

DATE: May 10, 1988

TO: Dan Teague, Long-Term Disability
Administrator - Risk Management
FROM: City Attorney
SUBJECT: Long-Term Disability Exclusionary Period for
Pregnancy Claims

You have asked this office for a written explanation of how the benefit exclusion period of the Long-Term Disability Plan (LTD) should be applied to disability claims based on pregnancy. LTD provides benefits for eligible City of San Diego employees after thirty days of disability under the conditions set forth in the plan document.

Paragraph 2.05 of the plan document provides that employees normally become eligible for coverage after twelve consecutive months of employment with the City. However, benefits are subject to the limitations of paragraph 5.08, entitled "Benefit Exclusions" which states in part:

The benefit provisions do not provide benefits for:

....

(e) Any accident or sickness for which medical treatment was received within six (6) months prior to the effective date of coverage for the Participant. Such accident or sickness shall be covered after a period of twelve (12) consecutive months, ending while coverage is in force, during which period no medical treatment for such sickness has been received, or after the Participant has been covered for a period of twelve (12) months, whichever occurs first. Emphasis added.

Under California law, The City of San Diego must, for the purpose of LTD benefits, treat pregnancy in the same manner as any other temporary disability. This requirement is set forth in California Government Code section 12945 which states in part:

It shall be 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. ...

Clearly, LTD benefits must be provided to otherwise qualified pregnant employees when they are certified by a physician as temporarily disabled in accordance with the provisions of the plan document.

In a meeting held on October 21, 1987, we indicated a concern over a policy that defined pregnancy as an accident or sickness for the purposes of denying benefits under paragraph 5.08(e). Such an interpretation is not required by Government Code section 12945 and may cause employees who become pregnant prior to accumulating twelve continuous months of employment with The City of San Diego to become ineligible for benefits for that particular pregnancy solely because they sought routine prenatal medical care for a normal pregnancy prior to the end of their initial twelve-month of employment. We advised you that because

pregnancy is not legally defined as "an accident" or "sickness" as those terms are used in subsection 5.08(e) that the plan administrator has the legal authority, pursuant to section 7.06(a) of the plan document to interpret section 5.08(e) in such a way that receipt of normal prenatal care for a routine pregnancy unaccompanied by any other medical complications is not a disqualifying event for an employee who becomes temporarily disabled as a result of pregnancy and who is otherwise eligible for benefits. Our concern was, and still is, that an interpretation of section 5.08(e) that leads to a policy that encourages employees to avoid seeking normal prenatal care in an attempt to preserve their right to benefits will not be in the best interest of the goals and intent of the LTD program because such a practice will most likely increase the probability of longer terms of temporary disability resulting from pregnancies

in general.

If the plan administrator is still interested in resolving this issue, but feels uncomfortable by interpreting the plan document pursuant to section 7.06(a), the same result may be accomplished by amending the plan.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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