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# Public Education: Maternity Leave

Jay E. Grenig
*Marquette University Law School*, jay.grenig@marquette.edu



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# Public Education*

## Maternity Leave

Jay E. Grenig
Attorney-at-Law,
San Mateo, California.

POLICIES AND PRACTICES OF EMPLOYERS which purportedly discriminate against pregnant employees have faced numerous challenges recently. Generally the discriminatory policies are of two types:

1. Policies requiring a pregnant employee to take a mandatory leave of absence at a set time in the employee's pregnancy; and

2. Policies denying employees temporarily disabled by a normal pregnancy the benefits provided employees temporarily disabled by other physical disabilities or illnesses. The challenges are generally based on the equal protection clause of the Fourteenth Amendment [*see Geduldig v. Aiello*, 417 U.S. 484 (1974)], the due process clause of the Fourteenth Amendment [*see Cleveland Bd. of Ed. v. La Fleur*, 414 U.S. 632 (1974)], or Title VII of the Civil Rights Act of 1964 [*see Wetzel v. Liberty Mutual Insur. Co.*, 508 F.2d 239 (3d Cir. 1975)].

### Mandatory Maternity Leave

School policies setting an arbitrary time when women teachers must give up their jobs during pregnancy were declared to be in conflict with the due process clause of the Fourteenth Amendment in *Cleveland Bd. of Ed. v. LaFleur*, 414 U.S. 632 (1974). The school policies that the Court struck down in its 7–2 ruling required pregnant teachers in Cleveland to take leave without pay five months before the end of their term and those in Chesterfield County, Virginia, to withdraw four months before. The Court rejected the district's argument that long maternity leaves were neces-

*This Report consists of articles written by members of the Local Government Law Section Committee on Public Education. *Chairman*, Fred W. Rausch, Topeka, KS; *Vice-Chairman*, Thomas Shannon, San Diego, CA.

sary to maintain continuity of classroom instruction and that they protected women who are not strong enough to work after the early months of pregnancy. The majority opinion by Justice Stewart also rejected the teachers' contention that the decision to take a leave should be made by the employee and her doctor and stated that mandatory leave during the last few weeks of pregnancy might be constitutional if it were needed to avoid the possibility of a woman giving birth on the job. The majority concluded that as long as the teacher is required to give substantial advance notice of her condition, the choice of firm dates later in pregnancy would serve the boards' objectives while imposing "a far lesser burden on the exercise of a teacher's constitutionally protected freedom.

With regard to a teacher's eligibility to return to work after giving birth, the Court approved school policies requiring a medical certificate from the teacher's doctor and guaranteeing return to work no later than the beginning of the next school year following the eligibility determination. However, the Court disapproved of a policy provision preventing a teacher from returning to work until the beginning of the next regular school semester following the time when her child attains the age of three months. *Accord, Wetzel v. Liberty Mutual Insur. Co.*, 508 F.2d 239 (3d Cir. 1975).

Relying on *Cleveland Bd. of Ed. v. LaFleur, supra*, the California Court of Appeals, First District has declared unconstitutional a school district's mandatory maternity leave policy which required pregnant teachers to take a leave three months prior to the expected birth of the child and continuing until three months after the birth of the child as well as to give advance notice of the expected birth date. When a teacher refused to tell the district the expected birth date until less than a month before the baby was born, the district notified the teacher that she would not be recommended for re-employment for the next school year because she had breached her employment contract by failing to comply with the district's maternity leave policy. Rejecting that argument, the Court of Appeals held that the notice requirement was so inextricably connected with the invalid mandatory provisions that it was not a valid basis for refusing to reemploy the teacher. *Kornblum v. Newark Unified School Dist.*, 37 Cal. App. 3d 623 (1974).

**Sick Leave Benefits**

The Equal Employment Opportunity Commission is the federal agency charged with enforcement of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity

Act of 1972, 42 U.S.C. (Supp. II) § 2000e *et seq.* The EEOC Sex Discrimination Guidelines provide, in part, that disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. 29 C.F.R. § 1604.10(b) (1973).

Despite the guidelines, the United States Supreme Court in *Geduldig v. Aiello*, 417 U.S. 484 (1974), denied a worker's claim that the withholding of disability benefits under the California disability insurance program for employees who miss work because of normal pregnancies was unconstitutional sex discrimination. Under the California program, "disability" is defined as excluding any injury or illness caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter. Calif. Unem. Ins. Code § 2626. The majority determined that there was no violation of the equal protection clause of the Fourteenth Amendment. In Footnote 20 of the majority opinion, the Court declared:

> [W]hile it is true only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification. . . . Absent a showing that distinctions involving pregnancy are mere pretext designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of the legislation. . . .

The Court explained that a pregnancy-based classification merely creates one class of pregnant women and another class of non-pregnant persons.

*Geduldig* involved only the question of whether there was sex discrimination in violation of the equal protection clause of the Fourteenth Amendment. The majority did not consider whether there was a violation of Title VII. *See Wetzel v. Liberty Mutual Insur. Co.*, 508 F.2d 239 (3d Cir. 1975).

In *Wetzel v. Liberty Mutual Insurance Company*, the United States Court of Appeals for the Third Circuit held that Title VII and the EEOC guidelines require an employer to treat pregnancy no differently than any other temporary disability for leave purposes. The court concluded that the employer's exclusion of disabilities due to pregnancies discriminates against female employees on the basis of sex in violation of Title VII.

The Court of Appeals for the Second Circuit also has upheld the guidelines. *Communications Workers of America v. AT&T,*

— F.2d—, 43 USLW 2405 (2d Cir. Mar. 26, 1975) vacating 379 F. Supp. 679 (S.D.N.Y. 1974). The court ruled that the decision in *Geduldig* does not require the dismissal of a Title VII action challenging the private employer's failure to provide sickness and disability benefits in connection with absences due to pregnancy. The court concluded that it is inconceivable that the Supreme Court intended to substantially circumscribe the reach of Title VII and invalidate the guidelines without mention of either.

The question of sick leave benefits for public school employees absent due to pregnancy is currently before the Ninth Circuit Court of Appeals in *Berg v. Richmond Unified School Dist.* The United States District Court for Northern California has held that Title VII prohibits a school district from excluding pregnant employees from disability benefits. *Vineyard v. Hollister Elem. School Dist.*, — F. Supp. — (N.D. Cal. 1974). The court rejected the district's argument that *Geduldig* permitted the denial of pregnancy benefits to a woman absent from work due to pregnancy and pointed out that there is no strong economic justification for excluding pregnant employees from disability benefits and that Congress has the power to pass legislation to implement the Equal Protection Clause that is broader than the clause itself. The United States District Court for the Northern District of Iowa also has held that a school district's denial of sick leave benefits to an employee absent from work because of normal pregnancy violates Title VII. *Sale v. Waverly-Shell Rock Bd. of Ed.*, 390 F. Supp. 784 (N.D. Iowa 1975); *see also Hutchison v. Lake Oswego Sch. Dist.*, —F. Supp. — (Or. 1974).

**Conclusion**

With regard to mandatory maternity leave policies, the courts have laid down the following guidelines:

1. Teachers may be required to take maternity leave during the last few weeks of pregnancy but may not be required to commence such leave several months before the expected birth date;
2. Districts may not prevent a teacher from returning to work within three months after the birth of her child;
3. Districts may prevent a teacher who has taken maternity leave from returning to work in the school year in which her child is born; and
4. Teachers may be required to give advance notice of their pregnant condition unless the purpose of the notice is to facilitate enforcement of an unconstitutional policy.

With regard to sick leave benefits for absences due to normal pregnancy, the answer is still uncertain. Two circuit courts of appeals have ruled that denial of sick leave benefits for normal pregnancy may violate Title VII and the EEOC Guidelines. The question of sick leave benefits for pregnant school employees is presently before the Ninth Circuit Court of Appeals.