



**FREEMAN, FREEMAN &  
SMILEY, LLP**

**EMPLOYMENT LAW  
BULLETIN**

**February 1, 2013**

**Bradley D. Ross**

*specializing in Employment Law  
and Business Litigation*

310.255.6180

Bradley.Ross@ffslaw.com

**Tal Korn**

*specializing in Employment Law  
and Business Litigation*

310.255.6192

Tal.Korn@ffslaw.com

*1888 Century Park East  
Suite 1900*

*Los Angeles, CA 90067*

*ffslaw.com*

## **New Laws in Effect Regarding Employee Pregnancy Leave**

New pregnancy regulations under the Fair Employment and Housing Act went into effect on December 30, 2012, expanding the circumstances under which a woman may be considered “disabled by pregnancy.” Now, an employee suffering from a pregnancy-related condition, including severe morning sickness, gestational diabetes, bed rest, loss or end of pregnancy, or post-partum depression, may be entitled to a leave of absence, job transfer, or reasonable accommodation in the workplace.

The new law also clarifies how to calculate the duration of an employee’s pregnancy disability leave and makes clear that an employee’s entitlement to pregnancy disability leave varies based on the number of hours typically worked by that employee in a week. A “four-month leave” for purposes of pregnancy disability leave is now defined as the number of days the employee would normally work within four calendar months. Thus, employees working 40 hours per week would be entitled to a leave of one third of a year or 17 1/3 weeks. Employees who work more or less than 40 hours per week are entitled to four months of leave on a proportional basis.

The new regulations also require employers with 50 or more employees to continue to provide employees participating in any company group health plan with health care coverage during a pregnancy disability leave, as well as during leave taken under the California Family Rights Act and Family Medical Leave Act. This results in a potential maximum period of 29 1/3 weeks for which continuing health care coverage must be provided. (Employers with 5-49 employees are not covered by CFRA or FMLA and are only required to continue health benefits during a pregnancy disability leave.)

In addition, the law expands employers’ obligations regarding the reinstatement of an employee who has been on a pregnancy disability leave. An employer is still required to reinstate an employee to the same position, or to a comparable position if the employer can show that the employee would not have been otherwise entitled to reinstatement to the same position. However, the new regulations remove the employer’s ability to deny reinstatement, even if the employer can show that preserving the job or duties for the employee would substantially undermine the employer’s ability to operate the business. In addition, if the employee cannot be returned to her original position, she must be given a comparable position for which she is qualified on her scheduled reinstatement date or within 60 calendar days after that scheduled reinstatement date. During this 60-day period, the employer has an affirmative duty to provide notice to the employee of available positions either in person or by letter, telephone or e-mail.

**freeman | freeman | smiley**  
ATTORNEYS AT LAW LLP