

Fire Fighter Pregnancy Policy

Line of Business: WC, GL, POL, EPLI

Risk Control Strategy/Key Issues: A policy to avoid actions or lack of actions by departments regarding federal standards of the Pregnancy Discrimination Act and the Family Medical Leave Act legislation

Suggested Program Elements:

The Pregnancy Discrimination Act of 1978 (PDA) is an amendment to the Title VII Civil Rights Act of 1964 and, as such, must be taken into consideration with operational policies and procedures for all departments. Collective bargaining agreements also affect the policy and procedures of departments in this area. The U.S. Supreme Court rulings define what can and should be done to accommodate a firefighter's condition. The policy should follow the same guidelines as to work status and light duty accommodations provided to other firefighters if they are injured off-duty. The Family Medical Leave Act (FMLA) was passed in 1993 and was reinforced by the United States Supreme Court in 1991 in settling the case of *United Auto Workers v. Johnson Controls*.

1. Policy statement by management: "Work During Pregnancy Policy for Firefighters"

- No tolerance for any discrimination in the department due to reassignment to light duty
- Assigned responsibility for reporting
- Light duty assignment establishment along guidelines set for any firefighter injured off duty
- Leave of absence for FMLA must follow federal guidelines

2. Reporting Procedures:

- All federal state/local statutes followed and documented as for any health condition
- You cannot require that they report to you their condition immediately upon their knowledge of the pregnancy, but do provide a process for them to follow to report to management

3. Light Duty:

- Establish duty requirements as you would for any firefighter injured off duty, such as with:
 - ✓ Broken leg
 - ✓ Medical condition
 - ✓ Respiratory or other issues
- It is not against the law to offer more benefits to a pregnant firefighter than it would be to any other temporary disability, but it is against the law to offer fewer benefits.

(Exposure to toxic fumes, smoke and other by products of fires is especially detrimental to a fetus, in addition to the ability of the mother to carry to term. Fetuses are especially impacted by carbon monoxide exposures and to temperatures over 102 degrees, which are a daily exposure to firefighters on the front lines.)

- ### 4. Establish a release of liability form
- through local legal counsel familiar with such forms if the firefighter wants to continue to serve on active duty after she acknowledges she is pregnant. This needs releases for both the medical condition of the firefighter and the fetus to exposures as outlined in NFPA 1582.

5. Implementation:

- Annual management staff training in the first quarter of each year
- Full program audit in the last quarter of each year for compliance

Program Activities Calendar:

- Annual training first quarter of each fiscal year

Web Site Links:

- Family and Medical Leave Act
<http://www.dol.gov/whd/fmla/>
- The Pregnancy Discrimination Act of 1978
<http://www.eeoc.gov/laws/statutes/pregnancy.cfm>

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Sample Policy

It is recommended that this policy be reviewed by local legal counsel and subject to review and comparison of the policy in regards to current state and federal employment guidelines and any Union contract agreements that may be in place. These are minimum standards and are suggestions for policy structure and as such are risk control suggestions not legal advice. As with all policies and procedures legal council should be sought to ensure proper protocols and procedures meet Federal Court and Federal/State employment laws in this area.

Maternity (Pregnancy Disability) Leave:

It is highly recommended, but not required, for a pregnant firefighter to notify the fire rescue Chief that she is pregnant. This should be accomplished as early in the pregnancy as possible, preferably upon confirmation of pregnancy, so that the firefighter can receive the necessary counseling and information on the hazards and risks to pregnant firefighters.

Upon notification of pregnancy the firefighter will meet with the human resource professional or designee to receive a copy of NFPA 1582 Appendix C, Essential Structural Firefighting Functions. This information will present to the firefighter's physician the job performance requirements of a firefighter. A medical release form will be provided to the firefighter's physician for the purpose of certifying the employees' fitness for duty. The firefighter's physician will then be able to advise the firefighter on whether she should continue to work in operations, request a modified duty status or be placed on Maternity (Pregnancy Disability) Leave.

Reassignment shall be from regular shift responsibilities on a temporary basis (with no reduction in pay and benefits), when one of the following occurs:

- It has been determined by the firefighter's physician that to continue working in operations will jeopardize the health and well-beings of the firefighter or her child.
- The firefighter herself requests modified duty assignment.
- The firefighter is no longer able to perform regular shift assignments safely and efficiently as determined by observed and documented performance deficiencies.

The affected firefighter may be reassigned, at the Fire Chiefs discretion, to those duties deemed appropriate to her condition and ability. If the firefighter elects to continue working, (and does not request modified duty) the firefighter will be allowed to continue duties after signing appropriate release of liability paperwork. The firefighter will be allowed to continue on full duty status until firefighter is no longer able to do so according to documented performance deficiencies. The job performance deficiencies shall be based on the inability for the firefighter to complete essential job functions for the position. At that time Maternity (Pregnancy Disability) Leave will commence. The firefighter will return to full-duty status when deemed medically fit for duty by the firefighter's physician.