Pregnancy Discrimination Act

Wall and Ceiling Contractors Should Be Aware of Pitfalls Of Possible Sex Discrimination

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PART TWO

Abortion Benefits

The exclusion of medical coverage for abortions from an employee health insurance plan would not amount to unlawful sex discrimination, except where the abortion is for therapeutic reasons necessary to save the life of the mother. Health costs involved in treating medical complications that result from non-therapeutic abortions would, however, have to be paid by the employer. The exception allowed for abortions is to avoid requiring employers to finance abortions against the dictates of their conscience.

As with pregnancy, it is unlawful to refuse to hire a woman because she was known to have had an abortion in the past. The determination of an employee or the taking of any other adverse action against her with respect to employment opportunities because she has had an abortion or will have an abortion is also forbidden. Additionally, a woman suffering complications from an abortion would be entitled, not only to medical payments, but also to disability and sick leave benefits when they are provided for other temporary illnesses or disabilities.

Period of Disability

A plan which limits the period of disability payments for childbirth and related conditions would amount to unlawful sex discrimination if other disabilities are not limited to the same period. Any attempt to imply even a normal period of time (generally six weeks for recovery from childbirth) to all cases of childbirth would arbitrarily discriminate against some people since some women require a longer period to recover. For this reason, no limit on the period of disability payments for pregnancy and related medical conditions was set in the law. A non-discriminatory plan would be one which sets a limit on the period during which employees, for whatever type of disability, may receive payments. A pregnant worker would not have to be paid for all the disability entitlements. She would have to be paid only for that part of the period during which she is medically unable to work. Since medical complications could extend the period of disability, the complications should be covered by the same time limits or dollar amount otherwise provided disabled workers.

Temporary Ban on Reduction

For a period of one year from the date the Act was signed into law, (that is, until October 31, 1979), employers may not reduce existing fringe benefits or compensations to any employee as a means of achieving compliance with the requirement for including pregnancy. The only exception to this requirement is where benefits are governed by the provisions of collective bargaining agreement. In such instances, the benefits may be reduced upon expiration of the bargaining agreement. An employer will be required to make any extra payments necessary to bring benefits into compliance, but the cost of the increased benefits may be apportioned between the employer and employees if they are presently shared, and if done so using the same apportionment.

There is no permanent freeze on fringe benefits at the level existing at the time the new law became applicable. Adjustments to reflect changed economic conditions or to re-allocate costs of operation would be permissible. Thus, benefit programs may be altered in a way which reduces benefits to some employees, but the employer must be able to demonstrate that the changes are for reasons entirely independent of the ban on pregnancy discrimination.

Contributory Plans

An employer who pays insurance premiums or makes contributions into a fringe benefit fund which does not provide pregnancy related benefits will either have to increase premiums or contributions to cover its share of the incremental costs of equal benefits, or pay equal benefits directly to the affected women employees. Where contributions are made by employees, all employees, not merely women or even pregnant women, will have to pay their usual portion of the increment.

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Pre-Existing Pregnancies

Some health insurance and medical disability plans provide for a delay of nine months after an employee is covered before benefits become available for maternity and related medical conditions. In other words, female employees who were pregnant when they began work, would not be covered. As with other aspects of the new law, pregnancies may not be singled out as the only pre-employment health condition subject to the delay in benefit payments. Further, medical complications resulting from an abortion or childbirth connected with the pregnancy not otherwise subject to the new benefit rules might have to be covered when employee medical costs connected with other disabilities are picked up after a short period of coverage.

Spouses of Male Employees

The dependents of employees are covered by the medical benefits of some hospitalization and medical benefit plans. The payment of the maternity costs of women employees under a medical plan would not mean that the similar costs for wives of male employees would have to be paid. Unlawful sex discrimination might occur, however, where a plan provides comprehensive medical coverage for spouses of women employees, but excludes pregnancy and related medical costs for spouses of male employees.

Expected Costs of Added Benefits

Compliance with the new rules on pregnancy discrimination will require some additional costs. It has not yet been determined what additional costs will be incurred under hospital-medical benefit plans. As to temporary disability plans, an increase of 3.5% of total contributions may be expected, according to the calculations of the United States Department of Labor. In relation to the number of workers, or total payroll for covered employees in private industry, the new requirements are estimated to bring the wage package costs up from the present 1.4 to 1.5% of each dollar paid in wages. Outside of the fringe benefit costs, the new requirements may result in savings, since women will be encouraged to remain the the work force during and after pregnancy. Employee replacement, training and unemployment compensation costs should accordingly be reduced. Some private insurance carriers have estimated that health insurance premiums for policies affected by the new rules may rise 50-8%.

Abuse of Privileges

Controls to prevent the abuse of leave privileges would be proper.
Since the period of disability resulting from an uncomplicated childbirth is predictable, an employer may require employees on maternity leave to submit medical evidence of complications in order to qualify for an extended disability benefit period. An employer could also condition the payment of disability benefits upon an intent to return to the job following recovery. Such controls to prevent the abuse of leave privileges must be applied even-handedly to both sexes, however. Special restrictions on disability for pregnancy or childbirth alone would not be permitted.

Possible Employee Dissatisfaction

A source of discontent among employees may lie in any perceived disparity of benefits, or in the possibly added burden placed on employees who contribute part of their wages to a benefit plan. The additional cost involved in providing mandatory maternity-related benefits will impact on all employees, regardless of whether they are recipients of the added protection. In instances where benefit plans are funded through shared contributions by both the employer and the employees, the special class of pregnant persons or persons desiring to become pregnant will stand to receive greater benefit than will other employees forced to share the increased costs. Even where the employer alone pays for the benefits, the funds available may result in a general reduction in what employees generally receive when adjustments for the costs of added coverage are made following the first-year freeze in existing benefits.

Any unhappiness among members of your work force should be dealt with immediately and openly. The most frequent source of discontent is likely to be increased costs for insurance coverage. If your plan includes employees’ families, you might point out that male staff members benefit as well as female members, when covered family members become pregnant. In the past, the inequitable health-care costs covered by most insurance plans when pregnancy is involved have had an impact on the earnings of male employees as well as female. That inequity is removed by this legislation.