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BILL



ANALYSIS

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House Bill 4327 (Substitute S-1 as reported)
Sponsor: Representative Coleman Young
House Committee: Labor
Senate Committee: Commerce and Tourism

Date Completed: 9-10-09

RATIONALE

Both State and Federal civil rights laws prohibit employers from discriminating against employees on the basis of sex, which includes pregnancy, childbirth, and related medical conditions. The Federal protection extended to pregnant workers is central to a lawsuit against the Detroit Police Department (DPD). According to the plaintiffs' complaint, the DPD previously maintained an informal policy and practice of providing light duty assignments to officers who had medical conditions or injuries that temporarily prevented them from performing the full range of confrontational police duties. Under this policy, pregnant officers were placed in restricted duty positions until they opted to use leave time or were required by their medical providers to discontinue work. In 2004, however, the DPD evidently adopted a new policy under which pregnant officers are to be treated as officers who incur nonduty-related injuries or medical conditions. According to the lawsuit, when the DPD learns that an officer is pregnant, regardless of whether she has actual work restrictions or has a desk job, she is placed on sick leave and receives a salary only until accrued personal leave or sick time is exhausted. Also, pregnant officers are placed on a waiting list for light duty positions, which are prioritized based on seniority. Reportedly, however, nonpregnant officers with minor nonduty-related injuries are not placed on sick leave and, in some cases, they receive preferential assignments to light duty work.

Five female DPD officers who were affected by this policy filed complaints with the Equal

Employment Opportunity Commission (EEOC). Regarding at least one complaint, the EEOC found reasonable cause to believe that Title VII of the Federal Civil Rights Act was violated. The EEOC issued a right to sue letter to each of the complainants. In October 2008, these officers filed a lawsuit against the DPD and the City of Detroit in the U.S. District Court for the Eastern District of Michigan (*Prater et al. v Detroit Police Department and the City of Detroit*, Case No. 08-CV-14339). The complaint alleges that the DPD's policy and practice violate Title VII of the Civil Rights Act and the Equal Protection Clause of the U.S. Constitution. The case is scheduled to go to trial in July or August 2010.

Title VII of the Civil Rights Act contains the Federal prohibition against employment discrimination, as well as the following statement: "[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work...". It has been suggested that Michigan's civil rights statute should contain comparable language.

CONTENT

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 nontherapeutic 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 nontherapeutic abortion not intended to save the life of the mother."

MCL 37.2202

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although State and Federal laws prohibit employers from discriminating on the basis of pregnancy, sometimes pregnant workers still are treated differently than other employees who may or may not be temporarily disabled. This can be especially true in male-dominated work settings like police departments, but discriminatory treatment might occur in any workplace. The Pregnancy Discrimination Act, which is included in Title VII of the Federal Civil Rights Act, makes it clear that employers must treat pregnant workers the same as other employees who can or cannot perform certain aspects of their job. This protection is violated when an employer forces pregnant workers to take sick leave even though they have no work restrictions. The violation is especially blatant when light duty assignments are provided to nonpregnant workers who cannot perform all aspects of the job due to medical conditions or injuries, but pregnant employees are not given light duty work.

By bringing the language of Michigan's civil rights statute into conformity with Title VII, the bill would increase protections for pregnant employees under State law.

Opposing Argument

By providing that a medical condition related to pregnancy or childbirth would not include nontherapeutic abortion not intended to save the life of the mother, the bill would punish women who choose to have an abortion. This language would allow employers to inquire about a woman's abortion and the reason for it, and then impose discriminatory treatment unless the abortion was intended to save the mother's life.

Response: The proposed language would be consistent with existing language in Article 2 that makes the same exception for a nontherapeutic abortion. Unless the bill contained conforming language, a court potentially could find that the exception did not apply.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could result in an increase in the number of civil rights complaints filed; however, the potential increase in the number of complaints should not cause a significant increase in the workload of the Department of Civil Rights. Current annual appropriations should cover any cost incurred due to any increase in complaints filed.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.