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Pregnancy Leave and other Parental Leave

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Pregnancy Leave and other Parental Leave

Reference Number: CTAS-1008

The federal Pregnancy Discrimination Act (PDA), an amendment to the Civil Rights Act of 1964,^[1] prohibits employment discrimination against women on the basis of pregnancy, childbirth or related medical conditions. This means that pregnancy-related conditions must be treated the same as any other temporary medical incapacity. The PDA applies to employers who have 15 or more employees. For this purpose the county generally is treated as the employer (not the individual office). The term "employees" includes local government employees, but does not include elected officials and their personal staff or policy-making appointees.

If the employer grants paid sick leave for temporary medical disabilities, female employees must receive the same benefit for pregnancy-related medical conditions. In other words, the employee must not be required to take unpaid leave during the time that she is medically unable to work due to pregnancy and childbirth if paid leave is available for other medical conditions. The employer must provide leave for pregnancy-related conditions in the same manner as all other reasons for leave under the employer's policies. For example, if other employees are allowed only two weeks paid sick leave, but may take unpaid leave for other purposes, a pregnant employee who is unable to work must be allowed to take the two weeks paid sick leave together with the amount of unpaid leave allowed other employees. Female employees cannot be penalized for taking maternity leave if other employees are not penalized for taking similar leaves of absence. For example, if retirement or seniority rights continue to accrue while an employee is on vacation or sick leave, those rights must continue to accrue during maternity leave. Pregnant employees are entitled to the same benefits (paid leave, health insurance, temporary disability payments, temporary work reassignment, etc.) as are provided for other temporary medical disabilities. However, if the employer does not provide a particular benefit for other temporary medical incapacities, that benefit is not required for pregnant employees. Finally, an employer may not set mandatory leave dates for pregnant employees. An employee must be allowed to continue to work as long as she is able to perform her job.

Eligible male and female employees are entitled to leave for the birth of a child, or for the adoption or placement of a child for foster care, under the federal Family and Medical Leave Act. See Leave for Birth, Adoption and Foster Care under Family and Medical Leave Act (FMLA) for more information. In addition to federal law, Tennessee has enacted a parental leave law, found at T.C.A. § 4-21-408, which applies to all employers who employ 100 or more full-time employees at a job site or location (generally the county would be treated as the employer, not the individual office). The state law allows up to four months off for adoption, pregnancy, childbirth and nursing an infant for both male and female employees who have been employed for 12 months. The leave may be with or without pay. The Tennessee Attorney General has opined that this state law does not conflict with the federal Pregnancy Discrimination Act.^[2] The statute requires that the provisions of the Tennessee parental leave law be included in the next employee handbook published by the employer after May 27, 2005.

[1] 42 U.S.C. § 2000e(k).

[2] Op. Tenn. Atty. Gen. 91-22 (March 12, 1991).

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