

**PART II. GOVERNOR’S OFFICE**

**Subpart** **Chap.**  
**A. HUMAN RELATIONS COMMISSION ..... 41**

**Subpart A. HUMAN RELATIONS COMMISSION**

<b>Chap.</b>		<b>Sec.</b>
<b>41.</b>	<b>PRELIMINARY PROVISIONS .....</b>	<b>41.1</b>
<b>42.</b>	<b>SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE .....</b>	<b>42.1</b>
<b>43.</b>	<b>POSTING OF NOTICES .....</b>	<b>43.1</b>
<b>44.</b>	<b>DISCRIMINATION ON THE BASIS OF HANDICAP OR DISABILITY .....</b>	<b>44.1</b>
<b>45.</b>	<b>HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY ....</b>	<b>45.1</b>
<b>47.</b>	<b>EDUCATIONAL INSTITUTIONS .....</b>	<b>47.1</b>
<b>49.</b>	<b>CONTRACT COMPLIANCE .....</b>	<b>49.1</b>
<b>51.</b>	<b>DISCRIMINATION WITH RESPECT TO ABORTION AND STERILIZATION .....</b>	<b>51.1</b>

**Cross References**

This section cited in 28 Pa. Code § 101.161 (relating to principle); and 28 Pa. Code § 601.21 (relating to organization services and administration).

**CHAPTER 41. PRELIMINARY PROVISIONS**

<b>Subchap.</b>		<b>Sec.</b>
<b>A.</b>	<b>GENERAL PROVISIONS .....</b>	<b>41.1</b>
<b>B.</b>	<b>OFFICERS AND EXECUTIVE COMMITTEE .....</b>	<b>41.91</b>
<b>C.</b>	<b>PREGNANCY, CHILDBIRTH AND CHILDREARING .....</b>	<b>41.101</b>

**Authority**

The provisions of this Chapter 41 issued under sections 7(a) and 9 of the Pennsylvania Human Relations Act (43 P. S. §§ 957(a) and 959); and the Pennsylvania Fair Educational Opportunities Act (24 P. S. §§ 5001—5010), unless otherwise noted.

**Source**

The provisions of this Chapter 41 adopted January 25, 1966, amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361, unless otherwise noted.

**Subchapter A. GENERAL PROVISIONS**

- 41.1. [Reserved].
- 41.11. [Reserved].
- 41.21. [Reserved].
- 41.22. [Reserved].
- 41.23. [Reserved].
- 41.24. [Reserved].
- 41.25. [Reserved].
- 41.26. [Reserved].
- 41.27. [Reserved].
- 41.28. [Reserved].
- 41.31. [Reserved].
- 41.32. [Reserved].
- 41.41. [Reserved].
- 41.42. [Reserved].
- 41.43. [Reserved].
- 41.44. [Reserved].
- 41.45. [Reserved].
- 41.46. [Reserved].
- 41.47. [Reserved].
- 41.48. [Reserved].
- 41.49. [Reserved].
- 41.50. [Reserved].
- 41.51. [Reserved].
- 41.52. [Reserved].

**BONA FIDE OCCUPATIONAL QUALIFICATIONS**

- 41.71. Bona fide occupational qualification definition.
- 41.72. Interpretations regarding advertisers and publishers.
- 41.73. Supplementary interpretations regarding bona fide occupational qualification standards.

**RETENTION OF EMPLOYMENT RECORDS**

- 41.81. Employers.
- 41.82. Notice to employer.

**§ 41.1. [Reserved].****Source**

The provisions of this § 41.1 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial pages (2167) to (2168).

**§ 41.11. [Reserved].****Source**

The provisions of this § 41.11 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial pages (2168) to (2169).

**§ 41.21. [Reserved].****Source**

The provisions of this § 41.21 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2169).

**§ 41.22. [Reserved].****Source**

The provisions of this § 41.22 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2169).

**§ 41.23. [Reserved].****Source**

The provisions of this § 41.23 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2169).

**§ 41.24. [Reserved].****Source**

The provisions of this § 41.24 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial pages (2169) to (2170).

**§ 41.25. [Reserved].****Source**

The provisions of this § 41.25 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2170).

**§ 41.26. [Reserved].****Source**

The provisions of this § 41.26 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2170).

**§ 41.27. [Reserved].****Source**

The provisions of this § 41.27 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2170).

**§ 41.28. [Reserved].****Source**

The provisions of this § 41.28 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial pages (2170) to (2171).

**§ 41.31. [Reserved].****Source**

The provisions of this § 41.31 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2171).

**§ 41.32. [Reserved].****Source**

The provisions of this § 41.32 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2171).

**§ 41.41. [Reserved].****Source**

The provisions of this § 41.41 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2171).

**§ 41.42. [Reserved].****Source**

The provisions of this § 41.42 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial pages (2171) to (2172).

**§ 41.43. [Reserved].****Source**

The provisions of this § 41.43 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2172).

**§ 41.44. [Reserved].****Source**

The provisions of this § 41.44 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2172).

**§ 41.45. [Reserved].****Source**

The provisions of this § 41.45 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2172).

**§ 41.46. [Reserved].****Source**

The provisions of this § 41.46 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2172).

**§ 41.47. [Reserved].****Source**

The provisions of this § 41.47 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2173).

**§ 41.48. [Reserved].****Source**

The provisions of this § 41.48 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2173).

**§ 41.49. [Reserved].****Source**

The provisions of this § 41.49 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2173).

**§ 41.50. [Reserved].****Source**

The provisions of this § 41.50 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2173).

**§ 41.51. [Reserved].****Source**

The provisions of this § 41.51 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2174).

**§ 41.52. [Reserved].****Source**

The provisions of this § 41.52 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; reserved August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887. Immediately preceding text appears at serial page (2174).

**BONA FIDE OCCUPATIONAL QUALIFICATIONS****§ 41.71. Bona fide occupational qualification definition.**

(a) It is anticipated that section 5 of the Pennsylvania Human Relations Act (43 P. S. § 955) which allows employment practices otherwise prohibited if based upon a bona fide occupational qualification will have limited scope and application.

(b) Discrimination in employment based upon race, color, religious creed, ancestry, age, sex or national origin is valid as a bona fide occupational qualification only when it is reasonably necessary to the essence of the normal operation of a particular business or enterprise.

(c) A bona fide occupational qualification allowing discrimination in employment is permissible only when the employer can prove a factual basis for believing that all or substantially all members of a class covered by the act would be unable to perform safely and efficiently the duties of the job involved. Absent such a showing, an applicant for a job in issue may be excluded only upon a demonstration of individual incapacity.

(d) The employer, employment agency or union has the burden of establishing that race, color, religious creed, ancestry, age, sex or national origin qualifies as a bona fide occupational qualification.

(e) The application of the exception is not warranted if based upon reasons such as, but not limited to:

(1) Assumptions of the comparative general employment characteristics of persons of a particular race, color, religious creed, ancestry, age, sex or national origin, such as their turnover rate.

(2) Stereotyped characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness.

(3) Customer, client, co-worker or employer preference, or historical usage, tradition or custom.

- (4) The necessity of providing separate facilities of a personal nature, such as restrooms or dressing rooms.
- (f) An employer may exclude persons from positions on the basis of sex only when the sexual characteristics of the employe are crucial to the successful performance of the job.

#### Source

The provisions of this § 41.71 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361; amended July 12, 1974, effective July 13, 1974, 4 Pa.B. 1406. Immediately preceding text appears at serial page (2174).

#### Cross References

This section cited in 16 Pa. Code § 51.52 (relating to securing supplementary interpretations); and 22 Pa. Code § 32.3 (relating to assurances).

### § 41.72. Interpretations regarding advertisers and publishers.

(a) Advertisement and notices relating to employment or union membership which state or imply a preference, limitation, specification or discrimination are illegal. The use of a word, term, phrase or expression in an employment notice or advertisement which tends to influence, persuade or dissuade, encourage or discourage, attract or repel a person because of race, color, religious creed, ancestry, age, sex or national origin shall be considered an unlawful discriminatory activity on the part of the person causing the notice or advertisement to be published and on the part of any publisher printing the notice or advertisement.

(b) An otherwise unlawful employment notice or advertisement shall be deemed lawful if the Commission has granted a bona fide occupational qualification interpretation under this section to the person or persons causing the notice or advertisement to be published. A “bona fide occupational qualification interpretation” for the purposes of this section means the authorization of an otherwise discriminatory employment qualification or requirement for the purposes of a specific employment notice or classification. The interpretation applies only to the particular notice or advertisement in issue and may not be considered otherwise applicable to the hiring or recruiting practices of the employer, employment agency or union requesting the interpretation. Upon receipt of a written notification of interpretation issued by the Commission, a publisher may print the otherwise discriminatory notice or advertisement.

(c) An employer, employment agency or union may request a bona fide occupational qualification interpretation for advertising purposes by calling Commission headquarters, 100 North Cameron Street, Harrisburg, Pennsylvania 17101, (717) 787-4410. If, upon receipt of this oral communication concerning the factual situation at issue, the Commission deems that a bona fide occupational qualification exists, it may so inform the applicant orally, but no interpretation is

deemed binding until written notification of the interpretation is received from the Commission. The Commission will maintain records of the requests received by it under this section.

(d) The Commission retains the right to require further written information from an employer, union or employment agency applying for a bona fide occupational qualification interpretation for advertising purposes.

(e) An opinion rendered orally or in writing by the Commission prior to the publication of an advertisement in response to the inquiry shall be binding for the purposes of this section except in those cases in which the applicant has not fully and accurately disclosed the relevant facts regarding the particular position in question.

(f) An appeal from a negative determination by the Commission may be made by submitting a written request and justification thereof to the Commission's Headquarters office at 100 North Cameron Street, Harrisburg, Pennsylvania 17101. Upon receipt of such appeal the Commission will review its initial denial of bona fide occupational qualification interpretation. Should the Commission, upon review, find the issuance of a bona fide occupational qualification interpretation unwarranted, it will set a conference with the appellant. If no resolution is achieved by means of conference, the Commission will determine a time and place for a hearing to be held before a Commissioner. The determination reached as a result of the hearing will be referred to the Commission for approval and will constitute a final order of the Commission subject to appeal as provided in section 10 of the act (43 P. S. § 960).

(g) A newspaper or other publication will not be in violation of this chapter when it has accepted a specific advertisement in good faith and in reasonable reliance upon the showing by the person placing the advertisement of written notification from the Commission that it has granted a bona fide occupational qualification interpretation for the specific position advertised.

(h) A newspaper or other publication will not be in violation of this section where it has accepted a specific advertisement in good faith and in reasonable reliance upon the representations of the persons placing the advertisement that the person is excluded from the definition of "employer" in section 4(b) of the act (43 P. S. § 954(b)) or that the job in question falls within the exclusions of section 4(c) of the act (43 P. S. § 954(c)) defining employe.

#### Source

The provisions of this § 41.72 adopted July 12, 1974, effective July 13, 1974, 4 Pa.B. 1406.

#### Cross References

This section cited in 16 Pa. Code § 51.52 (relating to securing supplementary interpretations); and 22 Pa. Code § 32.3 (relating to assurances).



**§ 41.73. Supplementary interpretations regarding bona fide occupational qualification standards.**

(a) An employer, employment agency or union may request from Commission staff, a supplementary interpretation regarding bona fide occupational qualification standards as applied to a specific position. A supplementary interpretation issued under this section shall be made in the absence of a complaint and will not constitute a final or interlocutory order of the Commission.

(b) Requests for a supplementary interpretation shall be submitted in writing to the headquarters office of the Commission at 100 North Cameron Street, Harrisburg, Pennsylvania 17101. The requests shall include, but not be limited to, a description and analysis of the job in question, and the number of positions available or anticipated. The requesting party shall also state with precision his justification that all or substantially all persons of a designated class cannot satisfactorily perform the functions essential to the position for which the supplementary interpretation is requested. The requesting party shall make appropriate references to guidelines, regulations, decisions or court opinions and shall include other relevant supportive materials. The Commission staff may request whatever additional information it deems necessary from the employer, employment agency or labor union seeking a supplementary interpretation. On the basis of the facts submitted, as well as other information available to them, the Commission staff will inform the party of its interpretation, if practicable.

(c) A supplementary interpretation is given without prejudice to the right of the Commission to reconsider the questions involved and, where the public interest requires, to rescind or revoke the advice. Notice of the rescission or revocation will be given to the requesting party so that the party may discontinue the course of action taken under the supplementary interpretation. The Commission will not proceed against the requesting party with respect to an action taken in good faith reliance upon the interpretation provided under this section; where relevant facts were fully, completely and accurately presented; where the facts subsequently developed are not materially different from the facts upon which the supplementary interpretation was based, such as a change in the duties of the job involved and where the action was promptly discontinued upon notification of rescission or revocation of the original interpretation of the staff.

(d) The issuance of a supplementary interpretation to an employer, employment agency or labor union would prevent action by the Commission against a requesting party, unless notice of rescission or revocation as provided in subsection (c) has been provided. If the issuance of a supplementary interpretation would not preclude the filing of a complaint by an employe or job applicant against an employer, employment agency or labor union to which a supplementary interpretation has been given. Thus, the issuance of a supplementary interpretation will not be asserted as any part of a defense to a charge of discrimination brought by an individual complainant, although the substantive defense of a

bona fide occupational qualification for the position in question may be raised. Where the substantive defense is raised, the Commission will dispose of the case on the relative facts and merits thereof without regard to a prior issuance of an interpretation to the respondent.

**Source**

The provisions of this § 41.73 adopted July 12, 1974, effective July 13, 1974, 4 Pa.B. 1406.

**Cross References**

This section cited in 16 Pa. Code § 51.52 (relating to securing supplementary interpretations); and 22 Pa. Code § 32.3 (relating to assurances).

**RETENTION OF EMPLOYMENT RECORDS**

**§ 41.81. Employers.**

A record, document and data pertaining to the employment, transfer, promotion and dismissal of individuals actually employed shall be preserved by employers subject to the Pennsylvania Human Relations Act (43 P. S. §§ 951—963) for 120 days following termination of employment. Company application-for-employment forms filled out by unsuccessful applicants shall be preserved in like manner by the employers for 120 days following the filing of the forms. These records shall be made available during business hours for inspection by authorized representatives of the Commission, and shall be subject to subpoena duces tecum upon failure to show the records.

**Source**

The provisions of this § 41.81 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**§ 41.82. Notice to employer.**

Until the final disposition of the complaint, the respondent employer shall be required to retain one of the following records:

- (1) Employment records relating to the complainant and other employes holding a position similar to that held by the complainant, in a complaint filed by a present or previous employe of the respondent.
- (2) The application-for-employment forms filed by the complainant and other candidates for the same position as that for which the complainant applied and was rejected, in a complaint filed by an unsuccessful applicant.

**Source**

The provisions of this § 41.82 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**Subchapter B. OFFICERS AND EXECUTIVE COMMITTEE**

Sec.	
41.91.	Chairperson.
41.92.	Secretary.
41.93.	Executive committee.
41.94.	Vice Chairperson.
41.95.	Assistant secretary.

**§ 41.91. Chairperson.**

The Chairperson of the Commission will be designated by the Governor and will preside at meetings of the Commission, certify acts and proceedings of the Commission and otherwise perform the duties and functions pertaining to the office of Chairperson of the Commission.

**Source**

The provisions of this § 41.91 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**§ 41.92. Secretary.**

The secretary of the Commission will be elected annually by the Commission at its first meeting of the calendar year and will hold office until a successor has been elected and qualified. The secretary will keep minutes of meetings held by the Commission, attest certificates of the Commission by affixing his signature thereto and will otherwise perform the duties and functions pertaining to the office of secretary of the Commission.

**Source**

The provisions of this § 41.92 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**§ 41.93. Executive committee.**

Two members of the Commission will be elected annually at the first meeting of the Commission in a calendar year, who, together with the Chairperson, constitutes the executive committee of the Commission. The two commissioners to be elected annually will hold office until the first meeting of the next calendar year or until their successors have been elected and qualified. The executive committee will have the power to order prehearing conferences and public hearings between regular meetings of the Commission but each case which has been ordered for prehearing conference or public hearing by the executive committee will be subject to approval and ratification by the Commission prior to the issuance of the notice for the hearing.

**Source**

The provisions of this § 41.93 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**§ 41.94. Vice Chairperson.**

The Vice Chairperson of the Commission will be elected annually by the Commission at its first meeting of the calendar year and, in the absence or inability of the Chairperson to serve, will perform the following:

- (1) Preside at meetings of the Commission.
- (2) Certify acts, records and proceedings.
- (3) Execute the duties and have the powers of the Chairperson.

**Source**

The provisions of this § 41.94 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**§ 41.95. Assistant secretary.**

The assistant secretary will be elected by a majority of the Commission at its first meeting in each calendar year to serve until his successor has been qualified and elected. The assistant secretary will serve and have the powers and duties of the secretary in his absence or inability to serve.

**Source**

The provisions of this § 41.95 adopted January 25, 1966; amended August 24, 1970, effective June 12, 1971, 1 Pa.B. 1361.

**Subchapter C. PREGNANCY, CHILDBIRTH AND CHILDREARING**

Sec.

- 41.101. Definitions.
- 41.102. Employment.
- 41.103. Employment benefits and security during disability.
- 41.104. Childrearing leave.

**§ 41.101. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Disability due to pregnancy or childbirth*—Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom are, for job related purposes, temporary disabilities and should be treated as such in written and unwritten employment practices and policies.

*Pregnancy*—The state of being in gestation. Pregnancy is a physiological process. Pregnant women, however, have a variable degree of disability on an

individual basis during which time they are unable to perform their usual activities. This subchapter relates to pregnancies without regard to the marital status of the mother.

**Source**

The provisions of this § 41.101 adopted May 16, 1975, effective May 17, 1975, 5 Pa.B. 1298.

**§ 41.102. Employment.**

A written or unwritten employment policy or practice which excludes from employment applicants or employes because of pregnancy is in prima facie violation of the Pennsylvania Human Relations Act (43 P. S. §§ 951—963). The burden shifts to an employer to justify, and clearly demonstrate, the factual basis for his or her assertion that exclusion from employment because of pregnancy is warranted.

**Source**

The provisions of this § 41.102 adopted May 16, 1975, effective May 17, 1975, 5 Pa.B. 1298.

**§ 41.103. Employment benefits and security during disability.**

(a) *Temporary disability due to pregnancy or childbirth.* Written and unwritten employment practices and policies regarding job benefits and job security, including, but not limited to, 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 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.

(b) *Permanent disability due to pregnancy or childbirth.* Written and unwritten employment practices and policies regarding job benefits and job security, including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under a health or disability insurance or sick leave plan, formal or informal, shall be applied to permanent disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other permanent disabilities.

(c) *Other.* Mandatory maternity leave policies which require a pregnant employe to take leave automatically at a specified time during pregnancy or to remain away from work after she has recovered from her disability are in violation of the Pennsylvania Human Relations Act (43 P.S. §§ 951—963). An employer shall accept the determination of a pregnant employe's physician regarding pregnancy-related disabilities where it accepts the medical judgment regarding other disabilities.

**Source**

The provisions of this § 41.103 adopted May 16, 1975, effective May 17, 1975, 5 Pa.B. 1298.

**Notes of Decisions**

The extension of an employe's pregnancy leave of absence because of the medical necessity of breastfeeding her child is an extension for disability or pregnancy purposes rather than for childrearing purposes, since a medical need for the physical presence of the parent is different from a psychological or emotional need of the child. *Board of School Directors of Fox Chapel Area School District v. Rossetti*, 387 A.2d 957 (Pa. Cmwlth. 1978).

Exclusion of pregnancy and childbirth from the coverage of an employe disability compensation plan through a policy or practice of the employer does not constitute sexual discrimination due to the terms or conditions of the plan, as exempted from the Pennsylvania Human Relations Act (43 P. S. § 955(a)), and may be the basis for an action against the employer. *Lukus v. Westinghouse Electric Corp.*, 419 A.2d 431 (Pa. Super. 1980).

**§ 41.104. Childrearing leave.**

(a) Nothing in this subchapter prohibits an employment policy that permits granting of leave for purposes of childrearing beyond the period of actual disability, but the leave may not include payment of sickness or disability benefits.

(b) Should an employer maintain a written or unwritten employment policy or practice which allows employes leave for purposes of childrearing and child care, the leave shall be equally applicable to both male and female employes. The word "child" or "children" used in this section includes children by birth or adoption.

**Notes of Decisions**

While a school board may provide for discretionary unpaid leave, it may not exercise its discretion in a discriminatory manner, and a denial of discretionary leave to a female teacher for purposes of medically-recommended breastfeeding clearly violates this provision. *Board of School Directors of Fox Chapel Area School District v. Rossetti*, 411 A.2d 486 (Pa. 1979). (Dissenting Opinion).

[Next page is 42-1.]