Reproductive Safety, Pregnancy and Maternity Position Paper

It is the position of the International Association of Women in Fire and Emergency Services (iWomen) that departments have a pregnancy policy that complies with the law and NFPA 1582.

Reproductive Safety
Information on the hazards that firefighters face and the impact that these hazards may have on a pregnant woman and her fetus should be clearly communicated to those affected so they can make an informed decision for their baby, themselves, and their family. Firefighters are exposed to dangers from extreme temperatures and toxic gases. The exposure to an environment such as this can pose a risk to an embryo or fetus and disturb or interfere with their growth and development. Studies have been done and continue to be done on core temperatures, with protective gear on, and the risk of pregnant women being exposed to toxic gases, such as those found at a fire.

A Department cannot be overly paternalistic, and as a result, institute policies forbidding women who have reached a particular point in their pregnancy from performing certain job duties, without regard as to whether this forced accommodation is necessary or not. Such policies were declared illegal years ago by the United States Supreme Court, in the case of International Union v. Johnson Controls, 499 U.S. 187 (1991). In that case, the company, a battery manufacturer, even took things a step further – it prohibited all women of childbearing ages from working in any job which exposed them to lead. In the absence of a relevant business necessity or legitimate job requirement, pregnant women cannot be excluded from working in a specific position. Otherwise, a company faces liability for violating the sex discrimination prohibition of the federal law known as Title VII of the Civil Rights Act (“Title VII”).

Pregnancy versus Maternity
These words are often used interchangeably when it comes to policies, which is incorrect. A pregnancy policy covers the period when a woman is pregnant, and shortly after she gives birth. A maternity policy, on the other hand, is really a child-rearing policy, which includes time off for paternity leave. To the extent a policy has a maternity leave policy providing for time off and benefits for child-rearing (as opposed to pregnancy), the benefits must be similar for men and women; otherwise, the policy may run afoul of the various laws prohibiting sex discrimination. In this case, the discrimination would be against men, who are being treated less well than their female counterparts when it comes to time off to care for their children.

Pregnancy Policy
There are varying policies out there in the fire service – some departments have little or no policy at all and others have extensive policies that protect the employee and employer. Despite the current low percentage of women in the fire service it should be considered a best practice to have a pregnancy leave policy in place, to be proactive. The Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act, provides states that 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 affected but similar in their ability or inability to
work. This act applies to employers with 15 or more employees and applies to employment agencies; labor organizations; and federal, state and local governments. Pregnant women are guaranteed to receive the same benefits already in place by an employer; in fact, they can receive better treatment than other temporarily disabled employees. State and local laws may be more generous, and cover smaller employers or all public employers.

When Congress enacted the Family Medical & Leave Act (FMLA) in 1993, time off was mandated for eligible pregnant workers; all public employers are covered by the FMLA, regardless of size. The FMLA guarantees up to 12 weeks per year of unpaid leave, which can be used for a combination of pregnancy and childrearing leave. The employee must have worked for the employer for a period of one year or 1,250 hours during the previous year. The employee’s health coverage must continue during this leave and there should be no loss of any other employment benefits which the employee earned or is entitled. After said leave, the employee generally must be reinstated to their original position or one with equivalent pay, benefits, and terms and conditions. The employer may require that the employee use accumulated sick leave or vacation leave as part or all of the pregnancy leave; if this is required, it must be specifically stated in the policy.

FMLA leave may come into play before the woman actually needs to go out on leave. It covers time off for morning sickness and doctor’s appointments. It is also important to note that if the woman is placed on light duty, that time spent on light duty cannot be counted against her twelve weeks off. For more information about the FMLA, visit the United States Department of Labor website at: http://www.dol.gov/dol/topic/benefits-leave/fmla.htm

Some states specifically require that, under certain conditions, a pregnant employee must be temporarily transferred to another position within the company. Under Illinois law, for example, it is discrimination to “refuse to temporarily transfer a …pregnant female firefighter to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated.” 775 ILCS 5/2-102(H).

Department Policy
It is recommended that all fire departments have a pregnancy policy in place. The policy that is set should communicate the risks involved and include guidelines for the pregnant firefighter to report her condition to the department. When a pregnancy is disclosed the firefighter should be given a medical release form, so that her physician can assess her ability to perform essential job functions. The medical release should be in accordance with NFPA 1582, Comprehensive Occupational Medical Programs for Fire Departments. This form will give the physician a guideline as to best gauge when the pregnant firefighter’s duties should be modified. Policies regarding pregnancy should include the department’s physician as a vital part of the research and information dissemination.

More recently, the National Fire Protection Association (“NFPA”) has revised NFPA Standard 1582, which addresses the treatment of pregnant firefighters. While the standards are not law, they do represent a professional consensus as to how various medical conditions should be evaluated for purposes of the
job. It will be recommended that Fire Departments provide to all firefighters, regardless of gender, educational information discussing risks the job poses to reproductive health. The Department physician should be consulted once a pregnancy has been confirmed, so that the Department and the firefighter can work together on determining what essential tasks (i.e., emergency response activities, exposure to toxins, wearing self-contained breathing apparatus, climbing, searching, dragging) may need to be removed from the firefighter’s duties at particular points in her pregnancy. A form will be added, intending to educate pregnant firefighters or those considering pregnancy with respect to issues which may arise in their position. It includes a list of risks, by trimester, which a woman should discuss with her treating physician. The form also addresses post-delivery and lactation issues. Finally, an entire chapter has been added in the form of an annex. It discusses physical hazards to the pregnancy and to the fetus. It also makes general recommendations as to what activities should be avoided during certain times of the pregnancy. It, too, discusses post-delivery and lactation issues.

A department that has light-duty or non-hazardous assignments available goes a long way towards providing a safe environment if chosen by a pregnant firefighter. Alternative duty could include assignments in any of the divisions within the department. Fire departments can require the pregnant firefighter to use sick or vacation time during pregnancy or post-partum. Any time that leave is needed, during pregnancy or postpartum, the pregnant employee should be allowed to use their leave time that has been accumulated on the books, whether it is sick or vacation leave or any other leave the department has.

It is important that the work uniform and firefighting gear also be addressed in the pregnancy policy. Firefighters who wish to remain on the frontline may need to be refitted for turnouts. If light duty or alternative duty is an option, civilian clothing may be an option.

If the pregnant firefighter is not able to perform the job functions, the department may require the pregnant firefighter to be re-assigned to alternative duty status, as long as the department does so in the same manner as any other circumstance. If it is deemed by the employer’s physician that the employee is not “fit for duty” then the above stated policy would take place. The department pregnancy policy should outline the procedure for this.

The employee’s health coverage must continue during this leave and there should be no loss of any other employment benefits which the employee earned or is entitled. After the leave, the employee must be reinstated to their original position or one with equivalent pay, benefits, and terms and conditions.

Before implementing a pregnancy leave policy it is recommended that the department have a legal advisor review it. Review of the policy should then be done on a regular basis to ensure that any changes in the current law, through legislation or court decisions, will be incorporated into the policy in a timely manner.

**Maternity or Childrearing Leave**

Fire departments, no different from any other employer, should recognize the importance of parental bonding with a new child (whose arrival may be occasioned by birth, adoption or fostering), regardless of the employee’s gender. The FMLA covers this. However, a situation may arise where a female employee
may have exhausted all or a majority of her available FMLA leave by the time the child is born or placed; this is especially likely where a Department does not have light duty assignments available. Therefore, there should be a policy in place providing for some childrearing time for an employee who has exhausted or nearly exhausted her available time off by the time the child is born or placed. This could also apply to the baby’s father, who may have exhausted his available FMLA time for other reasons (such as for addressing his own serious health condition).

Adopted by: iWomen Board of Trustees Date: 8/1/2012
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