

1974 WL 27747 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 9, 1974

***1 RE: Maternity Leave for Vending Stand Operators.**

Mr. M. S. Moncrief, Sr.
South Carolina Commission for the Blind
P. O. Box 11638
Columbia, S. C. 29211

Dear Mr. Moncrief:

You have suggested that this office review the existing maternity leave regulations which the Commission for the Blind applies to vending stand operators. That regulation provides:

Maternity absences shall begin two months prior to the expected delivery date and end no earlier than six weeks after the birth of the baby. A suitable temporary operator will be assigned to the snack bar during the absence of the regular operator.'

On January 21, 1974, the United States Supreme Court handed down a decision which dealt precisely with the question of the legality of maternity leave requirements imposed by state agencies. See Cleveland Board of Education, et al. v. Jo Carol LaFleur and Susan Cohen v. Chesterfield County School Board, et al., 42 U.S.L.W. 4186 (U.S. Jan. 22, 1974). That decision held that maternity leave regulations are proper but that their requirements cannot be arbitrary. The Court found that a school board's requirement that all pregnant school teachers leave work four months prior to the anticipated date of delivery was arbitrary. However, the court also found that the disabling effects of pregnancy may be a valid grounds for requiring termination of employment within 'the last few weeks of pregnancy'.

Insofar as when an employee may be permitted to return to work is concerned, the Court indicated that this determination also must not be arbitrary. The Court indicated that a proper consideration would be the physical health of the mother, but the Court gave no concrete indication of just what time period it thought reasonable.

In summary, every woman has a constitutionally protected right to bear children and state regulations which infringe on that right must have a good reason or reasons to support them. Based on the supreme court decision previously cited, I advise that a maternity leave regulation which requires a vending stand operator to leave work not later than one (1) month prior to the expected delivery date and which permits that operator to return to work not earlier than six (6) weeks after the birth of the baby is very probably legally valid. I think, however, that the two (2) month advance leave now required could be found arbitrary if the woman's health is the only reason for selecting that date.

If there are questions, please correspond.

Very truly yours,

John B. Grimball
Assistant Attorney General

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