

HUMAN RELATIONS COMMISSION

Employment Policies Relating to Pregnancy, Childbirth and Childrearing

Before Commissioners Loewenstein, R.J. Smith, Leader, Yaffe, Echols, Scott, Jordan, Donovan and Wisniewski; Commissioner E.E. Smith dissented.

The Human Relations Commission, by this order, adopts 16 Pa. Code §§ 41.101-41.104, and rescinds § 2(D) of the Human Relations Guidelines on Discrimination Because of Sex.

The Human Relations Commission determined to update its Guidelines on Discrimination Because of Sex, § 2(D) (childbirth leave). Accordingly, the regulations adopted by this order constitute a rescission of § 2(D) of the Human Relations Commission's Guidelines on Discrimination Because of Sex (Pa. B. Doc. No. 70-703, filed December 18, 1970, 9:00 a.m. amended Pa. B. Doc. No. 71-2413, filed December 24, 1971, 9:00 a.m.).

Notice of proposed rule making was published in 4 Pa. B. 2642, December 21, 1974. Comments were received and a public hearing was held January 9, 1975.

A definitional section has been added as § 41.101. Proposed §§ 41.101 and 41.102 have been renumbered §§ 41.102 and 41.103. Proposed § 41.103 (relating to employer's policy regarding unmarried parents) has been deleted. Several minor changes were made in the rules as proposed, and they are now adopted to read as set forth in Annex A to this order.

The regulations of the Human Relations Commission hereby adopted and the rescission of Guideline § 2(D) are adopted and rescinded pursuant to the authority contained in § 7(d) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended (43 P.S. §§ 951-63).

The Human Relations Commission finds:

- (1) That public notice of intention to adopt the administrative regulations adopted by this order and rescind the guideline rescinded by this order has been duly given pursuant to §§ 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) That the adoption of the regulations and rescission of the guideline of the Human Relations Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

The Human Relations Commission, acting pursuant to the authorizing statute, orders:

- (A) The regulations of the Human Relations Commission, 16 Pa. Code Ch. 41, are amended by adding §§ 41.101-41.104 to read as set forth in Annex A to this order. Guideline 2(D) of the Human Relations Commission's Guidelines on Discrimination Because of Sex is rescinded.
- (B) The Executive Director of the Human Relations Commission shall submit this order and Annex A hereto to the Department of Justice for approval as to legality as required by law.
- (C) The Executive Director of the Human Relations Commission shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

HOMER C. FLOYD
Executive Director

Annex A

Employment Policies Relating to Pregnancy, Childbirth and Childrearing

§ 41.101. Definitions.

Pregnancy: Pregnancy is the state of being in gestation. Pregnancy is a physiological process. All pregnant women, however, have a variable degree of disability on an individual basis during which time they are unable to

perform their usual activities. These regulations relate to all pregnancies without regard to the mother's marital status.

Disability due to pregnancy or childbirth: Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job related purposes, temporary disabilities and should be treated as such in written and unwritten employment practices and policies.

§ 41.102. Employment

A written or unwritten employment policy or practice which excludes from employment applicants or employes because of pregnancy is in prima facie violation of the Pennsylvania Human Relations Act. The burden shifts to an employer to justify, and clearly demonstrate, the factual basis for his or her assertion that exclusion from employment because of pregnancy is warranted.

§41.103. Employment benefits and security during disability.

(a) Temporary disability due to pregnancy or childbirth.

Written and unwritten employment practices and policies regarding job benefits and job security, including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(b) Permanent disability due to pregnancy or childbirth.

Written and unwritten employment practices and policies regarding job benefits and job security, including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to permanent disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other permanent disabilities.

(c) Other.

Mandatory maternity leave policies which require a pregnant employe to take leave automatically at a specified time during pregnancy or to remain away from work after she has recovered from her disability are in violation of the Pennsylvania Human Relations Act. An employer shall accept the determination of a pregnant employe's physician regarding pregnancy-related disabilities where it accepts such medical judgement regarding other disabilities.

§ 41.104. Childrearing leave.

Nothing in these regulations shall prohibit an employment policy that permits granting of leave for purposes of childrearing beyond the period of actual disability, but such leave shall not include payment of sickness or disability benefits.

Should an employer maintain a written or unwritten employment policy or practice which allows employes leave for purposes of childrearing and child care, such leave shall be equally applicable to both male and female employes. The word "child" or "children" used in § 41.104 includes children by birth or adoption.