Legislative Analysis

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SEX DISCRIMINATION: UNPAID LEAVE FOR POLICE DURING PREGNANCY

House Bill 6226
Sponsor: Rep. Coleman Young
Committee: Labor

Complete to 9-8-08

A SUMMARY OF HOUSE BILL 6226 AS INTRODUCED 6-25-08

The bill would amend the Elliott-Larsen Civil Rights Act to include as prohibited sex discrimination the unpaid leave of a police officer during pregnancy if the officer is capable of performing light duty.

MCL 37.2103

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the state and local units of government.[1] A reading of the bill does not clearly indicate how it would be construed, particularly taken in conjunction with existing prohibitions against employment discrimination on the basis of pregnancy included in the Title VII of the federal Civil Rights Act (P.L. 88-352, 42 USC 2000e et seq.), as well as the state Elliot-Larsen Civil Rights Act (1976 PA 453, MCL 37.2101 et seq.).

The federal Civil Rights Act, 42 USC 2000e(k), defines "because of sex" or "on the basis of sex" as, in part, including, but not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work…"[2]

The Code of Federal Regulation (appendix to Title 29, Part 1604) states "[t]he basic principle of the Act is that women affected by pregnancy and related conditions must be

[1] For an overview of employment issues facing pregnant police officers see, Karen Kruger, *Pregnancy & Policing: Are They Compatible? Pushing the Legal Limits on Behalf of Equal Employment Opportunities,* Wisconsin Women's Law Journal, Vol. 22:61, available at http://hosted.law.wisc.edu/wjlgs/issues/2007-spring/krugernobanner.pdf

[2] 29 CFR 1604.10 further states "Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms and conditions are they are applied to other disabilities.

treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she is pregnancy or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy."

Moreover, the regulations specifically provide that "[a]n employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees, whether by providing modified tasks, alternative assignments, disability leaves, leaves without pay, etc." The Elliot-Larsen Civil Rights Act, MCL 37.2201(d), defines "sex" as including but not limited to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth…"[3]

State and federal law already prohibit discriminatory employment practices against pregnant employees. If the bill is merely clarifying in nature—(i.e. essentially re-stating that if light duty is available to other temporarily disabled police officers it should be extended to pregnant police officers as well—then the bill would have no fiscal impact on the state and local governmental units, to the extent that current employment practices comply with existing statutory requirements. (Obviously, those units that currently do not comply with the existing statutory requirements—denying light duty assignment to pregnant officers where similar assignments are made to other temporarily disabled officers—would see an increase in costs.)

If the bill is construed to specifically require that light duty be made available to pregnant police officers, rather than unpaid leave, the bill would increase the costs of the state and local units of government in those units that currently do not provide for light duty assignments.[4] However, this result—providing light duty assignments to pregnant police officers, but not requiring similar accommodations for other temporarily disabled officers—would appear to directly contravene the federal Civil Rights Act's requirement of "equal treatment" in situations of this nature.[5] Under this reading of the bill, then, the bill would have no fiscal impact because it would appear to be unenforceable. If, however, the Civil Rights Act's focus on "equal treatment," read in conjunction with the

[3] The regulations further state, "[a]n employee must be permitted to work at all times during pregnancy when she is able to perform her job."

[4] The bill does not define the term "police officer" although that term is defined in the Commission on Law Enforcement Standards Act, 1965 PA 203, as (1) a regular employment member of a law enforcement agency authorized and established pursuant to law, including common law, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state; (2) a law enforcement officer of a Michigan Indian tribal police force; (3) the sergeant at arms or assistant sergeant at arms of either house of the legislature who is commissioned as a police officer; (4) a law enforcement officer of a multi-county metropolitan district; (5) an investigator of a county prosecutor's office, fully empowered by the county sheriff; and (6) a City of Detroit arson investigator fully empowered by the police chief.

[5] The Civil Rights Act, 42 USC 2000e-7, states "[n]othing in this subchapter [Title VII] shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter."

bill, effectively requires light duty assignments for all capable temporarily disabled officers— i.e., if pregnant police officers are provided light duty assignments, then other temporarily disabled officers must also be provided light duty assignments—the bill would increase costs of the state and local units of government by an amount above the costs of simply providing light duty assignments to pregnant officers.

To the extent the bill expands the employment protections of pregnant police officers, the bill could potentially increase the investigatory costs of the Department of Civil Rights where violations are alleged. Theses costs vary depending on the nature and complexity of each case and, on an individual basis, are generally not that significant.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.