



**FREEMAN, FREEMAN &  
SMILEY, LLP**

**EMPLOYMENT LAW  
BULLETIN**

**April 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

## **California Court Expands Amount of Leave Which Must be Provided to Employees Who Are Disabled by Pregnancy**

Pursuant to the California Family Rights Act (“CFRA”), eligible pregnant employees are already entitled to take up to twelve weeks of unpaid leave per year for the birth of a child. In addition, the Pregnancy Disability Leave Law (“PDLL”) requires an employer to provide up to four months of unpaid leave to an employee with a pregnancy-related disability. A pregnancy-related disability includes severe morning sickness, gestational diabetes, bed rest, loss or end of pregnancy, or post-partum depression.

In a case of first impression, a recent California Court of Appeal decision effectively expands the amount of leave which must be given to an employee who is disabled by pregnancy. Under this new ruling, even though an employee may have exhausted all leave permitted under the CFRA and PDLL, she may still be entitled to an additional leave under the Fair Employment and Housing Act (“FEHA”) to the extent that such leave constitutes a “reasonable accommodation” for a disability.

In *Sanchez v. Swissport, Inc.*, the plaintiff’s employment was terminated after she failed to return to work following leaves taken under the CFRA and PDLL. The plaintiff had been diagnosed as having a high-risk pregnancy and required complete bed rest. Her employer argued that because it had provided the employee with all leave mandated by CFRA and PDLL, it had satisfied all of its obligations and was therefore permitted to terminate the plaintiff for failing to return to work.

The Court of Appeal disagreed, holding that the employer had unlawfully discriminated against the employee based on “sex,” which encompasses medical conditions related to pregnancy, by failing to provide her with an additional leave until childbirth. Under FEHA, an employer must provide a reasonable accommodation for an employee’s known disability, unless the employer demonstrates that the accommodation would produce undue hardship. According to the court, by terminating the plaintiff’s employment the employer failed to provide its disabled employee with a reasonable accommodation until childbirth, because at that point, the employee would have been able to return to work without limitation.

Given the court’s ruling, employers should be mindful that pregnant employees who exhaust leave which is permitted under the CFRA and PDLL may still be entitled to additional leave as a reasonable accommodation if they can show that they suffer from a disability under FEHA.

\*\*\*

This Bulletin is made available for educational purposes and to provide general information on current legal topics, not to provide specific legal advice. The publication of this Bulletin does not create any attorney client relationship, and this Bulletin should not be used as a substitute for competent legal advice from a licensed professional attorney.

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