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### Court Says California Employers Can't Cap Pregnancy Disability Leaves at Four Months

A California Court of Appeal has ruled that an employee who exhausts her four months of leave under California's Pregnancy Disability Leave Law ("PDLL") yet remains disabled by pregnancy may be entitled to additional leave as a reasonable accommodation. The recent case, [Sanchez v. Swissport, Inc.](#), No. B237761 (Cal. Ct. App. Feb. 21, 2013), makes it clear that California employers cannot cap leave for pregnancy disability at four months and illustrates the often tricky interplay between pregnancy disability leave protections and other protections for disabled workers under the California Fair Employment and Housing Act ("FEHA").

Just a few weeks into her pregnancy, the plaintiff, Ana G. Fuentes Sanchez, was diagnosed with a high-risk pregnancy and ordered to bed rest for the duration of her pregnancy. She requested a leave for about seven and a half months, until the baby's due date, and her plan was to return to work very soon after the birth. Swissport granted Sanchez a 16-week leave of absence and permitted her to take an additional three weeks off. But when those 19 weeks were up, and with three months still to go in the pregnancy, Sanchez was still on bed rest and unable to return to work. Swissport terminated her employment because she had exhausted her leave under the California PDLL.

Sanchez sued for, among other things, pregnancy discrimination and Swissport's failure to provide a reasonable accommodation and engage in the interactive process. Swissport moved to dismiss the case, arguing that the exclusive remedy for an employee seeking reasonable accommodation for a pregnancy-related disability is the PDLL, and the PDLL specifically states that leave is "not to exceed four months." The trial court agreed and dismissed the case. But now the California Court of Appeal has reversed and remanded the case back to the trial level.

The Court of Appeal ruled that an employer's compliance with the PDLL requirement of four months of leave for pregnancy disability does not trump the separate requirement under the FEHA to provide a reasonable accommodation for a disability – in other words, an employer might have to do both. The court explained that the plain language of the

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PDLL “makes clear that its remedies augment, rather than supplant, those set forth elsewhere in the FEHA,” and that under the FEHA “a woman disabled by pregnancy is entitled to the protections afforded any other disabled employee -- a reasonable accommodation that does not impose an undue hardship on her employer.” A reasonable accommodation under the FEHA, said the court, could include “[a] finite leave of greater than four months.”

**Tips for Employers:** The *Sanchez v. Swissport* decision underscores that California employers may be required to accommodate a pregnancy disability by providing a leave of absence beyond the maximum four months allowed under the PDLL. Thus, if a pregnant employee exhausts her protected pregnancy disability leave yet remains disabled and needs more time off, the employer will be required to engage in the interactive process to find a reasonable accommodation, which could include granting additional leave.

Notably, the decision did not address the California Family Rights Act (“CFRA”), which requires employers with 50 or more employees to provide up to 12 weeks of leave for, among other things, an employee’s own serious health condition or baby bonding. Because CFRA does not cover pregnancy disability as a serious health condition, a pregnant employee generally is not entitled to use CFRA time in connection with the pregnancy until the child is born, although an employer can agree to “advance” the CFRA leave before the birth as a “reasonable accommodation” if an employee has used up her PDLL leave. But even in circumstances where CFRA leave does not fill the gap between expired leave under the PDLL and the end of the pregnancy disability, *Sanchez v. Swissport* illustrates that an employer may still have to provide additional leave as a reasonable accommodation for pregnancy disability.

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