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Friday
April 20, 1979

Part VIII

Equal Employment Opportunity Commission

Guidelines on Sex Discrimination

Adoption of Final Interpretive Guidelines

Questions and Answers

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1604

Guidelines on Sex Discrimination; Adoption of Final Interpretive Guidelines; Question and Answers

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Amendments to Guidelines on Discrimination Because of Sex, and Addition of Questions and Answers concerning the Pregnancy Discrimination Act, Public Law 95–555, 92 Stat. 2076 (1978).

SUMMARY: On October 31, 1978, President Carter signed into law the Pregnancy Discrimination Act, Pub. L. 95–555, 92 Stat. 2076, as an amendment to Title VII of the Civil Rights Act of 1964, as amended. The act makes clear that discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII. The amendments to the Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex bring the Guidelines into conformity with Pub. L. 95–555. The accompanying questions and answers respond to concerns raised by the public about compliance with the Pregnancy Discrimination Act.

EFFECTIVE DATE: April 20, 1979.

FOR FURTHER INFORMATION CONTACT: Peter C. Robertson, Director, Office of Policy Implementation, Room 4002A, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, (202) 634–7060.

SUPPLEMENTARY INFORMATION: The Pregnancy Discrimination Act makes clear that Title VII of the Civil Rights Act of 1964, as amended, forbids discrimination on the basis of pregnancy, childbirth and related medical conditions. As reflected in the Committee Reports (Senate Report 95–331, 95th Cong., 1st Session (1977) and House of Representatives Report 95–948, 95th Cong. 2d Session (1978)), Congress believed that the Equal Employment Opportunity Commission (EEOC or the Commission), in its Guidelines on Discrimination Because of Sex (29 CFR Part 1604, published at 39 FR 6836, April 5, 1972) had "rightly implemented the Title VII prohibition of sex discrimination in the 1964 act." H.R. 95–948 at p. 2.

Contrary to the EEOC's Guidelines and rulings by eighteen District Courts and all seven Courts of Appeal which faced the issue, in *General Electric Co. v. Gilbert,* 429 U.S. 125 (1976), the Supreme Court ruled that General Electric's exclusion of pregnancy related disabilities from its comprehensive disability plan did not violate Title VII. The Supreme Court further indicated that it believed that the EEOC Guidelines located at 29 CFR 1604.10(b) incorrectly interpreted the Congressional intent in the statute.

The Pregnancy Discrimination Act reaffirms EEOC's Guidelines with but minor modifications. For that reason, the Commission believed that only slight modifications of its Guidelines were necessary and issued them on an interim basis on March 9, 1979 at 44 FR 13278. Along with these amended Sex Discrimination Guidelines, the Commission published a list of questions and answers concerning the Pregnancy Discrimination Act. These responded to urgent concerns raised by employees, employers, unions and insurers who sought the Commission's guidance in understanding their rights and obligations under the Pregnancy Discrimination Act.

Fringe benefit programs subject to Title VII which existed on October 31, 1978, must be modified in accordance with the Pregnancy Discrimination Act no later than April 29, 1979. It is the Commission's desire, therefore, that all interested parties be made aware of EEOC's view of their rights and obligations in advance of April 29, 1979, so that they may be in compliance by that date. For that reason, the Commission has determined that the amendment to 29 CFR 1604.10 and the questions and answers, which will be appended to 29 CFR Part 1604, are not subject to the requirements of Executive Order 12044. See section 6(b)(6) of Executive Order 12044.

The Commission, however, invited and received comments from the public and affected Federal agencies. The Commission has considered the comments and determined that its Sex Discrimination Guidelines at 29 CFR 1604.10 should be issued in final form as they were published in 44 FR 13278 (March 9, 1979), except that the word "opportunities" has been inserted in Subsection (a) of Section 1604.10 to emphasize that this subsection applies to all employment-related policies or practices, since there was apparent confusion on this point. Also as a result of the comments, the Commission has added several questions and answers which will be of further assistance to those seeking Commission guidance with respect to their rights and obligations under the Pregnancy Discrimination Act, and has amended two of the originally published questions and answers.

Question 21 was amended by changing the second paragraph of the answer to read "non-spouse dependents" instead of "other dependents", to clarify the intent of the answers. Question 30 (now question 34) has been amended to include women who are contemplating an abortion within the prohibition against discrimination on the basis of abortion.

Questions 29 and 30 were added to address many of the concerns which had been raised with respect to "extended benefits" provisions.

Question 18(A) was added in response to questions and comments which pertain to child care leave.

A majority of the comments questioned the appropriateness of the Commission's answer to Question 21 of the questions and answers at 44 FR 13278. Question 21 asked whether an employer has to make available health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees and of the non-spouse dependents of all employees.

The Commission concluded that health insurance benefits for the pregnancy-related conditions of the male employee's spouse must be available to the same extent as health insurance benefits are available to the female employee's spouse. The pregnancy-related conditions of non-spouse dependents, however, would not have to be covered under the health insurance program so long as that practice applied to the non-spouse dependents of male and female employees equally.

The Pregnancy Discrimination Act amends Title VII of the Civil Rights Act of 1964, as amended. To the extent that a specific question is not directly answered by a reading of the Pregnancy Discrimination Act, existing principles of Title VII must be applied to resolve that question. The legislative history of the Pregnancy Discrimination Act states explicitly that existing principles of Title VII law would have to be applied to resolve the question of benefits for dependents. (S. Rep. No. 95–331 at 6.)

The Commission, being responsible for interpreting and implementing Title VII, utilized Title VII principles to arrive at the position reached on the dependent question.

The underlying principle of Title VII is that applicants for employment or employees be treated equally without regard to their race, sex, color, religion, or national origin. This equality of treatment encompasses the receiving of

fringe benefits made available in connection with employment. Title VII does not require employers to provide the same coverage for the pregnancy-related medical conditions of spouses of male employees as it provides for the pregnancy-related costs of its female employees. However, if an employer makes available to female employees insurance which covers the costs of all of the medical conditions of their spouses, but provides male employees with insurance coverage for only *some* of the medical conditions (i.e., all but pregnancy-related expenses) of their spouses, male employees are receiving a less favorable fringe benefit package. This view was explicitly supported in the Senate by Senators Bayh and Cranston. 123 Cong. Rec. S15037, S15058 (daily ed. Sept. 16, 1977), and not specifically opposed.

Absent a state statute to the contrary, it would not be a violation of Title VII if an employer's health insurance policy denied pregnancy benefits for the other dependents of employees (e.g. daughters) so long as the exclusion applied equally to non-spouse dependents of male employees and non-spouse dependents of female employees. Since male and female employees have an equal chance of having pregnant dependent daughters, male and female employees would be equally affected by such an exclusion.

Although costs may increase as a result of providing pregnancy benefits for the spouses of male employees where benefits are made available for the spouses of female employees, the Pregnancy Discrimination Act provides that where costs were apportioned on the date of enactment between employers and employees, any payments or contributions required to comply with the Act may be made by employers and employees in the same proportion, if that apportionment was non-discriminatory.

As a result of the many comments and questions raised on the dependent question, questions 22 and 23 were added to provide additional guidance to interested parties.

With the exception of the addition of questions 18(A), 22, 23, 29, and 30, and the amendments to questions 21 and 30 (now 34); the questions and answers are issued in final form as they were published in 44 FR 13278 (March 9, 1979).

By virtue of the authority vested in it by Section 713 of Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000-12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby approves as final § 1604.10 and adopts questions and answers concerning the Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076 (1978), as an appendix to Part 1604 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, D.C., this 17th day of April, 1979.

Eleanor H. Norton,

Chair, Equal Employment Opportunity Commission.

1. 29 CFR 1604.10 is amended to read as follows:

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment opportunities applicants or employees because of pregnancy, childbirth or related medical conditions is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the 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 disability due to pregnancy, childbirth, or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of § 1604.10(b) by April 29, 1979. In order to come into compliance with the provisions of § 1604.10(b), there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979 or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of § 1604.10(b) upon implementation.

2. The following questions and answers, with an introduction, are added to 29 CFR Part 1604 as an appendix:

Questions and Answers on the Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076 (1978)

Introduction

On October 31, 1978, President Carter signed into law the *Pregnancy Discrimination Act* (Pub. L. 95-955). The Act is an amendment to Title VII of the Civil Rights Act of 1964 which prohibits, among other things, discrimination in employment on the basis of sex. The *Pregnancy Discrimination Act* makes it clear that "because of sex" or "on the basis of sex", as used in Title VII, includes "because of or on the basis of pregnancy, childbirth or related medical conditions." Therefore, Title VII prohibits discrimination in employment against women affected by pregnancy or related conditions.

The basic principle of the Act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she is pregnant or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy.

In the area of fringe benefits, such as disability benefits, sick leave and health insurance, the same principle applies. A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions. However, health

insurance for expenses arising from abortion is not required except where the life of the mother would be endangered if the fetus were carried to term, or where medical complications have arisen from an abortion.

Some questions and answers about the *Pregnancy Discrimination Act* follow. Although the questions and answers often use only the term "employer," the Act—and these questions and answers—apply also to unions and other entities covered by Title VII.

1. Q. What is the effective date of the Pregnancy Discrimination Act?

A. The Act became effective on October 31, 1978, except that with respect to fringe benefit programs in effect on that date, the Act will take effect 180 days thereafter, that is, April 29, 1979.

To the extent that Title VII already required employers to treat persons affected by pregnancy-related conditions the same as persons affected by other medical conditions, the Act does not change employee rights arising prior to October 31, 1978, or April 29, 1979. Most employment practices relating to pregnancy, childbirth and related conditions—whether concerning fringe benefits or other practices—were already controlled by Title VII prior to this Act. For example, Title VII has always prohibited an employer from firing, or refusing to hire or promote, a woman because of pregnancy or related conditions, and from failing to accord a woman on pregnancy-related leave the same seniority retention and accrual accorded those on other disability leaves.

2. Q. If an employer had a sick leave policy in effect on October 31, 1978, by what date must the employer bring its policy into compliance with the Act?

A. With respect to payment of benefits, an employer has until April 29, 1979, to bring into compliance any fringe benefit or insurance program, including a sick leave policy, which was in effect on October 31, 1978. However, any such policy or program created after October 31, 1978, must be in compliance when created.

With respect to all aspects of sick leave policy other than payment of benefits, such as the terms governing retention and accrual of seniority, credit for vacation, and resumption of former job on return from sick leave, equality of treatment was required by Title VII without the Amendment.

3. Q. Must an employer provide benefits for pregnancy-related conditions to an employee whose pregnancy begins prior to April 29, 1979, and continues beyond that date?

A. As of April 29, 1979, the effective date of the Act's requirements, an employer must provide the same benefits for pregnancy-related conditions as it provides for other conditions, regardless of when the pregnancy began. Thus, disability benefits must be paid for all absences on or after April 29, 1979, resulting from pregnancy-related temporary disabilities to the same extent as they are paid for absences resulting from other temporary disabilities. For example, if an employee gives birth before April 29, 1979, but is still unable to work on or after that date, she is entitled to the same disability benefits available to other employees. Similarily, medical insurance benefits must be paid for pregnancy-related expenses incurred on or after April 29, 1979.

If an employer requires an employee to be employed for a predetermined period prior to being eligible for insurance coverage, the period prior to April 29, 1979, during which a pregnant employee has been employed must be credited toward the eligibility waiting period on the same basis as for any other employee.

As to any programs instituted for the first time after October 31, 1978, coverage for pregnancy-related conditions must be provided in the same manner as for other medical conditions.

4. Q. Would the answer to the preceding question be the same if the employee became pregnant prior to October 31, 1978?

A. Yes.

5. Q. If, for pregnancy-related reasons, an employee is unable to perform the functions of her job, does the employer have to provide her an alternative job?

A. An employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees, whether by providing modified tasks, alternative assignments, disability leaves, leaves without pay, etc. For example, a woman's primary job function may be the operation of a machine, and, incidental to that function, she may carry materials to and from the machine. If other employees temporarily unable to lift are relieved of these functions, pregnant employees also unable to lift must be temporarily relieved of the function.

6. Q. What procedures may an employer use to determine whether to place on leave as unable to work a pregnant employee who claims she is able to work or deny leave to a pregnant employee who claims that she is disabled from work?

A. An employer may not single out pregnancy-related conditions for special procedures for determining an employee's ability to work. However, an employer may use any procedure used to determine the ability of all employees to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. Similarly, if an employer allows its employees to obtain doctor's statements from their personal physicians for absences due to other disabilities or return dates from other disabilities it must accept doctor's statements from personal physicians for absences and return dates connected with pregnancy-related disabilities.

7. Q. Can an employer have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth?

A. No.

8. Q. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, may her employer require her to remain on leave until after her baby is born?

A. No. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

9. Q. Must an employer hold open the job of an employee who is absent on leave because she is temporarily disabled by pregnancy-related conditions?

A. Unless the employee on leave has informed the employer that she does not intend to return to work, her job must be held open for her return on the same basis as jobs are help open for employees on sick or disability leave for other reasons.

10. Q. May an employer's policy concerning the accrual and crediting of seniority during absences for medical conditions be different for employees affected by pregnancy-related conditions than for other employees?

A. No. An employer's seniority policy must be the same for employees absent for pregnancy-related reasons as for those absent for other medical reasons.

11. Q. For purposes of calculating such matters as vacations and pay increases, may an employer credit time spent on leave for pregnancy-related reasons differently than time spent on leave for other reasons?

A. No. An employer's policy with respect to crediting time for the purpose of calculating such matters as vacations and pay increases cannot treat employees on leave for pregnancy-related reasons less favorably than employees on leave for other reasons. For example, if employees on leave for medical reasons are credited with the time spent on leave when computing entitlement to vacation or pay raises, an employee on leave for pregnancy-related disability is entitled to the same kind of time credit.

12. Q. Must an employer hire a woman who is medically unable, because of a pregnancy-related condition, to perform a necessary function of a job?

A. An employer cannot refuse to hire a woman because of her pregnancy-related condition so long as she is able to perform the major functions necessary to the job. Nor can an employer refuse to hire her because of its preferences against pregnant workers or the preferences of co-workers, clients, or customers.

13. Q. May an employer limit disability benefits for pregnancy-related conditions to married employees?

A. No.

14. Q. If an employer has an all female workforce or job classification, must benefits be provided for pregnancy-related conditions?

A. Yes. If benefits are provided for other conditions, they must also be provided for pregnancy-related conditions.

15. Q. For what length of time must an employee who provides income maintenance benefits for temporary disabilities provide such benefits for pregnancy-related disabilities?

A. Benefits should be provided for as long as the employee is unable to work for medical reasons unless some other limitation is set for all other temporary disabilities, in which case pregnancy-related disabilities should be treated the same as other temporary disabilities.

16. Q. Must an employer who provides benefits for long-term or permanent disabilities provide such bnefits for pregnancy-related conditions?

A. Yes. Benefits for long term or permanent disabilities resulting from pregnancy-related conditions must be provided to the same extent that such benefits are provided for other conditions which result in long term or permanent disability.

17. Q. If an employer provides benefits to employees on leave, such as installment purchase disability insurance, payment of premiums for health, life or other insurance, continued payments into pension, saving or profit sharing plans, must the same benefits be provided for those on leave for pregnancy-related conditions?

A. Yes, the employer must provide the same benefits for those on leave for pregnancy-related conditions as for those on leave for other reasons.

18. Q. Can an employee who is absent due to a pregnancy-related disability be required to exhaust vacation benefits before receiving sick leave pay or disability benefits?

A. No. If employees who are absent because of other disabling causes receive sick leave pay or disability benefits without any requirement that they first exhaust vacation benefits, the employer cannot impose this requirement on an employee absent for a pregnancy-related cause.

18(A). Q. Must an employer grant leave to a female employee for childcare purposes after she is medically able to return to work following leave necessitated by pregnancy, childbirth or related medical conditions?

A. While leave for childcare purposes is not covered by the Pregnancy Discrimination Act, ordinary Title VII principles would require that leave for childcare purposes be granted on the same basis as leave which is granted to employees for other non-medical reasons. For example, if an employer allows its employees to take leave without pay or accrued annual leave for travel or education which is not job related, the same type of leave must be granted to those who wish to remain on leave for infant care, even though they are medically able to return to work.

19. Q. If state law requires an employer to provide disability insurance for a specified period before and after childbirth, does compliance with the state law fulfill the employer's obligation under the Pregnancy Discrimination Act?

A. Not necessarily. It is an employer's obligation to treat employees temporarily disabled by pregnancy in the same manner as employees affected by other temporary disabilities. Therefore, any restrictions imposed by state law on benefits for pregnancy-related disabilities, but not for other disabilities, do not excuse the employer from treating the individuals in both groups of employees the same. If, for example, a state law requires an employer to pay a maximum of 26 weeks benefits for disabilities other than pregnancy-related ones but only six weeks for pregnancy-related disabilities, the employer must provide benefits for the additional weeks to an employee disabled by pregnancy-related conditions, up to the maximum provided other disabled employees.

20. Q. If a State or local government provides its own employees income maintenance benefits for disabilities, may it provide different benefits for disabilities arising from pregnancy-related conditions than for disabilities arising from other conditions?

A. No. State and local governments, as employers, are subject to the Pregnancy Discrimination Act in the same way as private employers and must bring their employment practices and programs into compliance with the Act, including disability and health insurance programs.

21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees? Of the dependents of all employees?

A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions.

But the insurance does not have to cover the pregnancy-related conditions of non-spouse dependents as long as it excludes the pregnancy-related conditions of such non-spouse dependents of male and female employees equally.

22. Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However, where the employer provides coverage for the medical conditions of the spouses of its employees, then the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100 percent of reasonable and customary expenses sustained for a medical condition, but only covers dependent spouses for 50 percent of reasonable and customary expenses for their medical conditions, the pregnancy-related expenses of the

male employee's spouse must be covered at the 50 percent level.

23. Q. May an employer offer optional dependent coverage which excludes pregnancy-related medical conditions or offers less coverage for pregnancy-related medical conditions where the total premium for the optional coverage is paid by the employee?

A. No. Pregnancy-related medical conditions must be treated the same as other medical conditions under any health or disability insurance or sick leave plan *available in connection with employment*, regardless of who pays the premiums.

24. Q. Where an employer provides its employees a choice among several health insurance plans, must coverage for pregnancy-related conditions be offered in all of the plans?

A. Yes. Each of the plans must cover pregnancy-related conditions. For example, an employee with a single coverage policy cannot be forced to purchase a more expensive family coverage policy in order to receive coverage for her own pregnancy-related condition.

25. Q. On what basis should an employee be reimbursed for medical expenses arising from pregnancy, childbirth or related conditions?

A. Pregnancy-related expenses should be reimbursed in the same manner as are expenses incurred for other medical conditions. Therefore, whether a plan reimburses the employees on a fixed basis, or a percentage of reasonable and customary charge basis, the same basis should be used for reimbursement of expenses incurred for pregnancy-related conditions. Furthermore, if medical costs for pregnancy-related conditions increase, reevaluation of the reimbursement level should be conducted in the same manner as are cost reevaluations of increases for other medical conditions.

Coverage provided by a health insurance program for other conditions must be provided for pregnancy-related conditions. For example, if a plan provides major medical coverage, pregnancy-related conditions must be so covered. Similarly, if a plan covers the cost of a private room for other conditions, the plan must cover the cost of a private room for pregnancy-related conditions. Finally, where a health insurance plan covers office visits to physicians, pre-natal and post-natal visits must be included in such coverage.

26. Q. May an employer limit payment of costs for pregnancy-related medical conditions to a specified dollar amount set forth in an insurance policy, collective bargaining agreement or other statement of benefits to which an employee is entitled?

A. The amounts payable for the costs incurred for pregnancy-related conditions can be limited only to the same extent as are costs for other conditions. Maximum recoverable dollar amounts may be specified for pregnancy-related conditions if such amounts are similarly specified for other conditions, and so long as the specified amounts in all instances cover the same proportion of actual costs. If, in addition to the scheduled amount for other procedures, additional costs are paid for, either directly or indirectly, by the employer, such additional payments must also be paid for pregnancy-related procedures.

27. Q. May an employer impose a different deductible for payment of costs for pregnancy-related medical conditions than for costs of other medical conditions?

A. No. Neither an additional deductible, an increase in the usual deductible, nor a larger deductible can be imposed for coverage for pregnancy-related medical costs, whether as a condition for inclusion of pregnancy-related costs in the policy or for payment of the costs when incurred. Thus, if pregnancy-related costs are the first incurred under the policy, the employee is required to pay only the same deductible as would otherwise be required had other medical costs been the first incurred. Once this deductible has been paid, no additional deductible can be required for other medical procedures. If the usual deductible has already been paid for other medical procedures, no additional deductible can be required when pregnancy-related costs are later incurred.

28. Q. If a health insurance plan excludes the payment of benefits for any conditions existing at the time the insured's coverage becomes effective (pre-existing condition clause), can benefits be denied for medical costs arising from a pregnancy existing at the time the coverage became effective?

A. Yes. However, such benefits cannot be denied unless the pre-existing condition clause also excludes benefits for other pre-existing conditions in the same way.

29. Q. If an employer's insurance plan provides benefits after the insured's employment has ended (i.e. extended benefits) for costs connected with pregnancy and delivery where conception occurred while the insured was working for the employer, but not for the costs of any other medical condition which began prior to termination of employment, may an employer (a) continue to pay these extended benefits for pregnancy-related medical conditions but not for other medical conditions, or (b) terminate these benefits for pregnancy-related conditions?

A. Where a health insurance plan currently provides extended benefits for other medical conditions on a less favorable basis than for pregnancy-related medical conditions, extended benefits must be provided for other medical conditions on the same basis as for pregnancy-related medical conditions. Therefore, an employer can neither continue to provide less benefits for other medical conditions nor reduce benefits currently paid for pregnancy-related medical conditions.

30. Q. Where an employer's health insurance plan currently requires total disability as a prerequisite for payment of extended benefits for other medical conditions but not for pregnancy-related costs, may the employer now require total disability for payment of benefits for pregnancy-related medical conditions as well?

A. Since extended benefits cannot be reduced in order to come into compliance with the Act, a more stringent prerequisite for payment of extended benefits for pregnancy-related medical conditions, such as a requirement for total disability, cannot be imposed. Thus, in this instance, in order to comply with the Act, the employer must treat other medical conditions as pregnancy-related conditions are treated.

31. Q. Can the added cost of bringing benefit plans into compliance with the Act be apportioned between the employer and employee?

A. The added cost, if any, can be apportioned between the employer and employee in the same proportion that the cost of the fringe benefit plan was apportioned on October 31, 1978, if that apportionment was nondiscriminatory. If the costs were not apportioned on October 31, 1978, they may not be apportioned in order to come into compliance with the Act. However, in no circumstance may male or female employees be required to pay unequal apportionments on the basis of sex or pregnancy.

32. Q. In order to come into compliance with the Act, may an employer reduce benefits or compensation?

A. In order to come into compliance with the Act, benefits or compensation which an employer was paying on October 31, 1978 cannot be reduced before October 31, 1979 or before the

expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

Where an employer has not been in compliance with the Act by the times specified in the Act, and attempts to reduce benefits, or compensation, the employer may be required to remedy its practices in accord with ordinary Title VII remedial principles.

33. Q. Can an employer self-insure benefits for pregnancy-related conditions if it does not self-insure benefits for other medical conditions?

A. Yes, so long as the benefits are the same. In measuring whether benefits are the same, factors other than the dollar coverage paid should be considered. Such factors include the range of choice of physicians and hospitals, and the processing and promptness of payment of claims.

34. Q. Can an employer discharge, refuse to hire or otherwise discriminate against a woman because she has had or is contemplating having an abortion?

A. No. An employer cannot discriminate in its employment practices against a woman who has had or is contemplating having an abortion.

35. Q. Is an employer required to provide fringe benefits for abortions if fringe benefits are provided for other medical conditions?

A. All fringe benefits other than health insurance, such as sick leave, which are provided for other medical conditions, must be provided for abortions. Health insurance, however, need be provided for abortions only where the life of the woman would be endangered if the fetus were carried to term or where medical complications arise from an abortion.

36. Q. If complications arise during the course of an abortion, as for instance excessive hemorraging, must an employer's health insurance plan cover the additional cost due to the complications of the abortion?

A. Yes. The plan is required to pay those additional costs attributable to the complications of the abortion. However, the employer is not required to pay for the abortion itself, except where the life of the mother would be endangered if the fetus were carried to term.

37. Q. May an employer elect to provide insurance coverage for abortions?

A. Yes. The Act specifically provides that an employer is not precluded from providing benefits for abortions whether directly or through a collective bargaining agreement, but if an employer decides to cover the costs of abortion, the employer must do so in the same manner and to the same degree as it covers other medical conditions.

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