

Parents in the Workplace

A recent incident in a South Texas probation office brought a legal issue to light of which most people are not aware – that is, breast-feeding. It appears that a new mother was accompanying her husband on a visit to his probation officer. While waiting in the public waiting area, she proceeded to breast-feed her infant. The probation office personnel informed her that she would not be permitted to feed her child in this manner in a room possibly containing convicted sexual offenders. She took exception and her attorney rightfully states that this is a protected activity under Texas law.

Most people are not aware that the Texas Health and Safety Code entitles a mother to breast-feed her baby in “any location in which the mother is authorized to be.” This broad statement allows a mother to breast-feed in any public establishment, including malls, restaurants, government buildings or places of employment. In the case above, she was authorized to be in the government building and does have a right to breast-feed her child. Can the probation office limit this right due to potential safety issues? Well, the courts haven’t decided and the legislature did not specify further in the Code. Providing a reasonable alternative location for feeding would probably go a long way towards reducing the possibility of a lawsuit.

There are a few other laws protecting parents (and parents-to-be) which employers should be aware. Pregnant employees are protected from discrimination under the Texas Labor Code. Covering employers with fifteen or more employees, pregnant women are specifically protected under Section 21.106. Pregnancy is treated as a condition based upon one’s sex, and covered employers are prohibited from discriminating based upon pregnancy, childbirth or related medical condition. This does not mean that pregnant employees should not be limited from duties hazardous to their health or the health of the baby. Rather, they must be treated as any other employee with a temporary disability in decided their restricted duties. For instance, if a warehouse worker has a strained back and is placed on desk duty until released by a physician, then an employee who is pregnant should be treated in the same manner. This prohibition on discrimination also applies to the employment process, so questions concerning the current or planned pregnancy of an employment candidate are not a good idea. In the interest of assessing whether an individual is capable of performing a specific job duty, it would be better to inquire about any medical conditions prohibiting them from performing the duty. (A good job description with specific duties of the position listed comes in very handy.)

In addition to these Texas laws, federal law gives new parents some time off for the birth and care of an ill child under the Family and Medical Leave Act of 1993 (FMLA). Under FMLA, leave for care of an ill child is classified as “medical leave” while leave for the birth, placement or adoption of a child is considered “family leave.” The FMLA requires employers with 50 or more employees to provide up to 12 weeks of unpaid leave for the employee. To qualify under the act, the employee must have been employed for at least one year and worked for 1,250 hours (about 25 hours per week) during the 12 months preceding the leave.

For medical leave, the twelve weeks can be taken intermittently. That is, the time off may be spread out over the course of a 12 month period as necessary to tend for a son or daughter (or spouse or parent) with a serious health condition. A serious health condition is one that would require continuing care by a health care provider. While some debate has raged over what exactly qualifies as a serious health condition, a safe way to determine if a condition qualifies is whether the individual is currently seeing a health care provider for treatment is to require a medical certification from the health care provider.

Upon returning to work, the employee must be given the same position they had prior to the leave or to an equivalent position. Employers may require that the employee use their vacation, sick or other accumulated leave time concurrently with FMLA leave with the remainder of the 12 week leave as unpaid. This eliminates the possibility of an employee taking the twelve weeks leave then taking additional time away from work for vacation or sick time. Throughout the leave, the employee's health coverage, if provided, must be continued unchanged.

This information is intended as general legal advice and may not apply to your particular situation. If you have any legal questions you would like answered in this column or ideas, please forward them to me at edward@erbarrettlawoffice.com, fax number (214) 722-0025 or by mail at the Law Office of Edward R. Barrett, 4451 FM 2181, Ste. 100, PMB 125, Corinth, Texas 76210.