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Employers Take Note: Additional Leave for Pregnant Employees May be Required

Julie M. Holden
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In a recent decision, Sanchez v. Swissport, Inc., the California Court of Appeal ruled that a pregnant worker who is fired after using up her time off under California's Pregnancy Disability Leave Law ("PDLL") may still plead a claim for employment discrimination under the Fair Employment and Housing Act ("FEHA").

In Sanchez, a female employee was diagnosed with a high-risk pregnancy requiring bed rest, which required her to take a leave of absence from her job. The employer afforded her about 19 weeks of leave − consisting of the allowed time under the PDLL, as well as vacation time − before terminating her employment on July 14, 2009, three months before she was due to give birth. The employee alleged that she would have returned to work "very soon" after she was scheduled to give birth, so she was not requesting an open-ended leave.

Under the PDLL, an employer must "allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months." Under the similar California Family Rights Act ("CFRA"), an employer must grant an employee with a qualifying level of service up to a total of 12 weeks a year for family care and medical leave.

The FEHA is a broader statute, which prohibits discrimination in employment based on, among other things, pregnancy or pregnancy-related medical conditions. Under the FEHA, the employer must provide a "reasonable accommodation" for an employee's disability, as long as the reasonable accommodation does not impose "undue hardship" on the employer's operation. However, the employer may terminate an employee who cannot perform the essential duties of his or her job, even with a reasonable accommodation.

The employer argued that because it had provided the employee with the leave mandated by the PDLL and CFRA, it necessarily had satisfied its obligations under the FEHA. Therefore, the employer argued that the employee's claims − which were all based on the FEHA − should be dismissed.

The California Court of Appeal disagreed, reasoning that the remedies of the PDLL "augment, rather than supplant" those in the FEHA. And, "[u]nder the FEHA, a disabled employee is entitled to a reasonable accommodation−which may include leave of no statutorily fixed duration−provided that such accommodation does not impose an undue hardship on the employer." Since the employee alleged that she would have returned to work shortly after the birth, with little or no further accommodations, there was no presumption that she could not perform her essential duties with the reasonable accommodation of extra leave.

In other words, an employer is not relieved of its legal obligations to a pregnant employee just by allowing her the full four-month leave under the PDLL, or the 12 weeks under the CFRA. Employers must also make sure that they are complying with the broader FEHA, and "[a] finite leave of greater than four months may be a reasonable accommodation for a known disability under the FEHA."

The court in Sanchez did note that the employer was "free to challenge" the employee's allegation that allowing her an extended leave would not have imposed an undue hardship on the company. In other words, if allowing an extended leave for pregnancy-related disability in addition to the four months allowed under the PDLL would actually impose an undue hardship on the employer, this would be a defense to claims of a FEHA violation.

In the wake of the Sanchez decision, employers should carefully consider the circumstances before making a decision to terminate a pregnant employee after the employee's statutorily-mandated leave has expired. As Sanchez shows, if providing a longer amount of leave would not impose an undue hardship on the employer, denying the employee additional leave could be a violation of FEHA.