

Legislative Analysis



ELLIOTT-LARSEN CIVIL RIGHTS ACT: PREGNANCY, CHILDBIRTH, & RELATED CONDITIONS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4327 as enrolled
Public Act 190 of 2009
Sponsor: Rep. Coleman Young
House Committee: Labor
Senate Committee: Commerce and Tourism

Third Analysis (1-29-10)

BRIEF SUMMARY: The bill would prohibit job discrimination for women affected by pregnancy, childbirth, or related medical conditions.

FISCAL IMPACT: The bill would have no significant fiscal impact on the state and local units of government, as state and federal law already prohibit discriminatory employment practices against pregnant employees. See *Fiscal Information*.

THE APPARENT PROBLEM:

In October 2008, five Detroit police officers filed suit in U.S. District Court against the City of Detroit because department rules require them to take a leave of absence if pregnant. The pregnant police officers have alleged discrimination under Title VII of the federal Civil Rights Act of 1964.

According to a police department spokesman, the pregnant officers were denied the opportunity to take restricted duty assignments during their pregnancies because if these assignments were granted, then male officers could make a similar request whenever they became disabled off-site. The rule has been in effect since 2004 when an arbitrator ruled in favor of the police officers' union representing a male officer with an off-work injury who had filed a grievance, claiming discrimination.

More specifically, until 2004, pregnant police officers took restricted duty assignments when their pregnancies required them to do so. But then an officer who was disabled off-duty filed a grievance that claimed he, like pregnant officers, suffered an off-duty disability and should be offered a restricted duty assignment by the Detroit Police Department. An arbitrator found in his favor, but in response to the ruling the department canceled its policy of special consideration light-duty assignments for everyone, including pregnant officers.

Instead of light duty, pregnant officers are required to take time off using their sick leave. After their accumulated sick leave is exhausted, they go on unpaid leave.

In 2008, a pregnant police officer filed a claim with the U. S. Equal Employment Opportunity Commission. In May 2008, the commission found discriminatory the DPD

policy that denies light duty to pregnant police officer, and treats pregnancies as off-the-job injuries. The EEOC investigator who handled the complaint found that the police department policy likely violates Title VII of the federal Civil Rights Act of 1964 because the pregnant officer "was forced to take a leave of absence because of her sex." The EEOC investigator having found in her favor, the officer was able to file a sex discrimination suit under the federal Civil Rights Act. Fellow officers who had lost pay, seniority, and health benefits during their pregnancies joined her suit. The police officers, represented by lawyers affiliated with the American Civil Liberties Association, argue they have been forced to take a leave of absence because of their sex, and have suffered a significant loss of wages. They seek back pay and damages.

Legislation has been introduced to prohibit employers from treating pregnant employees differently from others, if the employees are equally able to work.

THE CONTENT OF THE BILL:

The bill would amend Article 2 of the Elliott-Larsen Civil Rights Act to prohibit an employer from treating an individual affected by pregnancy, childbirth, or a related medical condition differently for any employment-related purpose from another individual who was not so affected but was similar in ability or inability to work, without regard to the source of any condition affecting the other individual's ability or inability to work. For the purposes of this provision, a medical condition related to pregnancy or childbirth would not include a non-therapeutic abortion not intended to save the life of the mother.

Article 2 prohibits an employer from discriminating against an individual on the basis of sex, religion, race, color, national origin, age, height, weight, or marital status. The article states, "Sex' includes...pregnancy, childbirth, or a medical condition related to pregnancy or childbirth that does not include non-therapeutic abortion not intended to save the life of the mother."

MCL 37.2202

FISCAL INFORMATION:

The bill would have no significant fiscal impact on the state and local units of government, as state and federal law already prohibit discriminatory employment practices against pregnant employees.

Federal law. The federal Civil Right Act, 42 USC 2000e(k), defines discrimination "because of sex" or "on the basis of sex" as including, but not limited to, "because of or on the basis of pregnancy, childbirth, or related medical conditions; and 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..."^[1]

The Code of Federal Regulation (Appendix to Title 29, Part 1604) states "[t]he 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." Moreover, the regulations specifically provide that "[a]n 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." [2]

State law. The Elliott-Larsen Civil Rights Act, MCL 37.2201(d), defines "discrimination on the basis of sex" as including but not limited to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth..."

Fitting within these strictures, the bill clarifies the employment protections for pregnant employees under state law. As a result, the bill could potentially result in a small increase in the number of complaints filed with the Department of Civil Rights. The department's investigatory costs vary depending on the nature and complexity of each case although, on an individual basis, such costs are not significant.

ARGUMENTS:

For:

Proponents say the bill would bring the state civil rights statute--known as Elliott-Larsen--into compliance with Title VII of the federal Civil Rights Act. Those who support the legislation argue that pregnant police officers (indeed, all pregnant employees) should be treated no differently from others who are unable to do certain aspects of their work due to a temporary disability. This bill inserts that language found in federal law into state statute. Those who favor the bill also point out that the Detroit police officers who are forced to take a leave of absence when pregnant are clearly discriminated against on account of their sex, in violation of both state statute and federal law.

For:

Proponents support the bill because it requires that pregnant workers and new mothers be treated the same, for any employment related purposes, as others not so affected, but similar in their ability to work. According to a spokesperson from the National Organization for Women, the phrase "for any employment related purpose" should be interpreted to include *all of the following employer policies and practices*: those related to use of paid or unpaid sick leave, annual leave, personal leave, and medical leave; those related to compensation, health insurance, and long-term disability insurance; and those related to accommodating a temporary disability such as modifying tasks or performing alternative assignments. Further, the phrase should also be interpreted to include *all of the following rights*: the right to return to the previous job if employees on sick or

disability leave have a right to return to the previous job; the right to have pregnancy-related health insurance if health insurance coverage is provided to other employees; the right to be treated without discrimination based on the marital status of the pregnant employee; the right to be free from retaliation from the employer or co-workers for becoming pregnant; and the right to oppose without retaliation or harassment, an employment practice that seems discriminatory.

The bill would amend Section 202 of the Elliott-Larsen Civil Rights Acts to prohibit treating an individual affected by pregnancy, childbirth, or a related medical condition differently for any employment related purposes from another individual not so affected but similar in ability or inability to work, without regard to the source of any condition affecting the ability or inability to work.

For:

Some who favor the bill note that it promotes a "pro-family" employment policy that encourages young families to have children. Currently, some women hide their pregnancies (and incur risks to their health) rather than lose their jobs when they divulge their pregnancies to employers. That harsh choice adds unhealthy stress which can adversely affect a couple's marriage and a mother's health.

Against:

Opponents of the bill fear that those who operate small businesses having few employees would be unable to afford comparable treatment for their disabled employees. If, for example, light duty were offered to one of three full-time employees, and then a second employee also incurred a temporary disability for which light duty were mandatory, it would likely be necessary to hire additional new workers in order to serve customers.

Legislative Analyst: J. Hunault
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.