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ABSTRACT

This speech presents an analysis of court cases dealing with the rights of pregnant students and pregnant employees. The discussion of these rights, such as the right to maternity leave, focuses around the Civil Rights Act of 1964 and its implications for equal employment opportunity. The court cases discussed consider the application of the equal protection clause to the cases of pregnant employees. The author also outlines the application of the equal protection clause to pregnant students. Arelated document, EA 004 365, discusses the rights of married students. (JF)

The Legal Rights of Pregnant Students and Pregnant Employees

by

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My assignment for the second day of this School Law Seminar is to discuss the Legal Rights of Pregnant Students and Pregnant Employees. Having discussed yesterday the legal rights of married students, I have apparently been given a "package deal". I do not wish it to be supposed that by virtue of the subject matter assigned to me that I will discuss today's subject as a frustrated marriage counsellor, obstetrician or gynecologist. I propose to deal with the subject matter entirely from the standpoint of a lawyer - nothing else.

Please note from your programs that the term "pregnant employees" is not preceded by the term "female". Although I tried hard to see if I could find a case involving a pregnant male, my research in that area was not productive of such a case. However, I did come across a case involving an application by a male instructor for a leave under a maternity leave policy and that case I will discuss later in this talk.

There have been a series of cases dealing with the subject of maternity leaves which require careful consideration. Strangely enough, none of the cases that I have seen are any earlier than May of 1971. Dates are extremely important because of Title VII of the Civil Rights Act of 1964[1] as amended on March 24, 1972 by the Equal Employment Opportunity Act of 1972[2].

The term "person" as that term now appears in the law[3] includes governments, governmental agencies and political subdivisions. Previously, they were not covered by the law.

The term "employer" does not include the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of

Columbia.[4]

The language dealing with Exemptions now reads as follows:

> "This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."[5]

The Conference Report on the Amendment to the Civil Rights Act of 1964 stated that:

> "This section is amended to eliminate the exemption for employees of educational institutions. Under the provisions of this section, all private and public educational institutions would be covered under the provisions of Title VII. The special provision relating to religious educational institutions in Section 703(e) (2) is not disturbed.-Section-by-Section Analysis, Cong. Rec. (H 1862), March 8, 1972."

The House Committee Report has the following interesting language:

> "There is nothing in the legislative background of Title VII, nor does any national policy suggest itself to support the exemption of educational institution employees-primarily teachers-from Title VII coverage. Discrimination against minorities and women in the field of education is as pervasive as discrimination in any other area of employment.-House Committee Report No. 92-238, June 2, 1971."

Section 703(a) of the Civil Rights Act of 1964 as amended, prohibits discrimination because of an individual's race, color, religion, sex, or national origin.

With those preliminary observations, let us now direct our attention to the cases that have come down dealing with the sexy subject of maternity leaves prior to and since the 1972 amendments to Title VII of the Civil Rights Act of 1964.

In La Fleur v. Cleveland Board of Education [6] decided by the

United States District Court, Northern District of Ohio on May 12, 1971, an injunction was sought to restrain the Cleveland School Board from enforcing a regulation prohibiting teachers who became pregnant from teaching their classes past the fourth month of pregnancy.

Plaintiff contended that the regulation discriminated against female employees with respect to their employment and deprived them of their "rights, privileges and immunities secured by the Constitution and Laws of the Civil Rights Act of 1871 (42 U.S.C. Sec. 1983)".

The Board maintained that the regulation was a valid exercise of the school board's statutory authority to make rules and regulations for its government and the government of its employees and the pupils of the school.

The Court noted that the complaint had not been brought pursuant to Title VII of the Civil Rights Act of 1964.

The Court went into a detailed discussion of the adoption of the maternity regulations which had been adopted in the early fifties. Prior to the rule, teachers suffered many indignities as a result of pregnancy which consisted of children pointing, giggling, laughing and making snide remarks, causing interruptions and interference with the classroom program of study.

There were instances where teachers refused to voluntarily withdraw from teaching until the birth of the child; and although no child was born in the classroom, a few times it was very close. In one instance where a teacher's pregnancy was advanced, children in a junior high school class were taking bets on whether the baby would be born in the classroom or in the hall.

The evidence also established a steady increase of violence in the Cleveland schools over the last ten years. In the 1969-70 school year there were 256 assaults upon teachers by pupils and others within the school buildings. Up to the date of the lawsuit, 140 assaults had already taken place. In 1971 alone there had been the confiscation of 46 guns and 18 knives in the Cleveland public schools. 136 teachers were accidentally injured as the result of falls in the halls and corridors during the 1969-70 school year.

Teachers are required to be on their feet much of the day and in addition to teaching they are required to maintain order in the classrooms and supervise the movements of students in the halls, corridors and sometimes in the cafeterias.

The Court noted some of the physical conditions resulting from pregnancy such as possible complications such as toxemia, placenta previa,etc. It also noted the frequency of urination during the last three months of pregnancy.

The Court held that the primary purpose of the regulation was to protect the continuity of the classroom program.

The Court rejected the argument of any violations of constitutional rights and concluded with the following observation:

> "The Cleveland public schools had operated prior to the early 1950's without this maternity leave rule, and the experiences were such that the Board was compelled to adopt a regulation to remedy this impediment to its educational function.
>
> This requirement of maternity leave gives the school the best assurances that sudden disruption of the students' classroom program due to an unforeseen complication in the teacher's condition will be minimized. The requirement of advance notice of termination also allows time for a substitute teacher to work and train with the intended class prior to assuming her full responsibilities, further maintaining continuity in the classroom program. The provision for resumption of employment after the

child's birth serves the purposes of maintaining classroom continuity and protecting the health of the mother and child.

This regulation has minimized the classroom distractions and disruptions which had occurred prior to its adoption, further attesting to its necessity and reasonableness, and this court so finds.

The problem of the teacher's health and safety, before and after the child's birth, is of itself a valid concern of the school board aside from its interest in the students' education.

In an environment where the possiblity of violence and accident exists, pregnancy greatly magnifies the probability of serious injury.

This court finds that for the reasons stated herein, the regulation in question is entirely reasonable, and most adequately meets the prescribed tests.

This court finds that the Cleveland Board of Education has not discriminated as to women whose condition is attendant to their sex.

This court finds that there is a reasonable basis for the rule which distinguishes pregnant teachers from all other teachers.

This court finds that no showing of a violation of the plaintiffs' constitutional rights has been made.

This court finds that the regulation furthers the design for quality education, and serves the important interests of the students in implementing this fundamental right.

This court finds that the plaintiffs' burden of showing that the maternity leave of absence is arbitrary and unreasonable has not been sustained.

In accordance, the maternity regulation of the Cleveland Board of Education is sustained in its entirety."

In Cohen v. Chesterfield Co. School Board,[7] decided by the United District Court for the Eastern District of Virginia on May 17, 1971, it was contended that a regulation of the Chesterfield County School Board which required pregnant school teachers to take a leave of absence at the end of the fifth month of

pregnancy violated the constitutional rights of the plaintiff in that it discriminated against her as a women, thereby violating the equal protection clause of the Fourteenth Amendment.

Said the Court:

> "The unrefuted medical evidence is that there is no medical reason for the Board's regulation. As a matter of fact, pregnant women are more likely to be incapacitated in the early stages of pregnancy than the last four months. Further, there is no psychological reason for a pregnant teacher to be forced to take a mandatory leave of absence. In short, since no two pregnancies are alike, decisions of when a pregnant teacher should discontinue working are matters best left up to the woman and her doctor."

In conclusion the Court held that:

> "The maternity policy of the School Board denies pregnant women such as Mrs. Cohen equal protection of the laws because it treats pregnancy differently than other medical disabilities. Because pregnancy, though unique to women, is like other medical conditions, the failure to treat it as such amounts to discrimination which is without rational basis, and therefore is violative of the equal protection clause of the Fourteenth Amendment."

In Jinks v. Mays[8], the United States District Court for the Northern District of Georgia, on September 23, 1971, had occasion to consider a complaint attacking the policy of the Atlanta Board of Education which granted maternity leave to tenured teachers but denied it to untenured teachers. It was alleged that the policy was arbitrary and violated the Equal Protection Clause of the Fourteenth Amendment.

The Court upheld the argument saying:

> "The court finds that the policy denying maternity leave to untenured teachers is arbitrary. It has no rational basis and bears no relevance to the purpose of the Teacher Tenure Act or to the purpose of the administrative scheme of the Board of Education. Just as defendants grant study leave, bereavement leave, personal illness leave, emergency leave, and military service leave to both tenured and untenured teachers, so, too,

must they grant maternity leave to both tenured and untenured teachers."

* * *

"For the foregoing reasons the court declares that defendants' arbitrary policy denying maternity leave to untenured teachers violates the Equal Protection Clause of the Fourteenth Amendment and is null and void. The court Orders that defendants be and they are hereby permanently enjoined from refusing to grant maternity leave to plaintiff and the class she represents. The court further Orders that defendants are enjoined from refusing to reemploy plaintiff Jinks as a teacher should she choose to resume teaching, on Condition that there is at such time a vacancy within the school system. Plaintiff's prayer for back pay is Denied."

On September 28, 1971 in the case of Awadallah v. New Milford Board of Education[9] a Consent Order was entered on a complaint filed with the New Jersey Division of Civil Rights providing that the respondents shall not discriminate against any person in violation of the Law Against Discrimination, that the respondents shall not maintain or enforce any policy or practice for the removal of any tenured or non-tenured teacher from her teaching duties that is based solely on the fact of pregnancy or a specific number of months of pregnancy.

The Order further provided that all tenured or non-tenured pregnant teachers may apply to the Board for a leave of absence without pay and shall be granted that leave at any time before the expected birth and continuing to a specific date after birth. The date of return shall be further extended for an additional reasonable period of time at the teacher's request for reasons associated with the pregnancy or birth or for other proper cause. However, the Board of Education need not extend the leave of absence of a non-tenured teacher beyond the end of the contract school year in which that leave is obtained.

In the matter of the appeal of Anne Blumberg[10] an attack was lodged before the Commissioner of Education of the State of

New York against a policy which provided that maternity leaves would be granted for no less than one year, no more than two years and in general will be terminated at the beginning of a term (first or second semester) at the discretion of the superintendent.

Said the Commissioner:

> "Boards of education admittedly have a primary obligation to provide uninterrupted instruction for their students. If this fundamental duty can be reconciled with the desire of an individual teacher to return to the classroom following the birth of her child, boards of education should make every effort to achieve this accommodation, rather than relying upon the rigid application of a local regulation, which, as has been indicated may lead to inequitable results.
>
> It should be evident that these remarks are not offered as a condemnation of any policy or regulation involving maternity leaves but rather as a suggestion that such policies and regulations should be administered with reasonable flexibility. When a board of education is aware of a teacher's wish to return to teaching at the beginning of a new term or school year, it might reasonably require her to submit a statement from her physician attesting to her physical ability to resume her duties. This information could be obtained well in advance of the teacher's anticipated return to school in order to allow the board ample opportunity to obtain a replacement should the teacher's physician indicate the inadvisability of his patient's return to the classroom at that time. Such a procedure could effectively reconcile the interests and desires of the teacher with the responsibilities of the board of education to provide uninterrupted instruction for its students.
>
> Upon consideration of the record before me in this case, I find that while respondent's maternity leave policy, as incorporated in the collectively negotiated agreement with its teachers, appears to be unduly rigid, there has been no abrogation of any constitutionally protected right of petitioner, and that there is no basis upon which I may properly set aside the maternity leave provision of the agreement."

In Guelich v. Mounds View Ind. Public School Dist. No. 621 [11] decided on November 24, 1971, the United States District Court, District of Minnesota, Third Division, ruled that a federal trial court had jurisdiction to entertain an action by

a public school employee seeking a declaration that an administrative policy of the school relative to compulsory maternity leave was a denial of equal protection and requesting damages and injunctive relief.

In Cerra v. East Stroudsburg Area School District [12] the Pennsylvania Commonwealth Court on December 21, 1971 upheld a regulation which required a resignation at the end of the fifth month of pregnancy. The Court held that the regulation was reasonable, based on experience indicating that a good management of the school system required such resignations in order to avoid a critical shortage of teachers since pregnant teachers granted maternity leave often failed to return. The Court in its decision relied on a decision by the Pennsylvania Supreme Court in Brown case [13] decided in 1943 and upon Ambridge Borough School Districts Board of School Directors v. Snyder [14] decided in 1942. It brushed aside the Cohen decision [15] in view of the decisions of the Pennsylvania Supreme Court.

There were two dissenting opinions in this case, one of which expressed the view that the regulation violated the Fourteenth Amendment by denying equal protection of the laws.

In Guelich v. Mounds View Independent Public School District No. 621 [16] the United States District Court, District of Minnesota, Third Division held that a claim for damages under the Civil Rights Act [17] could not be entertained since a board of education is not a person within the meaning of that law.

On February 18, 1972 the Michigan Attorney General rendered an Opinion holding that the rules governing eligibility for unemployment insurance benefits that deprive a pregnant woman of eligibility to receive benefits during the period that begins

with the tenth calendar week before expected confinement and extending through the sixth calendar week following termination of pregnancy are invalid because they discriminate against females on the basis of a physical condition unique to that sex and are in violation of the equal protection clause of the federal Constitution. Subjecting pregnant and post-pregnant women to more stringent eligibility requirements than are applied to similarly temporarily disabled men is patently disciminatory.

In Schattman v. Texas Employment Commission [18] decided on March 1, 1972 (amended March 17) reversed a lower United States District Court decision [19] and upheld a policy of terminating pregnant female employees two months prior to the expected delivery date. It was alleged that the policy violated the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The District Court had so ruled.

The Circuit Court of Appeals held that a state or political subdivision was not subject to the provisions of the Civil Rights Act of 1964. It further held that there was no violation of any Constitutional rights and that the regulation was not unreasonable or arbitrary. It is interesting to note at this point that the amendments to the Civil Rights Act of 1972, mentioned at the start of this talk, were signed into law on March 24, 1972.

On February 15, 1972 a Hearing Examiner for the New Jersey Division of Civil Rights in the case of Miller v. Pequannock Township Board of Education [20] took testimony covering a policy which provided as follows:

> "Any employee not on tenure who becomes pregnant shall give written notice of that fact to the Superintendent of Schools at least five months before the expected confinement date.

> The Board of Education, on the recommendation of the Superintendent of Schools, shall determine in each case when the teacher concerned shall discontinue her school duties; but, in no case shall this be later than four months prior to the expected confinement date.

He recommended to the Director of the Division that the Rule under attack be declared to be violative of New Jersey's Civil Rights Law which prohibits discrimination based on sex, among other things.

In Williams v. San Francisco Unified School District [21], the United States District Court for the Northern District of California held, on March 21, 1972, that a policy which required pregnant employees to take a leave at least two months before the anticipated delivery date was violative of the equal protection clause of the Fourteenth Amendment to the federal Constitution because it singled out pregnant certificated employees for classification without any rational relationship to any legitimate objective of the school district and, in addition, promoted no compelling interest of the district or the state. The employee was entitled to a preliminary injunction where, apart from the court's belief of the probability of her ultimate success on the merits of the case, she had sustained her burden of showing that on the basis of the record, the balance of hardships tipped decidedly in her favor.

In Connecticut, the Commission on Human Rights and Opportunities in the case of Staten v. East Hartford Board of Education [22] held on March 28, 1972 that a city board of education discriminated against a female school teacher on the basis of sex by requiring her to take maternity leave without pay from the fifth month of pregnancy up to and including the third

month following the termination of pregnancy. By virtue of its policy, the board of education only requires such leaves of women. Women are terminated not because of their willingness to continue work, their job performance, or their need for personal medical safety, but solely because of a condition attendant to their sex. The special treatment with regard to maternity was based on sex within the meaning of the state law banning such discrimination.

In Monell v. Dept. of Social Services of the City of New York [23] Judge Constance Baker Motley ruled on April 12, 1972 that a federal trial court had subject matter jurisdiction of an action challenging the validity of a policy requiring pregnant women employees to take unpaid leaves of absence after the seventh month of pregnancy. The action had been instituted by female employees of the New York City Board of Education and the New York City Department of Social Services.

Said Judge Motley:

> "Discrimination against women in employment generally is now prohibited by national law. 42 U.S.C.¶2000e. Discrimination against pregnant women employees and in the application of disability benefits to pregnancies has recently been prohibited by the Rulesand Regulations of the Equal Employment Opportunity Commission. 37 Fed. Reg. 6837. An equal rights amendment to the Federal Constitution is making its way through the ratification process of the states. Sex legislation is thus automatically suspect. Reed v. Reed, supra."

She held that the complaint could not be dismissed for failure to state a claim upon which relief may be granted.

On the same day that Judge Motley decided the Monell case she decided the first case on record that I have been able to find dealing with an application by a male for leave under a

maternity leave policy. Lest anyone conjure up any visions of a pregnant male about ready to disgorge a child, rest easily. Such was not the case.

In Danielson v. Board of Higher Education, et al [24], Judge Motley passed upon a challenge by one Ross Danielson, a lecturer in sociology of the City University of New York, of a pregnancy leave policy in effect at the City University. Mr. Danielson claimed that women faculty members were permitted to take leaves of absence up to three semesters, for the purpose, among others, of caring for a new born infant, without adversely affecting their tenure rights, but the same child care privilege was denied to men. He sought a declaration that the maternity leave provision was unconstitutional on its face and as applied to male faculty members. He sought an injunction enjoining the defendants from discharging him or otherwise penalizing him for having taken child care leave.

Mr. Danielson's wife was a teacher at Lehman College. When she learned of her pregnancy it was decided that she would continue her teaching duties throughout her pregnancy and after childbirth. For the first six months after the child was born, Mr. Danielson would stay home and rear the infant.

He attempted to obtain a "parental leave of absence" which leave, it was contended, was available for women faculty members. His request for leave was rejected.

Judge Motley ruled that the complaint could not be dismissed for failure to state a claim upon which relief may be granted.

In connection with the rights of pregnant students, there do not appear to be too many cases.

In Alvin Ind. School Dist. v. Cooper [25], the Court of Civil

Appeals of Texas ruled that the Board of Trustees of a school district was without legal authority to adopt a rule or policy that excluded the mother of a child from admission to a school where she was of an age for which the state furnished school funds. While this is not strictly speaking a pregnancy case, it should be considered here.

In Perry v. Grenada Municipal Separate School District,[26] a case dealing with unwed mothers, the United States District Court, N. D. Miss. W. D., expressed its views in the following language:

> "The Court would like to make manifestly clear that lack of moral character is certainly a reason for excluding a child from public education. But the fact that a girl has one child out of wedlock does not forever brand her as a scarlet woman undeserving of any chance for rehabilitation or the opportunity for future education. As in the Carrington case the school is free to take reasonable and adequate steps to determine the moral character of a girl before she is readmitted to the school. If the board is convinced that a girl's presence will taint the education of the other students, then exclusion is justified. Nevertheless, the inquiry should be thorough and weighed in keeping with the serious consequences of preventing an individual from attaining a high school education.
>
> In sum, the Court holds that plaintiffs may not be excluded from the schools of the district for the sole reason that they are unwed mothers; and that plaintiffs are entitled to readmission unless on a fair hearing before the school authorities they are found to be so lacking in moral character that their presence in the schools will taint the education of other students."

In Ordway v. Hargraves [27] an action was brought under the Civil Rights Act on behalf of a pregnant, unmarried senior at a high school against school officials who had informed the student she was to stop attending regular classes at the high school. The Court held that the plaintiff was entitled to preliminary injunction requiring school officials to readmit

her on a full-time, regular-class-hour, basis, where there was neither showing of danger to her physical or mental health resultant from her attending classes during regular school hours nor valid educational or other reason to justify requiring her to receive educational treatment not equal to that given all others in her class.

In Farley v. Reinhart,[28] an unwed mother who had been denied the right to continue in school was ordered reinstated to classes because of a violation of her constitutional rights.

In the matter of the appeal of John K. Murphy as parent and natural guardian of Catherine Murphy Loucks,[29] the petitioner was permitted to participate in a graduation ceremony as a direct consequence of the filing of an appeal to the Commissioner seeking such relief. She would have been excluded by reason of certain policies and she challenged those policies seeking an order directing that all references to the attempts to exclude her from the graduation exercises be expunged from the record. She was married and pregnant and would have been denied the right to participate in the graduation exercies solely because of her pregnancy.

The New York Commissioner of Education ruled that the policy to bar the petitioner from the graduation ceremony solely because of pregnancy was clearly arbitrary, capricious and unreasonable. He further ordered that to the extent that petitioner's school records reflect the operation of the policy in question or refer in any way to the circumstances surrounding the attempted exclusion of the petitioner from the graduation exercises, they

must be expunged.

In Shull v. Columbus Municipal Separate School District [30] the United States District Court, N.D. Miss, E. D. ruled that students may not be excluded from a school district for the sole reason that they are unwed mothers. Such a policy, the Court held, is violative of Constitutional rights guaranteed by the equal protection clause of the Fourteenth Amendment.

The ever increasing number of lawsuits to enforce claimed rights must necessarily alert school boards to the necessity of constantly examining their policies, rules and regulations and by all means to at all times keep in touch with their counsel to make certain that rights are not trampled upon.

FOOTNOTES

1. P.L. 88-352; 42 U.S.C. Sec. 2000 et seq.
2. P.L. 92-261; 86 Stat. 103
3. Sec. 701 (a)
4. Sec. 701 (b)
5. Sec. 702
6. 326 F. Supp. 1208; 3 Employment Practices Decision ¶8228 (C.C.H.)
7. 326 F. Supp. 1159; 3 Employment Practices Decisions ¶8231 (C.C.H.
8. 332 F. Supp. 254; 4 Employment Practices Decisions ¶7684 (C.C.H.)
9. N. J. Division of Civil Rights, Docket No. E02ES-5337
10. Decision No. 8353, N. Y. Commissioner of Education, Sept. 24, 1971
11. 4 Employment Practices Decisions ¶7735 (C.C.H.
12. 285 A.2d.206; 4 Employment Practices Decisions ¶7607 (C.C.H.)
13. 32 A.2d.565
14. 29 A.2d.34
15. See Footnote 7, Ante.
16. 4 Employment Practices Decisions ¶7625 (C.C.H.)
17. 42 U. S. C. Sec. 1983
18. 40 U.S. Law Week 2614; 4 Employment Practices Decisions ¶7679 (C.C.H.
19. 330 F. Supp. 328
20. Docket No. E 14ES-5422
21. 4 Employment Practices Decisins ¶7771 (C.C.H.)
22. Case No. FEP-6-34-1; Employment Practices Guide ¶5055 (C.C.H.)
23. 4 Employment Practices Decisions ¶7765 (C.C.H.)
24. 4 Employment Practices Decisions ¶7773 (C.C.H.)
25. 404 S. W.2d. 76 (1966)
26. 300 F. Supp. 748 (1969)
27. 323 F. Supp. 1155 (1971)

28. U. S. D. C. N. D. Ga., 1-20-72; Nolpe Notes March 1972, P. 5.

29. Dec. No. 8405, N. Y. Commissioners of Education, Jan. 31, 1972.

30. 338 F. Supp. 1377 (1972)