exertions, demands, and psychological stress. Firefighters may also be exposed to biological or radiation hazards. The fire environment may also produce a wide range of chemical agents, including irritant and asphyxiating gases and other toxins.

Human reproductive health as it is affected by the work environment is a relatively new area of study. The clearest connection between an environmental agent and adverse reproductive outcomes for both men and women is in the case of ionizing radiation, which is not a common exposure for most firefighters. Prolonged exposure to high ambient temperatures, however, may also have a detrimental effect on fertility and pregnancy. High heat exposure has been related to infertility in men and may be linked to neural defects in the babies of exposed mothers.

Chemical agents in the fire environment are numerous and unpredictable. The toxic effects of fire smoke have been tentatively linked to a number of physical problems, including respiratory disease, coronary artery disease and malignancies. Many chemical agents in the fire environment may also adversely affect reproduction. Carbon monoxide, carbon dioxide, hydrogen cyanide, acrolein and other aldehydes, sulfur dioxide, hydrogen chloride, nitrogen dioxide, and benzene are all commonly produced in fire environments. Research shows that all of these compounds may have detrimental effects on reproduction. Pregnant women and their fetuses are especially affected by carbon monoxide exposures.

Although much more study is needed, existing research suggests that both men and women are vulnerable to reproductive toxicity in the firefighting environment. In addition, the potential hazards to developing fetuses pose special concerns for pregnant firefighters.

Sample physician’s evaluation form:

________ FIRE DEPARTMENT
Physician’s Evaluation of Pregnant Firefighter

FIREFIGHTER completes and signs this statement:

I hereby grant Dr. ____________, who is my attending physician for this pregnancy, permission to furnish the information requested below.

I ___ am ___ am not a member of the Hazardous Materials Response Team.

Firefighter’s signature: ________________________       Date:____________________

TO THE FIREFIGHTER: It is the policy of the _______ Fire Department to encourage pregnant firefighters to continue their work as long as it is medically safe to do so. The _______ Fire Department will provide you with temporary reassignment within the Fire Department to non-firefighting functions through the end of your pregnancy with no loss of base salary or benefits, when the physician attending the firefighter’s pregnancy determines that it is no longer medically safe for the firefighter to continue firefighting duties or you are no longer physically able to perform those duties. This evaluation must be completed by your attending physician for this pregnancy each time you visit your physician for pre-natal care, but no less frequently than monthly.

TO THE PHYSICIAN: Your patient is a firefighter. She works an average of 56 hours per week on 24-hour shifts. Here are examples of the work conditions typically encountered in firefighting work:

–An opportunity for (but no guarantee of) up to eight hours’ sleep during night-time on-duty standby for alarms, with arousal from sleep and response expected within one and one-half minutes.
–Extremes of heat and cold (depending on the season and the nature of the emergency)
–Physical and emotional stress while working at fires, rescues and medical emergencies
–Physical demands during emergencies that include crawling, climbing, reaching, pulling, pushing, lifting, bending, carrying, and that involved weights in the 50-pound range frequently and the 100-pound range occasionally
–A “protective equipment load” in fire emergencies of approximately 50 pounds (boots, turnout coat and bunker pants, helmet, gloves, protective hood and other safety equipment, including self-contained breathing apparatus worn on the firefighter’s back and weighing approximately 35 pounds).
–Work in the presence of smoke, toxic fumes and other hazardous materials while wearing protective breathing equipment and firefighter protective clothing. [Special note: If this firefighter is a member of the __. F.D. Hazardous Materials Response Team, she may respond more frequently to hazardous materials emergencies; on such calls, she is protected when required by “moon suit” type full-body encapsulating suits with independent air supply.]

It is the policy of the _______ Fire Department to encourage pregnant firefighters to continue their work as long as it is medically safe to do so. When it is no longer medically safe for a pregnant firefighter to continue firefighting work, the _______ Fire Department will provide for
her temporary reassignment within the Fire Department to non-firefighter duties with no loss of base salary or benefits.

Please evaluate this pregnant firefighter and determine whether, as of the time of this evaluation, it is medically safe for her to continue firefighting work. Note that, as of the time of the initiation of this pregnancy, this firefighter was otherwise considered to be in appropriate physical condition (physically able) to do firefighting work.

Physician will check the appropriate statement and sign the form at the bottom where indicated.

[  ] It is medically safe for this pregnant firefighter to continue firefighting work. I will review this finding at the firefighter’s next medical examination on __________ (date).

[  ] It is not medically safe for this pregnant firefighter to continue firefighting work. I recommend reassignment of this firefighter to temporary non-firefighting work to the end of this pregnancy, subject to the following physical limitations:

Attending physician’s signature:_________________

Date:_______________
This is the text of the Pregnancy Discrimination Act, which amended Title VII (the federal anti-discrimination statute) in 1978 to define pregnancy discrimination as a form of sex discrimination.

The Pregnancy Discrimination Act of 1978
[amending §701 of Title VII, 42 U.S.C. §2000e (K)]

§1604.10 Employment policies relating to pregnancy and childbirth
(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is in prima facie violation of Title VII.
(b) Disabilities caused or contributed to by pregnancy, childbirth or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.
(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.
(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of §1604.10(b) by April 29, 1979...
(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of §1604.10(b) upon implementation.

[44 FR 23805, Apr. 20, 1979]

APPENDIX - QUESTIONS AND ANSWERS ON THE PREGNANCY DISCRIMINATION ACT, PUB. L. 95-555, 92 STAT. 2076 (1978)

INTRODUCTION
On October 31, 1978, President Carter signed into law the Pregnancy Discrimination Act (Pub. L. 95-955). The Act is an amendment to Title VII of the Civil Rights Act of 1964 which prohibits, among other things, discrimination in employment on the basis of sex. The Pregnancy Discrimination Act makes it clear that "because of sex" or "on the basis of sex," as used in Title VII, includes "because of or on the basis of pregnancy, childbirth or related medical conditions." Therefore, Title VII prohibits discrimination in employment against women affected by pregnancy or related conditions.
The basic principle of the Act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she is pregnant or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy.

In the area of fringe benefits, such as disability benefits, sick leave and health insurance, the same principle applies. A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions. However, health insurance for expenses arising from abortion is not required except where the life of the mother would be endangered if the fetus were carried to term, or where medical complications have arisen from an abortion. Some questions and answers about the Pregnancy Discrimination Act follow. Although the questions and answers often use only the term "employer," the Act - and these questions and answers - apply also to unions and other entities covered by Title VII....

Q. If, for pregnancy-related reasons, an employee is unable to perform the functions of her job, does the employer have to provide her an alternative job?
A. An employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees, whether by providing modified tasks, alternative assignments, disability leaves, leaves without pay, etc...

Q. What procedures may an employer use to determine whether to place on leave as unable to work a pregnant employee who claims she is able to work, or deny leave to a pregnant employee who claims that she is disabled from work?
A. An employer may not single out pregnancy-related conditions for special procedures for determining an employee's ability to work. However, an employer may use any procedure used to determine the ability of all employees to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. Similarly, if an employer allows its employees to obtain doctors' statements from their personal physicians for absences due to other disabilities, it must accept doctors' statements from personal physicians for absences and return dates connected with pregnancy-related disabilities.

Q. Can an employer have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth?
A. No.

Q. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, may her employer require her to remain on leave until after her baby is born?
A. No. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

Q. Must an employer hold open the job of an employee who is absent on leave because she is temporarily disabled by pregnancy-related conditions?
A. Unless the employee on leave has informed the employer that she does not intend to return to work, her job must be held open for her return on the same basis as jobs are held open for employees on sick or disability leave for other reasons.

... 

Q. Must an employer hire a woman who is medically unable, because of a pregnancy-related condition, to perform a necessary function of a job?
A. An employer cannot refuse to hire a woman because of her pregnancy-related condition so long as she is able to perform the major functions necessary to the job. Nor can an employer refuse to hire her because of its preferences against pregnant workers or the preferences of co-workers, clients, or customers.

Q. May an employer limit disability benefits for pregnancy-related conditions to married employees?
A. No.

... 

Q. For what length of time must an employer who provides income maintenance benefits for temporary disabilities provide such benefits for pregnancy-related disabilities?
A. Benefits should be provided for as long as the employee is unable to work for medical reasons unless some other limitation is set for all other temporary disabilities, in which case pregnancy-related disabilities should be treated the same as other temporary disabilities.

... 

Q. Can an employee who is absent due to a pregnancy-related disability be required to exhaust vacation benefits before receiving sick leave pay or disability benefits?
A. No. If employees who are absent because of other disabling causes receive sick leave pay or disability benefits without any requirement that they first exhaust vacation benefits, the employer cannot impose this requirement on an employee absent for a pregnancy-related cause.

Q. Must an employer grant leave to a female employee for childcare purposes after she is medically able to return to work following leave necessitated by pregnancy, childbirth or related medical conditions?
A. While leave for childcare purposes is not covered by the Pregnancy Discrimination Act, ordinary Title VII principles would require that leave for childcare purposes be granted on the same basis as leave which is granted to employees for other non-medical reasons. For example, if an employer allows its employees to take leave without pay or accrued annual leave for travel or education which is not job related, the same type of leave must be granted to those who wish to remain on leave for infant care, even though they are medically able to return to work.

Q. If state law requires an employer to provide disability insurance for a specified period before and after childbirth, does compliance with the state law fulfill the employer's obligation under the Pregnancy Discrimination Act?
A. Not necessarily. It is an employer's obligation to treat employees temporarily disabled by pregnancy in the same manner as employees affected by other temporary disabilities. Any restrictions imposed by state law on benefits for pregnancy-related disabilities, but not for other disabilities, do not excuse the employer from treating the individuals in both groups of employees the same...

Q. If a state or local government provides its own employees income maintenance benefits for disabilities, may it provide different benefits for disabilities arising from pregnancy-related conditions than for disabilities arising from other conditions?
A. No. State and local governments, as employers, are subject to the Pregnancy Discrimination Act in the same way as private employers...
Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees? Of the dependents of all employees?
A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions. But the insurance does not have to cover the pregnancy-related conditions of other dependents as long as it excludes the pregnancy-related conditions of the dependents of male and female employees equally.

Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related conditions of the spouses of male employees as it provides for its female employees?
A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However, where the employer provides coverage for the medical conditions of the spouses of its employees, then the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees...

Q. May an employer offer optional dependent coverage which excludes pregnancy-related medical conditions or offers less coverage for pregnancy-related medical conditions where the total premium for the optional coverage is paid by the employee?
A. No. Pregnancy-related medical conditions must be treated the same as other medical conditions under any health or disability insurance or sick leave plan available in connection with employment, regardless of who pays the premiums.

Q. Where an employer provides its employees a choice among several health insurance plans, must coverage for pregnancy-related conditions be offered in all of the plans?
A. Yes. Each of the plans must cover pregnancy-related conditions...

Q. If a health insurance plan excludes the payment of benefits for any conditions existing at the time the insured's coverage becomes effective (pre-existing condition clause), can benefits be denied for medical costs arising from a pregnancy existing at the time the coverage became effective?
A. Yes. However, such benefits cannot be denied unless the pre-existing condition clause also excludes benefits for other pre-existing conditions in the same way.

Q. Where an employer's health insurance plan currently requires total disability as a prerequisite for payment of extended benefits for other medical conditions but not for pregnancy-related costs, may the employer now require total disability for payment of benefits for pregnancy-related medical conditions as well?
A. Since extended benefits cannot be reduced in order to come into compliance with the Act, a more stringent prerequisite for payment of extended benefits for pregnancy-related medical conditions, such as a requirement for total disability, cannot be imposed. This, in this instance, in order to comply with the Act, the employer must treat other medical conditions as pregnancy-related conditions are treated.
Q. Can an employer discharge, refuse to hire or otherwise discriminate against a woman because she has had an abortion?
A. No...

Q. Is an employer required to provide fringe benefits for abortions if fringe benefits are provided for other medical conditions?
A. All fringe benefits other than health insurance, such as sick leave, which are provided for other medical conditions, must be provided for abortions. Health insurance, however, need be provided for abortions only where the life of the woman would be in danger if the fetus were carried to term or where medical complications arise from an abortion.

Q. May an employer elect to provide insurance coverage for abortions?
A. Yes...but if an employer decides to cover the costs of abortion, the employer must do so in the same manner and to the same degree as it covers other medical conditions.

[44 FR 23805, Apr. 20, 1979]

Notes/commentary [provided by WFS]

The requirement that pregnancy-related conditions be treated "the same as" disabilities caused by other medical conditions was clarified in the 1987 U.S. Supreme Court decision in California Federal Savings and Loan, which ruled that employers may provide pregnancy benefits greater than those provided for other off-the-job disabilities or injuries.

Fringe-benefit programs or insurance plans available in connection with employment must also treat pregnancy the same as (or better than) other comparable medical conditions.

If light duty is provided for firefighters who are injured off duty, it must also be offered to pregnant firefighters. Employers are also permitted (though not required) to offer non-hazardous duty to pregnant firefighters even where they do not make such an offer to firefighters injured off duty.

Procedures used to determine an employee's ability to work while pregnant or to return to work following a pregnancy should be the same as those used in cases of other, comparable medical conditions. This includes forms to be filled out by the physician, and any physical tests administered to the employee prior to return to work.

Employees using leave under the Family and Medical Leave Act (which became law several years after the Pregnancy Discrimination Act) must be reinstated into their original or an equivalent position, regardless of how the employer treats employees on sick or disability leave for other reasons.

Under the Family and Medical Leave Act, the employer must provide up to 12 weeks of unpaid, job-protected leave in connection with childbirth or a serious health condition of the employee or a child. An employee who has not exhausted this 12 weeks of leave prior to the birth of a child would be entitled to take the remainder after the birth if it is required in order to care for the child.
Legal Aspects of Maternity Leave: The Pregnancy Discrimination Act and California Federal Savings & Loan

Maternity leave is a relatively new issue in American society, in all fields of employment. Traditionally, motherhood and work outside the home were considered mutually exclusive: if a woman had a job at all, it was only until she started having children. Combining a real career with motherhood was virtually unheard of.

Treatment of women in the workplace reflected these attitudes. It wasn’t that long ago that some employers refused to hire married women, the assumption being that they would soon become pregnant and quit their jobs. Since mothers were not expected to work outside the home, it was extremely rare to find provisions for maternity leave in any job. Indeed, as recently as 1964, 40% of all employers terminated employees who became pregnant. No laws existed to prevent employers from treating pregnant workers in any way the employers saw fit, however arbitrary.

In 1978, Congress passed the Pregnancy Discrimination Act (PDA) as an amendment to Title VII of the Civil Rights Act. The PDA broadened the definition of sex discrimination to include discrimination based on pregnancy and childbirth. It stated, “Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work...” The act applies to all employers with fifteen or more employees, and to employment agencies and labor organizations.

The PDA was important for several reasons. It was the first significant piece of legislation to deal with maternity in the workplace. Its main purpose was to prevent arbitrary and discriminatory treatment of pregnant workers. The PDA guaranteed that pregnant women would have access to the benefits already in place for other workers. This had many positive effects. Company health insurance plans were no longer allowed to exclude pregnancy and childbirth. Employers could not refuse to hire or promote a woman solely on the basis of pregnancy. Disability caused by pregnancy had to be covered by any existing disability program. Most importantly, a woman could not be arbitrarily fired from her job if she became pregnant, nor could she be required to take an extended leave which was not deemed medically necessary. Previously, it had been common practice to force a pregnant employee to go on leave when she began to “show,” because her condition was perceived as inappropriate for the work environment. After the PDA became law in 1978, those days were over.

The PDA also had its limitations. It addressed the fact that many employers were treating pregnant employees differently and worse than other employees. In “protecting” pregnant women, employers were passing arbitrary judgment on their ability to work, and thus were discriminating against them. After the PDA, pregnant women were suddenly guaranteed the right to work as long as they were able, and the expectation developed that pregnant women would and should work until very close to the time of their delivery.

In many ways, this was a good thing. Pregnant women are not sick, and should be able to productive members of the community. Unfortunately, as the pendulum swings the other way, the physical and emotional impacts of pregnancy may be discounted. Employers may see pregnancy and childbirth as superfluous concerns – strictly personal problems. Some employers claimed that
the PDA prevented them from providing any maternity benefits for employees, as such benefits would violate the requirement that all employees be treated “the same.”

Women working in hazardous environments often found themselves in a double bind. In administering the PDA, the Equal Employment Opportunity Commission exempted from the terms of the act those employers who in good faith felt they had to discriminate on the basis of pregnancy because of a toxic work environment or other health risks. But some of those same employers were citing the PDA as a reason they could not give pregnant employees special non-hazardous assignments. Such special treatment was discriminatory, they claimed, because it treated pregnant workers differently from others.

The PDA does not require employers to establish new programs where none exists. But does the law prevent the establishment of benefits for pregnant employees? This was the key issue in a Supreme Court decision concerning a California state policy that granted up to four months of unpaid leave for disability caused by pregnancy or childbirth. This policy was challenged by the California Savings and Loan Association as a violation of the PDA. The 6-3 decision in favor of the California policy was a crucial one. In the majority opinion, Justice Thurgood Marshall clarified the PDA, stating that it was intended “to construct a floor beneath which pregnancy benefits may not drop, not a ceiling above which they may not rise.”

Beyond just upholding the California law, the decision opened the door for the establishment of appropriate maternity provisions for employees. In a hazardous environment, special considerations that protect the health of mother, and allow her to make reasonable decisions to protect the health of the fetus, are not necessarily discriminatory, and may be conscionable and appropriate. It is very important the women become involved in the development of these policies.

In considering the California case, the nation’s highest court recognized that it was time to address the issues associated with combining careers and family life. Few people have the luxury of designating one breadwinner and one primary child care provider in the household. Women work, and 80% of working women are expected to have children at some point in their careers. Women are solidly established in the working world, yet much of the time we must deal with environments and policies that make us feel like unwelcome guests. At least in terms of the maternity issue, the Supreme Court has made some important steps in changing that.

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WFS Publications
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The U.S. Supreme Court on January 13, 1987, handed down a decision with major positive repercussions for working women. In California Federal Savings and Loan Assn. v. Guerra [U.S. Sup.Ct. 85-494] the Court ruled 6-3 that states may require employers to give pregnant employees up to four months of unpaid leave, and to give them their jobs back (or a similar job) upon returning to work. Ten states – California, Washington, Montana, Kansas, Illinois, Ohio, New Hampshire, Connecticut, and Massachusetts – had such laws or regulations on the books as of January 1987, with more expected to be enacted now that the constitutional issues are resolved.
Since municipal governments are often exempt from such state-imposed requirements, the value of the decision for public sector workers is that it clears the way for employers to adopt such policies, either voluntarily or through collective bargaining. Employers can no longer claim, as many had in the past, that it would be against the law to give women greater benefits for maternity than men or women receive for off-duty disabilities.

The decision was a controversial one, in which the complexity of the arguments led some feminist groups such as NOW, and others such as the ACLU, to share part of the position backed by the U.S. Chamber of Commerce and the Reagan administration. The position was that such maternity benefits constituted preferential treatment of pregnant women, and that such treatment was a violation of the 1978 Federal Pregnancy Discrimination Act. NOW and the ACLU advocated extending similar benefits to all disabled employees, in order to remove the preferential status; the Reagan administration argued for finding the California law unconstitutional, leaving employers free to deny maternity benefits.

The Court, however, rejected the idea that such special benefits violated the 1978 law. The majority opinion interpreted the law as designed to prevent discrimination against pregnant workers, not to require precise equality of treatment with other temporarily disabled employees. Justice Marshall, writing for five members of the majority, said that laws like California’s “promote equal employment opportunity” because they “allow women, as well as men, to have families without losing their jobs.”

One surprise in the decision was that conservative Justice Antonin Scalia voted with the majority. He did so, however, on narrow and restricted constitutional grounds, and specifically rejected Justice Marshall’s arguments in the case.

In the wake of the decision, proponents of parental leave and child care legislation were optimistic that such laws would now be easier to pass. Representative Pat Schroeder of Colorado, author of the parental leave bill, said, “The California decision has opened the doors for us. It says the Supreme Court recognizes that there are women in the work force who are there to stay and that the demands of the family have to be addressed by society.”

Those who had argued against the Court’s position predicted a backlash against the employment of women in general, and serious financial hardship for small businesses who could not afford to offer such benefits. Eleanor Smeal of NOW, though her organization had supported the position that preferential treatment violated the law, said that the decision was a victory for women, and that NOW would continue to lobby for gender-neutral parental leave legislation.

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Legal Aspects of Maternity Leave:  
The Supreme Court Decision in Johnson Controls

Many women firefighters, as well as women employed in other “hazardous” occupations (in this case, jobs that are male-dominated and usually well-paid), watched with concern as several legal cases challenging “fetal protection” policies barring women’s employment wound their way through the court system. Finally, one of the most notorious and far-reaching of the cases, UAW v. Johnson Controls, was argued before the U.S. Supreme Court. On March 20th, 1991, the Court rendered its decision in the case, a decision widely hailed by women’s employment rights advocates for its protection of women’s right to employment in hazardous occupations.

It is important for women firefighters and their employers to understand fully the details, context and legal history of this case. Some of the legal terms used here may be cumbersome, but it is worthwhile to wade through them in order to become familiar with the impact of this decision.

The employer, Johnson Controls, is a battery manufacturer in Milwaukee, Wisconsin. In 1982, it barred most women from jobs that involved actual or potential (through transfer, promotion, etc.) lead exposure in excess of the OSHA standard. The only women permitted to work in these jobs were those who could prove their infertility through medical documentation. The three individual plaintiffs in the case were a woman who had been sterilized in order to avoid losing her job, a 50-year-old divorcée, and a man who had been denied a leave of absence to lower his lead level because he intended to become a father. The three filed a class action suit alleging sex discrimination in violation of Title VII of the 1964 Civil Rights Act as amended by the Pregnancy Discrimination Act of 1978.

The plaintiffs never got the chance to argue the merits of their case fully in the lower courts, because the defendant was granted summary judgement, which means that there was no trial and that the decision was reached on the basis of the legal papers alone. The lower courts applied what is called a “business necessity” inquiry, a strict standard difficult for plaintiffs to meet. Further, under the Supreme Court’s 1989 decision in Wards Cove Packing v. Atonio, the initial burden of persuasion was shifted to the plaintiffs. The appeals court hearing the Johnson Controls case also concluded that even under the less stringent “bona fide occupational qualification” (BFOQ) standard, the employer’s fetal protection policy was reasonably necessary to further the industrial safety concern that is part of the essence of the employer’s business. [Note: Employers may legally discriminate on the basis of gender if it can be shown that the discriminatory requirement is a legitimate qualification (BFOQ) for the job: for example, requiring sperm donors to be male, or wet nurses to be female.]

Justice Blackmun, writing for the majority (five justices), held that under Title VII, sex-specific fetal protection policies like that of Johnson Controls are, on their face, sex discrimination, because such policies require only female employees (and not males) to produce proof that they are not capable of reproducing. Policies such as the one in question that exclude employees on the basis of gender and childbearing capacity rather than fertility (male and female) are also sex discrimination under the PDA. A policy that discriminates on the basis of sex, no matter how “benign” the motives, can only be defended if it is a bona fide occupational qualification.

The majority went on to reject the employer’s argument that sex is a BFOQ for the job of batterymaker. “Occupational”, the majority said, is the most telling term, and it must be defined as skills and aptitudes that affect the employee’s ability to do the job. In discussing Johnson
Controls’ contention that the safety of unconceived fetuses is essential to its business, the Court narrowly limited the “safety BFOQ” to “instances in which sex or pregnancy actually interferes with the employee’s ability to perform the job.” The majority found that unconceived fetuses are neither customers nor third parties whose safety is essential to the business of battery manufacturing: “The BFOQ is not so broad that it transforms this deep social concern (the possibility of injury to future children) into an essential aspect of battery-making.” The Court rejected the employer’s argument that the threat of tort liability suits from children born with birth defects justified the exclusion.

In discussing how the PDA’s definition of a BFOQ supports its conclusion, the majority broadened the scope of this opinion, stating: “Decisions about the welfare of future children must be left to the parents who conceive, bear, support and raise them rather than to employers who hire those parents.” The Court reserved the decision to work while pregnant or while capable of becoming pregnant for each individual woman to make for herself. Women capable of doing their jobs may not be forced to choose between having a child and having a job, the Court stated.

Justice Blackmun’s majority opinion was joined by Justices Marshall, Stevens, O’Connor, and Souter. Justices White, Rehnquist, Kennedy, and Scalia filed concurrences. The 5-4 nature of this decision, and the majority and concurring opinions’ discussions of legal precedents and statutory definitions, should cause all fertile women in “hazardous” occupations to breathe a collective sigh of relief that they still have jobs. The Court could easily have decided to remand the case for trial to decidedly unsympathetic lower courts using a restrictive standard that would virtually have guaranteed success for the employer.

There is a bittersweet aspect to a decision which allows women to expose themselves equally with men to hazardous environments. In a perfect world, no women, men, children, fetuses or unconceived fetuses would be exposed to hazards in the workplace. Even as certain employers impose “fetal protection” policies to exclude women from the better-paying jobs, society ignores the health hazards of low-paying, “women’s” occupations such as household work and nursing. Taking the “protection” rationale a step further, one might also foresee the possibility of prosecution of fertile women for drinking coffee or alcohol, smoking cigarettes, eating unwisely, and engaging in other acts which could endanger their unconceived fetuses. [One need only read the Court’s decisions in Dothard (excluding women prison guard from male facilities), several airline cases (excluding pregnant flight attendants from flying), and Western Airlines (excluding flight engineers over 60) to be reminded of the sexist and ageist stereotypes sustained by the Court in recent times.] In UAW v. Johnson Controls, the Supreme Court has affirmed women’s equal rights with men to make their own decisions about their place of employment.

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Addendum:
It is important to note that following the Court’s decision in Johnson Controls, maternity policies that require a woman to leave active firefighting at a specified point in her pregnancy will probably no longer be considered legal. This option must now be left up to the individual woman; however, a fire department administration that wishes not to “force a women capable of
doing her job to choose between having a child and having a job” will offer meaningful alternate duty to all pregnant firefighters, with no loss of pay or benefits.
Legal Aspects of Maternity Leave: 
The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA), signed by President Clinton on February 5, 1993, expanded sick leave and family-care leave benefits for millions of U.S. workers. The FMLA guarantees employees up to twelve weeks a year of unpaid leave for the birth or adoption of a child, or the placement of a foster child; or for a serious health condition of a spouse, parent, child, or of the employee her/himself.

Many states already had some type of family-leave statute on the books. The FMLA is notable not only because it extends this benefit to workers in states that do not have such provisions, but because it requires that health care coverage of employees be continued during such leaves. This provision is missing from most state requirements.

The FMLA provides minimum guarantees: that is, it does not take away any benefits that may already be provided through employer policy or collective bargaining agreements. Thus, if an employer is already required (by contract, state law, etc.) to provide more family and medical leave than the FMLA mandates, the new law does not reduce that requirement. The employer must comply with whichever provisions are most generous to the employee. Correspondingly, collective bargaining agreements may not be used to diminish workers’ rights under the FMLA.

The FMLA applies to all public-sector employers subject to the Fair Labor Standards Act and to federal minimum-wage laws, and to all private employers with fifty or more employees. Employees must have worked for the employer for at least a year, and must work an average of 25 or more hours a week, in order to be covered.

Key provisions of the FMLA:

- Workers are allowed to take up to twelve work-weeks of unpaid leave during any twelve-month period in order to care for a newborn child, a newly adopted child, or a newly placed foster child; to care for a spouse, child, or parent with a serious health condition; or due to a serious health condition that leaves the employee unable to work.

- The employer must continue the employee’s health care benefits during leave periods. The law requires the employer to maintain a worker’s coverage under a group health plan while s/he is on leave, if that employee would have been eligible for such coverage if s/he had not been on leave. The law does not address the issues of pension contributions or non-health-care benefits during leaves.

- When an employee returns from leave, the employer must put her/him back into the position s/he previously held, or into an equivalent position with equivalent pay and benefits. “Key employees,” defined as the highest-paid 10% of the workforce, may be denied reinstatement in certain cases if reinstatement would cause substantial economic harm to the employer’s operations.

- Leave taken for the birth or placement of a child may be taken any time in the twelve months that follow the date of birth or placement.

- “Intermittent” or “reduced-schedule” leaves are permitted for birth or placement leaves; they must be made available for health leaves. This means that if a worker, out of medical
necessity, needs to take small chunks of leave — for example, to transport a family member to and from the hospital for weekly medical treatments — or needs to work on a reduced schedule (such as one that allows her/him to be home at night), the employer must make these leaves available. The employer has the option to transfer (temporarily) employees using these leaves to a different position — for example, from a 24/48 schedule to a 40-hour job — to better accommodate the needed schedule, as long as the new position has equivalent pay and benefits. Employers are not required to allow intermittent or reduced-schedule leaves for the birth or placement of a child, but they may agree to do so.

- The law does not require employers to allow workers to accrue seniority while on leave.
- Spouses who work for the same employer may be limited to a combined twelve weeks of leave in the case of childbirth, adoption/placement, or family illness (of someone other than the employee).
- Employees may be required to provide thirty days’ notice of their intent to take leave for childbirth or placement, or for other foreseeable reasons.
- The employer may require a doctor’s certificate to verify the need for leave taken for health reasons. The employer may, at its own expense, require a second opinion and, if the two conflict, a final and binding third opinion. Employers may also require periodic recertifications and reports on the employee’s status.
- Employers may require employees to use their paid vacation and sick leave as part or all of the twelve weeks of leave mandated by FMLA.
- If employees normally pay a portion of health plan costs, they must continue to pay this portion during leaves. If an employee chooses not to return to his/her job after a leave, the employer can, under certain conditions, demand repayment of the health care premiums it has paid on behalf of the employee.
- Employees are not eligible for unemployment benefits during FMLA leaves.

Definitions:

“Serious health condition” means an illness, injury, impairment, or physical or mental condition involving inpatient care (in a hospital, hospice, or residential health care facility), or continuing treatment by a health care provider. Short-term illnesses are not covered. Employees using leave for their own health conditions must be unable to perform their job functions, though employers will also be required to approve intermittent leaves for employees to receive necessary treatments for early stages of diseases such as cancer.

“Son or daughter” means a biological child, adopted or foster child, stepchild, legal ward, or other child under 18 for which the employee stands in the place of a parent. Sons and daughters 18 or older are included if they are incapable of caring for themselves due to a mental or physical disability.

“Parent” is defined correspondingly; the FMLA does not, however, mandate leaves to care for a non-marital partner or for the parents of one’s spouse. (Some state laws do mandate leaves for these family members.)

“Care” given by the employee need not be physical, but may refer to psychological care in the home as well as during inpatient stays in health care facilities.

“Equivalent position” does not mean that the employee’s new position is merely comparable or similar to the one s/he left. The job duties and all terms, conditions and privileges of employment must correspond to those of the original position.
Employers are required to post notices in the workplace explaining the provisions of the FMLA. Most employers will want to go farther, revising their employee handbooks or other materials about benefit programs to explain how the new law will be implemented and how it affects existing employee benefits. Employers who violate the FMLA are liable for the wages and benefits that the employee loses, or for any actual monetary losses. Employers who have not acted in good faith will be liable for double damages.

The Family and Medical Leave Act was a long time in coming. Organizations such as the Women’s Legal Defense Fund, and labor unions such as the United Mine Workers, worked for more than a decade to gain Congressional support for such a bill. The two leave bills that finally passed Congress were vetoed by President Bush. Enactment of family and medical leave was one of the Democrats’ major promises in last year’s presidential campaign, and the 1993 law was the first bill to pass the 103rd Congress.

The law is not without its limitations. Critics point out that those most likely to benefit from it—lower-income workers whose employers did not already provide maternity leave or sick leave—are also those least likely to be able to afford an extended period of unpaid leave. It is expected that pressure will continue to extend the law to require that at least part of such leaves be paid, as they are in most other industrialized countries. (Canada, for example, guarantees 17-41 weeks of parental leave, with 15 weeks at 60% salary.)

Even acknowledging these limitations, the 1993 Family and Medical Leave Act is still a significant step in recognizing that U.S. workers need job protection to help them deal with the arrival of a new child or with a family medical crisis. For many workers, simply knowing they will not lose their job in such circumstances is a great relief.

Note: A “serious health condition” as defined by the FMLA is not the same thing as a “disability” under the Americans with Disabilities Act (ADA). An ADA "disability" is an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. Some FMLA "serious health conditions" may be ADA disabilities, for example, most cancers and serious strokes. Other "serious health conditions" may not be ADA disabilities, for example, pregnancy or a routine broken leg or hernia. This is because a condition such as pregnancy is not an impairment.

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Your Rights under the Family and Medical Leave Act of 1993

The FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

– to care for the employee’s child after birth, or placement for adoption or foster care
– to care for the employee’s spouse, son or daughter, or parent, who has a serious health condition; or
– for a serious health condition that makes the employee unable to perform the employee’s job.

At the employee’s or employer’s option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

– The employee ordinarily must provide 30 days advance notice when the leave is “foreseeable”
– An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer’s expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

– For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan.”
– Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
– The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

– interfere with, restrain, or deny the exercise of any right provided under the FMLA;
– discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

– The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
– An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.
Healthy Milk, Healthy Baby
Chemical Pollution and Mother's Milk

Chemicals: Dioxins and Furans

Dioxins (the common name for polychlorinated dibenzo-para-dioxins) and furans (polychlorinated dibenzofurans) are two closely related groups of chemical byproducts that are produced throughout the world. Both groups consist of chlorinated compounds that have a range of congeners – members of the same structural group with different configurations. The congeners differ in terms of the number, position, and combination of chlorine atoms on the molecule. There are 75 possible dioxin congeners and 135 possible furan congeners. The dioxin and furan congeners thought to be most toxic to humans are the seven dioxins and ten furans with a particular pattern of chlorines known as the 2,3,7,8-congeners. Most studies measuring human exposure to dioxin and furans focus on this group. The term "dioxin" is often used to refer to this group of 17 congeners.

Dioxins and furans are not produced intentionally. They are byproducts from a range of chemical, manufacturing, and combustion processes including:

- production of certain pesticides (i.e. chlorophenol, chlorophenoxyacetic acid);
- paper pulp bleaching;
- production of certain dyes and pigments;
- municipal waste incineration;
- sewage-sludge incineration;
- hospital-waste incineration;
- polyvinyl chloride plastic (PVC) production and incineration;
- diesel-engine exhaust;
- accidental fires and explosions of chlorine-containing material;
- metal production; and
- combustion of wood.

Incineration is believed to be the main route by which dioxins and furans are produced and is often the area of focus in pollution-prevention efforts.

The above information is from the website of the Natural Resources Defense Council:
www.nrdc.org/breastmilk/chem9.asp

Chemicals: PBDEs

Polybrominated diphenyl ethers (PBDEs) are a class of widely used flame retardants. They are added to the plastic material in televisions and computers and are also found in construction materials, furniture, and textiles.
The chemical structure of the PBDEs closely resembles the structure of PCBs, dioxins and furans. Rather than containing chlorine, however, these chemicals contain bromine. Unlike the PCBs and many of the organochlorine pesticides, the PBDEs are not banned anywhere, and are widely used throughout the world. The production and use of PBDEs have steadily increased since the 1970s.

PBDEs are persistent in the environment and have a high potential for bioaccumulation. PBDE contamination has been observed in the environment for years, particularly in marine mammals, and is a problem for humans as well.

**Health Effects of PBDEs**

Because PBDEs have been recognized as environmental contaminants only recently, they have not been extensively studied for health effects. As with most industrial chemicals, they were subject to no testing requirements for safety prior to their debut on the market and their release into the environment. The similarity of the PBDEs to the dioxins and PCBs gives many scientists cause for concern that their negative effects on health will prove similar. In fact, preliminary studies indicate that these chemicals may have many of the same properties as the banned toxicants. In particular, scientists have found indications that the PBDEs may affect hormone function and may be toxic to the developing brain. The PBDEs have been associated with non-Hodgkin's lymphoma in humans, a variety of cancers in rodents, and disruptions of thyroid hormone balance.

**PBDEs in the Body**

PBDEs can enter the environment during the production and disposal of materials containing PBDE flame-retardants, as well as during the lifetime of PBDE-containing products. PBDEs are not chemically bound to plastics, so they can evaporate into indoor air or the outdoor environment. Once released, PBDEs can build up in the environment and in living organisms, binding strongly to sediment and building up in fish and other aquatic organisms.

Human exposure to PBDEs mainly occurs as a result of eating PBDE-contaminated fish. Worker exposure occurs during the production of PBDEs or PBDE-containing products. Consumers may also be exposed to PBDEs by breathing indoor air in the vicinity of electronic equipment or fabrics treated with these chemicals.

PBDEs were first found in sediment in the United States and in fish in Sweden in the early 1980s. Since then, several studies have found PBDEs in different human tissues, including blood, fat, and breast milk. Still, only a few studies have sought to measure PBDEs in breast milk. The data regarding PBDEs is limited in part because PBDEs have only recently been acknowledged as a chemical class of concern.[3] In future breast-milk monitoring studies, PBDE residues should be routinely examined.

**Controlling Exposure: Bans and Restrictions**

No known restrictions have been placed on the production and use of PBDEs. However, the Swedish government has announced its intention to ban PBDEs in products sold in Sweden, based partly on the detection of these chemicals in breast milk.
Benchmarks and Exposure Limits for PBDEs
Because PBDE contamination is a relatively newly understood phenomenon, no benchmarks or "safe" levels have been set for human exposure.

Breast-milk Monitoring Studies Looking at PBDEs
Very few breast-milk monitoring studies have measured PBDEs. Extensive data from Sweden, and some limited data from Germany have been collected. The data from Sweden sounded the first alarm about the potential for breast-milk contamination from PBDEs. In the Swedish study, archived samples collected between 1972 and 1997 were recently analyzed for the presence of PBDEs to get an overall summed total of PBDEs in milk.

The data from Sweden show a drastic increase in the quantity of PBDEs detected in women's breast milk. Since no definitive data regarding the health effects of children's exposure to PBDEs in breast milk have been published, it is not possible to draw conclusions regarding the impact of these rising levels. However, enough is known to raise concerns. Like the dioxins, furans, PCBs, and organochlorine pesticides, PBDEs are bioaccumulative and persistent. Unlike these other chemicals, no serious international efforts are under way to ban these hazardous chemicals. The trend toward higher levels in breast milk signals a need for immediate action to stop human exposures, before the levels rise higher and risk compromising the safety of children's first food. Toward that end, other monitoring studies in other countries will help clarify the scope of the problem.

The above information is from the website of the Natural Resources Defense Council:
www.nrdc.org/breastmilk/chem10.asp
Bibliography

These articles may be of use to those researching the reproductive risks of firefighting to both men and women.

Evanoff, B.A., and L. Rosenstock, “Reproductive Hazards in the Workplace: A Case Study of Women Firefighters,” American Journal of Industrial Medicine, 9:503-515. This early (1985) study attempts to balance the employer’s needs with the risks of firefighting during pregnancy, and “seeks a reasonable accommodation between employment and fetal and maternal health.” It concludes that while firefighting clearly poses risks to a healthy pregnancy, many women may find it necessary to stay in active suppression up until the end of their first trimester.

McDiarmid, Melissa, M.D., et al., “Reproductive Hazards of Firefighting,” American Journal of Industrial Medicine, 19:433-445 (1991) and 19:447-472 (1991). This research deals with reproductive hazards for both male and female firefighters. Part I deals with chemical hazards, Part II with non-chemical (e.g., heat, noise, physical exertion.) The abstract from Part II states:

...There is evidence that heat, noise, and physical exertion may affect various endpoints of reproductive health, including fertility, fetal loss, and growth parameters of the offspring. In particular, hyperthermia, a major fire fighting hazard, has been shown to impair male fertility and may also be teratogenic.


Firefighter Pregnancy: Physicians’ Input

[Excerpts from letters received by WFS from physicians asked for their opinions regarding pregnancy and firefighting.]

While data is sparse, I would not recommend that anyone who is pregnant be exposed to smoke and toxic substances or to hyperthermia or hypothermia. There are human data on the deleterious effects of carbon monoxide and smoking for the developing fetus. Wide swings in temperature can also have untoward effects. The fetus is at risk during embryogenesis (the first eight weeks of pregnancy), and smoking throughout pregnancy can also cause prematurity and low birth weight.

I believe switching from suppression duties to light duty would be the prudent thing to do when pregnancy is established, not because of the physical work but because of the potential for toxic exposure. Light duty would be possible throughout the pregnancy, and leave could be arranged around the time of expected delivery and postpartum recovery.

Kenneth J. Ryan, M.D.
Professor of Obstetrics and Gynecology, Harvard Medical School
Chair, Department of Obstetrics and Gynecology, Brigham and Women’s Hospital

(You indicate that) suppression duties include sudden changes in activity, heavy lifting, heavy hauling, exposure to smoke and toxic substances, work to exhaustion and severe temperature changes with hyperthermia being common and hypothermia being possible. You have indicated that light duty would include clerical/office work, public education and messenger work. It would seem appropriate that the suppression duties and the successful completion of normal pregnancy are not compatible. Therefore, it would be my opinion that the individual who becomes pregnant should be removed from suppression duties and should then be delegated light duty activities. It does not make any medical sense to allow pregnant women to be subjected to the duties which you have listed in the suppression category, regardless of their gestational age.

Stanley A. Gall, M.D.
Professor of Obstetrics and Gynecology
Duke University Medical Center

I know of no specific guidelines for disability for firefighters. However, my suggestion is that pregnant patients avoid heavy lifting after approximately 20 weeks of pregnancy.

There is no time in pregnancy where exposure to smoke and toxic substances, work to exhaustion, and severe temperature changes such as hyperthermia or hypothermia can be described as health for the fetus. Thus, I would recommend that as soon as the patient is diagnosed as pregnant, she should avoid exposure to smoke, toxic substances, and severe temperature changes. If this means changing her to light duty as soon as she is pregnant, that would certainly accomplish the goal. Pregnant women can certainly tolerate sudden changes of
activity and lifting until further in their pregnancy, but if these needs must be combined, then I think the above is the wisest course to recommend.

Jennifer R. Niebyl, M.D.
Director, Division of Maternal and Fetal Medicine
The Johns Hopkins University School of Medicine

It is my impression that pregnant personnel should not be subjected to the hazards of suppression duties as you have defined them. The hazards and stakes involved for the fetus and newborn infant are sufficiently high that I don’t believe that exposure to smoke and toxic substances, hyperthermia, or work to exhaustion would be in the best interests of the pregnant mother or her fetus at any stage of pregnancy.

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