



Subject Seaford Leubers
Salaries

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

October 15, 1974

Opinion No. 74- 340

Mr. Keith B. Mueller
Superintendent, USD 378
Riley, Kansas 66531

Dear Mr. Mueller:

We have received your letter concerning the legal status of payment of sick leave benefits to an employee for time off during a normal pregnancy. You did not specify the pertinent provisions of the insurance contract; therefore, we presume there is provision for sick leave benefits.

Although for many years this office ruled that contractual provisions could not include "fringe benefits," we changed that position as legislative enactments broadened the contractual powers of local boards. It remains a question to consider whether pregnancy falls within the sick leave 'fringe' benefit.

Congress amended the Civil Rights Act of 1964 by enactment of the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e et seq. The Act prohibits employment discrimination on the basis of sex. Pursuant to the enactment the Equal Employment Opportunity Commission promulgated the following regulation:

"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 under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving such as the commencement and duration of sick leave, the availability of extensions, the accrual of seniority, . . . 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." 29 C.F.R. § 1604.10(b)

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The Kansas Civil Rights Commission has emergency regulations in force presently which contain virtually identical wording. On this basis there would seem little doubt that sick leave by reason of pregnancy is compensable.

However, the U.S. Supreme Court in June, 1974, handed down its decision in *Geduldig v. Aiello* reported at 42 L.W. 4905. The case concerned California's disability insurance system which pays benefits to persons in private employment with disabilities not covered by workmen's compensation. The suit was brought to challenge the constitutionality of a provision that, in defining disability excluded pregnancy from coverage. The issue was whether the Equal Protection Clause requires such policies (e.g. 1% contribution rate which meets the level of benefits payable) to be sacrificed to finance the payment of benefits to those whose disability is attributable to normal pregnancy. The Court thought not. It found the exclusion was not invidious discrimination under equal protection. The Court found that California has a legitimate interest in maintaining the self-supporting nature of its insurance program. As to the exclusion of pregnant women from coverage, the Court found:

"no evidence....that the selection of the risks insured by the program worked to discriminate against any definable group or class in terms of the aggregate risk protection derived by that group or class from the program."

A strong dissent adhered to the view that any classification based on sex is inherently suspect.

Although this decision is of interest as an indicator of a direction the Court may take, we do not find construing a state-wide plan to be analogous to individual teacher contracts which contain sick leave provisions. Therefore, we conclude reliance must be placed on EEOC guidelines and Kansas Civil Rights Commission regulations. That being so it follows payment is proper for sick leave by reason of pregnancy.

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If we may be of further assistance, please contact us.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Vern Miller".

VERN MILLER
Attorney General

VM:DMH:tp