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CLIENT ALERT

California Employees' Entitlement to Leave for Pregnancy Disability not Limited to Four Months

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Under California's Pregnancy Disability Leave Law (PDLL), employers must provide up to four months of paid or unpaid leave because of an employee's actual disability based on pregnancy. Some employers have been of the view that their obligation to provide leave for pregnancy disability ends at the end of those four months. Not so, said the California Court of Appeal recently in a case of first impression. In *Sanchez v. Swissport, Inc.,* B237761 (Cal. Ct. App. 2d App. Dist., February 21, 2013), the Court of Appeal held that California's Fair Employment and Housing Act (FEHA) obligates employers to consider requests for accommodation, including extended leaves of absence, after the four months of pregnancy disability leave (PDL) is exhausted.

After she was diagnosed with a high-risk pregnancy requiring bed rest, Ana Sanchez requested a temporary leave of absence, which request her employer granted. She expected to be disabled and unable to work during her pregnancy, a period of nearly eight months. Ms. Sanchez anticipated, however, that she would be able to perform the essential duties of her job shortly after she delivered her child, with only minimal accommodations, if any. Her employer discharged her after she had been on leave for only 19 weeks, more than the four months required by the PDLL.

Ms. Sanchez sued, alleging that she was discharged because of her pregnancy, her pregnancy-related disability, and her requests for accommodation. She also claimed that her employer failed to accommodate her and failed to engage in the interactive process, as required by the FEHA. The employer responded to Ms. Sanchez's complaint by filing a demurrer, the California equivalent of a motion to dismiss. The trial court sustained the demurrer and dismissed the action on the ground that Ms. Sanchez had exhausted her leave under the PDLL and was entitled to no further accommodation because at the end of her four-month PDL she was unable to return to work.

The Court of Appeal reversed, allowing Ms. Sanchez to proceed with her claims against the employer. The court concluded that the employer's responsibility to Ms. Sanchez did not end when the PDL was exhausted, basing its decision on the express language of the PDLL. In particular, the PDLL provides that the remedies under that statutory scheme are not exclusive – they are "[i]n addition to" those under the FEHA that govern pregnancy, childbirth, and pregnancy-related medical conditions. Cal. Govt. Code § 12945(a). Thus, the remedies under the PDLL "*augment,* rather than supplant, those set forth elsewhere in the FEHA." *Sanchez* at 8. The court also relied on the Fair Employment and Housing Commission's (FEHC's) recently promulgated regulation providing that the right to leave under the PDLL is "separate and distinct" from the right to reasonable accommodation, including a leave of absence, under the FEHA. *Id.* at 10, n. 6, quoting 2 CCR § 7291.14.

Employers thus should comply with the following guidance provided by the FEHC in its regulation:

> "At the end or depletion of an employee's pregnancy disability leave, an employee who has a physical or mental disability (which may or may not be due to pregnancy, childbirth, or related medical conditions) may be entitled to reasonable accommodation under Government Code section 12940 [*i.e.,* the FEHA]. Entitlement to leave under section 12940 must be determined on a case-by-case basis, using the standards provided in the disability

> discrimination provisions … of these regulations, and is not diminished by the employee's exercise of her right to pregnancy disability leave."

Id.

Employers that are subject to California's FEHA therefore may not simply discharge employees who are unable to return to work after they exhaust their PDLs. Four months of leave may not be enough for employees who continue to suffer from a disability, whether or not that continuing disability is related to the employee's pregnancy. Employers must approach accommodation requests for leave after exhaustion of the four-month PDL as they would any other leave requests made under the FEHA. They must engage in the interactive process with the employee to determine whether a reasonable accommodation can be made or whether they are unable to grant an accommodation because, for example, an undue burden would be created. Failure to satisfy these requirements under the FEHA will subject employers to liability.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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