MTAS

technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

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# EEOC ISSUES AMENDMENTS TO ITS SEX DISCRIMINATION GUIDELINES: QUESTIONS AND ANSWERS INTERPRETING PREGNANCY DISCRIMINATION ACT

The Act, which added Section 701(k) to Title VII, prohibits employment discrimination because of "pregnancy, childbirth, or related medical conditions." The law became effective Oct. 31, 1978. However, employers have until April 29, 1979, to make necessary adjustments to fringe benefit or insurance programs that were in effect on Oct. 31 in order to ensure that pregnant workers are granted the same benefits as those suffering other disabilities. Programs created after Oct. 31, 1978, must be in compliance immediately.

EEOC's interpretive "questions and answers" are classified as "interim amendments" to the commission's guidelines on sex discrimination, Section 1604.10, after their publication in the FEDERAL REGISTER March 9, 1979. They will be open for written comments for 30 days; however, they will be considered effective as of their publication date.

Following are some highlights from the Q & A's:

Hiring--An employer cannot refuse to hire a pregnant applicant "so long as she is able to perform the major functions" of the job, nor can hiring be refused because of preferences of co-workers, clients, or customers.

Determining "fitness"--Employers can continue with "any procedure used to determine the ability of all employees to work," such as a doctor's statement, physical examination, etc., as long as pregnancy-related conditions are not singled out for special procedures.

Job accommodations--If employers accommodate other "temporarily disabled" employees, they must make similar accommodations for pregnant workers. "For example, a woman's primary job function may be the operation of a machine and incidental to that function, she may carry materials to and from the machine. If other employees temporarily unable to lift are relieved of these functions, pregnant employees also unable to lift must be temporarily relieved."

Holding a job open--"Unless the employee on leave has informed the employer that she does not intend to return to work," her job must be held open for her in the same way used for employees on sick or disability leave for other reasons.

Benefit programs and pregnancy--Disability benefits must be paid for all absences incurred on or after April 29, even if the pregnancy began or the employee gave birth before that date. Employers also should provide disability benefits "for as long as the employee is unable to work for medical reasons," unless the policy sets other limitations on temporary disability pay. In addition, benefits for long-term or permanent disabilities must apply to pregnancy-related conditions. If insurance options are offered to employees, "each of the plans must cover pregnancy-related conditions. For example, an employee with a single coverage policy cannot be forced to purchase a more expensive family coverage policy in order to receive coverage for her own pregnancy-related condition."

Coverage of spouses and dependents--If dependent or spouse coverage is not provided, it does not have to be initiated. However, if an employer's insurance program covers the medical expenses of employees' husbands, "then it must equally cover the medical expenses of spouses of male employees," including pregnancy-related expenses.

Distribution of cost--The added costs of bringing benefit plans into compliance "can be apportioned between the employer and employee in the same proportion that the cost of the fringe benefit plan was apportioned on Oct. 31, 1978, if the apportionment was nondiscriminatory." However, if they were not apportioned at that time, the employer must continue to pay the full amount, and "in no circumstance may male or female employees be required to pay unequal apportionments on the basis of sex or pregnancy."

Reduction of benefits or compensation--In order to be in compliance with the Act, benefits or compensation that an employer was paying on Oct. 31, 1978, cannot be reduced before Oct. 31, 1979, or before the expiration of a collective bargaining agreement in effect on Oct. 31, 1978, whichever is later.

Abortion--An employer cannot discriminate in its employment practices against a woman who has had an abortion. However, an employer is not required to provide insurance for abortion unless the life of the woman is endangered or medical complications arise from an abortion. Nevertheless, an employer may elect to provide insurance coverage to cover abortions and, if it does, must do so in the same manner and to the same degree as other medical conditions are covered.

As can be noted by these examples, many sections of the guidelines will have far reaching effects on your city's insurance coverage as well as personnel policy administration. It is recommended that you request your legal counsel to review the entire Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076, along with the Commissions Sex Discrimination Guidelines, 29 CFR, Part 1604.10, as amended (Federal Register, March 9, 1979, P. 13278), including the introduction and question and answers section included as an appendix to the guidelines. You and your legal counsel possibly will want to meet with your insurance carrier/s soon thereafter to up-date your insurance package and also comply with the Act before April 29, 1979.

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