

One Minute Memo[®]



California Employers May Need To Provide More Pregnancy Leave Than Required By The Pregnancy Disability Leave Law

On February 21, 2013, in a matter of first impression, the California Court of Appeal in *Sanchez v. Swissport, Inc.* determined that an employer may be required to provide additional leave as an accommodation under the Fair Employment and Housing Act (FEHA) beyond the maximum leave required under the State's Pregnancy Disability Leave Law ("PDLL").

Factual Background and the Trial Court's Decision

On February 27, 2009, Ana G. Fuentes Sanchez was diagnosed with a high risk pregnancy requiring bed rest. Her employer, Swissport, granted her a temporary leave of absence. On July 14, 2009, after 19 weeks of leave, Swissport terminated her employment. Her anticipated due date was October 19, 2009, and she alleged that she would have returned to work soon after giving birth. Sanchez sued, alleging that Swissport violated the FEHA by failing to provide her with additional leave for her pregnancy-related disability. The trial court granted Swissport's demurrer to the complaint.

The PDLL, which is contained within the FEHA, states that an employer must "allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission's regulations." The PDLL states that its provisions are "in addition to" other regulations governing pregnancy, childbirth, and pregnancy-related medical conditions in the FEHA. The key issue here was whether the PDLL's regulations cap pregnancy disability-related leave at a maximum of four months, as Swissport argued, or whether the FEHA allows employees to take additional leave under its disability discrimination provisions.

Swissport undisputedly complied with its PDLL obligations by allowing Sanchez more than four months of leave. Therefore, Swissport argued, Sanchez could not state a claim under the FEHA because Swissport satisfied all of its pregnancy leave obligations. Sanchez countered that she should have been provided additional leave as an accommodation under the FEHA after exhausting her four months of leave under the PDLL.

The Court of Appeal's Decision

Although the trial court agreed with Swissport, the Court of Appeal reversed, holding that the FEHA provides additional protections beyond the PDLL. The Court of Appeal concluded that Sanchez's inability to return to work after her 19 weeks of leave due to her pregnancy constituted a disability under the FEHA. Relying on case law holding that a finite leave of greater than four months may be a reasonable accommodation for a disability under the FEHA, the Court of Appeal held that Sanchez may have been entitled to additional leave if Swissport could not show that the extended leave would have imposed an undue hardship on the company.

The practical impact of the *Sanchez* decision will be limited because of recent changes to the PDLL regulations that became effective December 30, 2012. Like the decision in *Sanchez*, these new regulations provide that an employee who is still disabled after taking the full four months of pregnancy disability leave under the PDLL may be entitled to additional leave as a

result of the FEHA's disability discrimination provisions. For an explanation of the various new burdens for employers, please see Seyfarth Shaw's California Peculiarities Employment Law blog [here](#).

What *Sanchez v. Swissport* Means for Employers

Employers do not necessarily satisfy all of their obligations under the FEHA by granting an employee four months of pregnancy disability leave under the PDLL. Rather, employers must continue to engage in the interactive process when an employee is unable to return to work due to a pregnancy-related disability after exhausting her PDLL, and determine whether a reasonable accommodation, including an extended leave of absence, would allow the employee to return to perform her essential job duties. The employer may then make a determination as to whether an extension of the leave would impose an undue hardship on it.

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