The Pregnancy Discrimination Act, signed into law by President Carter on October 31, 1978, amends Title VII of the Civil Rights Act of 1964. The Act makes clear that discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII.

Stokes & Shapiro has received numerous inquiries concerning the effects of, and the requirements under, this new Act. We urge you to review your employment practices, health insurance, and disability plans to ensure compliance with this new law.

The new Act clarifies the prohibition against sex discrimination in Title VII of the Civil Rights Act by adding a definition of “sex discrimination,” and by specifying that women affected by pregnancy, childbirth, or related medical conditions are to be treated the same as other disabled employees for all employment-related purposes, including coverage by fringe benefit programs. The new law forbids discrimination against pregnant women in all employment terms and specifically requires coverage for pregnancy in any health, sick leave, or disability benefit plan.

As of the day President Carter signed the Act into law (October 31, 1978), it became unlawful to: (i) refuse to hire a woman because she is pregnant, (ii) fire a woman because she is pregnant; (iii) stop the accrual of seniority for an employee who has taken time away from the job because of pregnancy (or an abortion), unless seniority does not accrue for other disabled employees during any leave of absence; (iv) force a pregnant employee to leave work at an arbitrarily established time if she is still willing and able to work, or set a time limit for her return to work if she is willing and able to work. Under the new Act, employers have until April 30, 1979, to make all health-care and disability benefits which were in effect on October 31, 1978 equal for pregnant and other sick or disabled employees. Any fringe benefit program implemented after October 31, 1978, must be in compliance with the Act when created.

These new rules merely seek to prohibit discriminatory treatment of pregnant women. There is no requirement for preferential treatment of these women. They need not be shown any favors with respect to hiring, being allowed to continue working, being furnished with medical and hospital benefits, or being provided benefits when they are disabled. An employer is not required to establish a plan covering temporary pregnancy-related disabilities, or to provide other pregnancy benefits, if that employer presently has no health care or disability plan for other illnesses or disabilities. Pregnant women simply must be treated the same as other employees on the basis of their ability or inability to work.

Employers Subject to the New Act.

Private industry employers having at least 15 employees, who have been on the job each working day in each of 20 or more calendar weeks in the current or preceding year, are subject to the new rules when their business operations are involved in “interstate commerce.” This term is extremely broad and covers virtually any business in today’s business society having the requisite number of employees stated above.

Since there are a number of states that already have laws requiring pregnancy and related disabilities to be treated as other temporary disabilities under employees’ health and benefit programs, the law will likely have little effect on employers in those states. Additionally, those employers who had complied with the EEOC’s Guidelines on Sex Discrimination before the Supreme Court decision in Gilbert v. General Electric Corp., 429 U.S. (1976), are
likely to be in compliance with the new requirements. Any changes in disability benefits in reliance on the Gilbert decision, or in sick leave policies following the Court’s decision in Nashville Gas Co. v. Satty, 434 U.S. 136 (1977), may need to be re-examined in light of the new rules.

Employers who did not provide temporary disability, sick leave, or health insurance benefits for employees on or before October 31, 1978 will not be affected by the law’s restrictions. They will, however, be covered by the ban on discrimination against female employees because of pregnancy, childbirth, abortion, and related medical conditions.

**Employees Affected by New Rules**

The new protection afforded by the amended law is confined to female employees or job applicants who are affected by pregnancy. Employment decisions may not be based on their condition of pregnancy or any medical condition related to pregnancy, abortion, or childbirth.

Women affected by pregnancy include only those women who themselves become pregnant, have an abortion, bear a child, or have a pregnancy-related medical condition. The protection does not extend to a woman who is affected by the pregnancy of another, such as a daughter. Similarly, a husband would not likely be entitled to any additional benefits simply because he is affected in some way by the pregnancy of his wife.

**Employment Practices Affected**

The ban on discrimination against pregnant workers attaches to all employment decisions. It affects policies that involve a refusal to hire or to promote pregnant women, the termination of pregnant women, a forced leave of absence at an arbitrarily established time during pregnancy rather than at a time based on the inability to continue working, reinstatement rights following leave of absence for pregnancy or childbirth, or that involve credits for previous service in regard to the accrual of a retirement and seniority rights. Pregnancy-based distinctions are to be subject to the same restrictions as other acts of sex discrimination.

Employee benefit programs that provide health insurance, income maintenance during illness or disability, or any other income support program for disabled workers will have to include pregnancy, abortion, childbirth, or related conditions as well. Where employers have a practice of transferring disabled workers to lighter assignments, or of requiring employees to be examined by company doctors, they must administer these benefits and requirements equally for all workers in terms of their actual ability or inability to perform work.

**Sick Leave and Disability Benefits**

Pregnant women need not be paid sick leave or granted disability benefits simply because they are pregnant. Employers need to pay these benefits only on the same terms as they are granted other employees, who are medically unable to work. Thus, when a woman wishes to take a pregnancy leave early, or to remain home and care for the child after the initial disability period, there is no need to pay her disability or sick leave benefits for those periods she is voluntarily away from her job.

Medical insurance plans similarly
do not have to be established to cover maternity. It is only where hospital and medical benefits are provided for other sicknesses and disabilities that they must be made available on a non-discriminatory basis as regards pregnancy and childbirth. Although an employer is not required to pay for health insurance to cover abortions under the new Act, the denial of sick leave or other disability benefits for the time spent away from work while undergoing the abortion may be violative of the Act if such sick leave or disability benefits are provided for other types of illnesses and disabilities.

**Medical Costs**

Medical insurance or payment plans do not have to be established where none existed on or before October 31, 1978. Employers who provide for the payment of any part of the medical costs of employees, however, must arrange for the payment of medical and hospital costs of pregnancy, childbirth, and related conditions of employees on the same terms. Health insurance need not be provided for abortions, except where the life of the mother is endangered by the pregnancy, or unless there are complications resulting from the abortion.

A health insurance plan which covers all the costs of medical treatment of employees would have to provide for the payment of all of the costs related to pregnancy and childbirth as well. Where limits specified are percentages of costs, a disparity in the benefits provided might result to the detriment of pregnant women. They key is whether or not there is an equality of benefits for pregnancy and related medical costs.

**Leaves of Absence**

Leaves of absence for pregnancy should be granted on the same basis they are granted other employees subject to disabling conditions. Setting a time period for the commencement of all pregnancy leaves of absence would likely result in discrimination; because it would not be based on a particular individual’s ability to continue performing her job safely and efficiently. In some instances employers may provide voluntary unpaid leaves of absence for employees who become sick or disabled. They may continue to abide by such a policy so long as it does not discriminate against pregnant women. The determinations as to the continued ability of a pregnant woman to work should be based on medical opinion, but should be applied to all other disabled workers as well.

(Editor's Note: This is the first of a two-part series on the Pregnancy Discrimination Act. The final part will appear in the August, 1979 edition of Construction Dimensions.)