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To: Human Resources Officers
Benefits Officers

From: Evelyn Nazario 
Associate Vice Chancellor
Human Resources Management & CO HR Services

Subject: Expansion of Female Employees' Rights and Employer Obligations under the Pregnancy Disability Leave (PDL) Act

Overview

Audience: Benefits Officers, Leave Coordinators, or any campus designated staff responsible for the administration of CSU Leave Programs.

Action Items: Information Only

Affected Employee Groups/Units: All female employees

Summary

The California Fair Employment and Housing Department recently expanded the Pregnancy Disability Leave Act regulations which require California employers to:

- Maintain coverage under a group health plan for a period of up to four (4) months within a 12 month period for benefits eligible female employees who qualify for Pregnancy Disability Leave (PDL);
- Grant Pregnancy Disability Leave based on new definitions of "Disabled by Pregnancy," as prescribed by law; and
- Provide reasonable accommodations or transfers or time off to female employees per the criteria stated in the Pregnancy Disability Leave Act.

Benefits Officers, Leave Coordinators, or any campus designated staff responsible for the administration of CSU Leave Programs should read this Technical Letter in its entirety.

I. Legislative Authority

Government Code

California Government Code §§12945(b)(2); California Code of Regulations, Title 2, Division 4, §§7297 et seq. (referred to as Pregnancy Disability Leave (PDL)) provides up to four months disability leave per pregnancy for a female employee who is disabled as a result of pregnancy, childbirth, or a related medical condition, regardless of length of service or timebase. Pregnancy Disability Leave can be taken consecutively or intermittently. A copy of the regulations is provided in Attachment 1.

Distribution:

CSU Presidents
Vice Chancellor, Human Resources

Payroll Managers
Linda Rasmussen, State Controller's Office

New Leave Requirements

Effective immediately, the existing [California Pregnancy Disability Leave](#) law under California Government Code §§12945(b)(2) was amended to expand the definition of “disabled by pregnancy” and also requires California employers to:

- Provide reasonable accommodations or transfers or time off to female employees per the criteria stated in the Pregnancy Disability Leave Act for a period of up to four (4) months per pregnancy; and
- Continue coverage under a group health plan for a period of up to four (4) months over the course of a 12-month period on behalf of benefits eligible female employees who are on Pregnancy Disability Leave (PDL) as a result of disability due to pregnancy, childbirth, or a related medical condition

For the purposes of calculating such leave, the new regulations specify that four (4) months is defined as the number of days the employee would normally work within four (4) calendar months (one-third of a year equaling 17-1/3 weeks, or 693 hours). For employees who work 20 hours per week, four (4) months means 346.50 hours of leave entitlement, based on 20 hours per week times 17-1/3 weeks.

If the employee’s schedule varies, an average of the hours worked over the four (4) months prior to the beginning of the leave is to be used for calculating the employee’s normal work month, on a pro rata or proportional basis.

Although Pregnancy Disability Leave is a leave entitlement, usage of the leave is only applicable for the period of time that the employee is “disabled by pregnancy or childbirth.” The period of time designated as Pregnancy Disability Leave is determined by the employee’s health care provider. As an example, Pregnancy Disability Leave may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, or any related condition defined in the following section of this technical letter. Campuses are required to track the usage of Pregnancy Disability Leave to ensure that the period of time does not overlap with the leave entitlement under the CSU FML Policy, which must be tracked separately.

Pregnancy Disability Leave vs. Existing CSU Family Medical Leave Policy

Please note: [The CSU Family Medical Leave Policy](#) incorporates both California Family Rights Act (CFRA) and the federal Family Medical Leave Act (FMLA), and consequently; Pregnancy Disability Leave does not track against CSU Family Medical Leave.

Therefore, female employees are eligible for the following amounts of leave:

- Up to four (4) months (or 17-1/3 weeks) under the Pregnancy Disability Leave Act (per pregnancy); and
- Up to twelve (12) weeks under the CSU Family Medical Leave Policy (rolling 12-month basis).

In addition, female employees are eligible for the following amounts of health coverage continuation:

- Up to four (4) months (or 17-1/3 weeks) under the Pregnancy Disability Leave Act (over the course of 12 months); and
- Up to twelve (12) weeks under the CSU Family Medical Leave Policy (rolling 12-month basis).

II. New Definitions of “Disabled by Pregnancy” and Health Care Provider(s)

“Disabled by Pregnancy”

Per the expanded regulations, “disabled by pregnancy” refers to a “condition related to pregnancy, childbirth, or a related medical condition,” which can be a physical or mental condition related to pregnancy or childbirth. Such conditions may be medically advisable for an employee to either request time off or be reassigned, or request to be reasonably accommodated. An employee may also be deemed “disabled by pregnancy” due to the following:

- Post-Natal Care;

- Bed Rest;
- Gestational Diabetes;
- Pregnancy-Induced Hypertension;
- Preeclampsia;
- Post-Partum Depression;
- Severe Morning Sickness;
- Childbirth, Loss or End of Pregnancy; or
- Recovery from Childbirth, Loss or End of Pregnancy.

In order for a female employee to be considered “disabled by pregnancy,” the illness must be certified by a health care provider as defined in the Pregnancy Disability Leave Act.

Recognized Health Care Providers

Please note: a health care provider under the Pregnancy Disability Leave Act is defined as follows:

1. A medical or osteopathic doctor, physician, or surgeon, licensed in California, or in another state or country, who directly treats or supervises the treatment of the employee’s pregnancy, childbirth or a related medical condition, or “a condition related to pregnancy, childbirth, or a related medical condition,” as set forth in Government Code section 12945, or;
2. A marriage and family therapist or acupuncturist, licensed in California or in another state or country, or any other persons who meet the definition of “others capable of providing health care services” under FMLA and its implementing regulations, including nurse practitioners, nurse midwives, licensed midwives, clinical psychologists, clinical social workers, chiropractors, physician assistants, who directly treats or supervises the treatment of the applicant’s or employee’s pregnancy, childbirth or a related medical condition, or “a condition related to pregnancy, childbirth, or a related medical condition,” as set forth in Government Code section 12945, or;
3. A health care provider from whom an employer or a group health plan’s benefits manager will accept medical certification of the existence of a health condition to substantiate a claim for benefits.

III. New Requirement of Continuation of Health Coverage While On Pregnancy Disability Leave

Employment Status Considerations Related to Continuation of Health Coverage

In general, health benefits continue for CSU employees that are in paid status. The Pregnancy Disability Leave Act requires an employer to continue health benefits on behalf of female employees while on Pregnancy Disability Leave due to “disability by pregnancy or childbirth.” However, the female employee must be eligible and already enrolled in benefits in order for health benefits to continue while on Pregnancy Disability Leave. While on Pregnancy Disability Leave, the employer has the right to require the individual to use any accrued sick leave, as is current CSU policy. Please note, however, that the CSU is required to continue health coverage for female employees who exhaust leave credits while on Pregnancy Disability Leave and subsequently lose pay status.

Continuation of health coverage for eligible employees under Pregnancy Disability Leave is separate and distinct from leave entitlements under the California Family Rights Act (CFRA) and/or the federal Family Medical Leave Act (FMLA), and must not exceed four (4) months within a 12-month period, calculated from the first day of such leave. Through CSU policy, coverage for dental and vision is also applicable to employees on such leave.

Leave Supplementation Considerations

CSU, through policy, requires employees in classifications that earn leave credits, to apply the appropriate accrued leave credits (such as sick leave) to Pregnancy Disability Leave to maintain pay status during the disabled period. In addition, a female employee disabled due to pregnancy or childbirth, or related condition, may also be eligible for Non-Industrial Disability Insurance (NDI), administered by the Employment Development Department (EDD). Currently, EDD does not require an employee to exhaust vacation leave

credits in order to qualify for NDI. This is in accordance with the Pregnancy Disability Leave Act, which permits the employee to apply vacation leave credits (or other applicable leave credits) to Pregnancy Disability Leave. Use of vacation leave credits during Pregnancy Disability Leave is applicable only as an option, and is not required of the employee. Female employees who are eligible for paid Parental Leave either by collective bargaining agreement (CBA) or through CSU Policy (non-represented employees) may also opt to utilize paid Parental Leave during the disability period, depending on the employee's situation and available options.

For state employers such as the CSU, the amended law also states: "If the employer is a state agency, the collective bargaining agreement (CBA) shall govern with respect to the continued receipt by an eligible female employee of the healthcare coverage." Please refer to the respective CBA when counseling a represented employee with regard to leaves of absence related to pregnancy.

New Allowable Circumstances for the Recovery of Health Premiums Paid During Pregnancy Disability Leave

Please note: Government Code 12945 allows the employer to recover any premiums paid on behalf of the employee while on Pregnancy Disability Leave if one of the following events occurs:

1. The employee fails to return at the end of her pregnancy disability leave.
2. The employee's failure to return from leave is for a reason other than one of the following:
 - a. Taking CFRA leave, unless the employee chooses not to return to work following the CFRA leave.
 - b. The continuation, recurrence, or onset of a health condition that entitles the employee to pregnancy disability leave, unless the employee chooses not to return to work following the leave.
 - c. Non-pregnancy related medical conditions requiring further leave, unless the employee chooses not to return to work following the leave.
 - d. Any other circumstance beyond the control of the employee, including, but not limited to, circumstances where the employer is responsible for the employee's failure to return (e.g., the employer does not return the employee to her same position or reinstate the employee to a comparable position), or circumstances where the employee must care for herself or a family member (e.g., the employee gives birth to a child with a serious health condition).

New Pregnancy Disability Leave Accommodations and Reassignment Requests

Per the Pregnancy Disability Leave Act, the CSU can temporarily reassign a pregnant, female employee to a less strenuous or hazardous position for the duration of the pregnancy upon request by the employee based on advice from the health care provider, if the reassignment can be reasonably accommodated.

Further, the CSU is prohibited from denying a request for reasonable accommodation to an employee affected by pregnancy if:

1. The employee's request is based on the advice of her health care provider that reasonable accommodation is medically advisable; and
2. The requested accommodation is reasonable.

Whether or not such requests are determined to be reasonable is a factual determination to be made on a case-by-case basis, taking into consideration such factors, including but not limited to, the employee's medical needs, the duration of the needed accommodation, the employer's legally permissible past and current practices, and other such factors, under the totality of the circumstances.

The employee and employer shall engage in a good faith interactive process to identify and implement the employee's request for reasonable accommodation as set forth in section 7291.17 of the Pregnancy Disability Leave Act (employer notification obligations).

If such a request is made, the campus should obtain certification from the health care provider that documents the employee's restrictions. The employee must complete the California Department of Fair Employment and Housing "[Certification of Health Care Provider for Pregnancy Disability Leave, Transfer and/or Reasonable Accommodation](#)" form (see Attachment 2).

If the requested reasonable accommodation involves a reduction in work hours, or intermittent leave, the hours should be deducted from the employee's four (4) month leave entitlement.

IV. Newly Required Notifications to Employees Regarding the Pregnancy Disability Leave Act

The California Department of Fair Employment and Housing (CFEH) has developed the following notice that is applicable to employers with 50 or more employees, that must be posted and also provided to pregnant employees regarding the Pregnancy Disability Leave Act:

- Notice B: "[Family Care and Medical Leave and Pregnancy Disability Leave](#)" (see Attachment 3).

Please note: CFEH's Notice A: "Your Rights and Obligations as a Pregnant Employee" is not applicable to employers with 50 or more employees.

V. Employee Responsibilities

A pregnant employee requesting time off or reasonable accommodation under the Pregnancy Disability Leave Act must:

- Give the employer reasonable notice of at least 30 days in advance if the request is foreseeable, or as soon as possible if the need is an emergency or unforeseen.
- Provide written medical certification from a health care provider within a reasonable timeframe (typically fifteen (15) calendar days or an extended date mutually agreed upon).

VI. New Processing Instructions for Continuation of Health Benefits for Employees on Unpaid PDL

Processing Instructions for Continuation of Health Benefits for Employees on Unpaid PDL

If an employee's health benefits lapse while on Pregnancy Disability Leave, campuses must complete an STD. 674 form and submit it to the State Controller's Office (SCO) in order to continue benefits while on such leave (similar to existing process for continuing health benefits for an employee on FMLA). However, for Pregnancy Disability Leave, the Remarks Section of the STD. 674 form must indicate: "Benefits continuation due to Pregnancy Disability Leave, Government Code 12945."

Common Management Systems (CMS) Processing Instructions

Campuses manually track PDL usage. Therefore, this technical letter has no impact to CMS Baseline.

General Information

Questions regarding this Technical Letter may be directed to Human Resources Management at (562) 951-4411. This document is also available on the Human Resources Management Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

EN/mh