

DATE: March 9, 1987

TO: Cruz Gonzalez, Risk Management Director via  
Jack McGrory, Deputy City Manager  
FROM: City Attorney  
SUBJECT: Long-Term Disability Benefits for Pregnant  
Employees

You have recently asked this office to respond to the following questions:

- (1) Under what conditions can Long-Term Disability Benefits be paid for pregnancy prior to the date of delivery?
- (2) What is considered to be a medical disability in the case of pregnancy?

Article IV of The City of San Diego's Employee's Long-Term Disability Income Plan entitled "Eligibility for Long-Term Disability Benefits" states

Each Eligible Employee who is a Participant shall be entitled to be paid from the Plan the monthly disability benefit determined in Article V during the period specified. A Participant will be considered totally disabled if:

- (a) The Participant is certified by a licensed physician that he is unable to perform any and/or all duties of present occupation during a twelve (12) consecutive months' income payout period; and
- (b) After the twelve (12) months of disability, the Participant is unable to engage in any gainful occupation or employment for which the Participant is

or becomes reasonably fitted by education, training or experience.

In addition, Cal. Gov't Code . 12945 states, in part, as follows:

It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:

....

- (b) For any employer to refuse to allow a female employee affected by pregnancy, childbirth, or related medical conditions either:

(1) To receive the same benefits or privileges of employment granted by that employer to other persons not so affected who are similar in their ability or inability to work, including to take disability or sick leave or any other accrued leave which is made available by the employer to temporarily disabled employees. For purposes of this section, pregnancy, childbirth, and related medical conditions are treated as any other temporary disability. However, no employer shall be required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical condition for a period exceeding six weeks. Nothing in this section shall be construed to require an employer to provide his or her employees with health insurance coverage for the medical costs of pregnancy, childbirth, or related medical conditions. ... Emphasis added.

(2) To take a leave on account of pregnancy for a reasonable period of time; provided such period shall not exceed four months. ...

....

Each case must be evaluated on an individual basis. When a licensed physician certifies that a pregnant employee is unable to perform the normal duties of her job classification, The City of San Diego can require the employee to fill a "light duty" assignment. However, if no light duty assignment is available, the City is obligated to pay the benefits in accordance with the provisions of the Plan. Although California Gov't Code . 12945 does not require The City of San Diego to provide disability benefits for pregnancy, child birth, or a related medical condition beyond a period of six weeks, the present Plan Document authorizes benefit coverage as long as the employee is "disabled" as that term is defined in Article IV. If the City desires to restrict benefits for pregnancy, child birth or related conditions to a maximum of six weeks, the Plan Document must be amended in accordance with the provisions of Article VIII and the meet and confer requirements of the Meyers-Milias-Brown Act Cal. Gov't Code . 3500 et seq..

In summary, Long-Term Disability Plan Benefits are available to an employee when a licensed physician certifies that the

employee is unable to perform any of the duties of the employee's present occupation and no light duty assignments are available. Pregnancy, child birth, and related medical conditions are treated the same as any other disability.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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