

FORMAL OPINION

February 9, 1979

JOHN J. HORN, *Commissioner*
Department of Labor and Industry
John Fitch Plaza
Trenton, New Jersey

WARREN E. SMITH, *Acting Director*
Division on Civil Rights
Department of Law and Public Safety
Newark, New Jersey

FORMAL OPINION NO. 2—1979

Gentlemen:

You have asked for an opinion as to the continued validity of the New Jersey statutes governing the temporary disability benefits program which limit benefit payments to pregnant women to an eight-week period surrounding childbirth while permitting all other claimants to collect benefits for up to 26 weeks. In particular, you ask whether these statutes are consistent with an amendment to Title VII of the federal Civil Rights Act of 1964 signed into law by President Carter on October 31, 1978. The amendment prohibits discrimination on the basis of pregnancy, childbirth and related medical conditions in public or private employment related benefit programs.

The New Jersey statutes in question, N.J.S.A. 43:21-4(f)(1)(B) and 43:21-39(e), which restrict benefit eligibility for disability associated with normal pregnancy to the four weeks before the expected date of birth and the four weeks following termination of the pregnancy, are analyzed in detail in *Formal Opinion No. 1—1975*. We there concluded that these provisions were consistent with the United State Supreme Court's opinion in *Geduldig v. Aiello*, 417 U.S. 484 (1974), which upheld the constitutionality of similar pregnancy provisions in California's temporary disability benefits law.

The new federal amendment, P.L. 95-555, adds the following new subsection to §701 of the Civil Rights Act:

(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; *and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work*, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. [Emphasis added.]

The amendment provides that it shall become effective 180 days after

ATTORNEY GENERAL

enactment—or May 1, 1979.

The legislative history of the new amendment makes clear that its purpose was to nullify the Court's holding in *Geduldig* as well as its subsequent decision in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), which reached a similar result with respect to private benefit programs under Title VII. See H.R. Rep. No. 95-948, 95th Cong., 2d sess. 11, reprinted in 1978 U.S. Code Cong. & Ad. News 6525.¹ It is clearly established in this regard that Title VII applies to states and their political subdivisions, *Fitzpatrick v. Bitzer*, 427 U.S. 445, 448-449 (1976), and operates to invalidate conflicting state laws as well as discriminatory actions of public or private employers authorized by such laws. E.g., *Kober v. Westinghouse*, 480 F.2d 240, 245-246 (3rd Cir. 1973).

Insofar as the New Jersey provisions allow female claimants to collect disability benefits for normal pregnancy² under State and private plans for a maximum of only eight weeks while all other claimants are potentially eligible for up to 26 weeks, the statutes plainly conflict with the federal amendment and may no longer be enforced as of the May 1 effective date of the amendment. In the meantime, the Department of Labor and Industry should seek amendatory legislation to bring these statutes into conformity with Title VII as amended.

You are therefore advised that N.J.S.A. 43:21-4(f)(1)(B) and 43:21-39(e) are inconsistent with the recent amendment to the federal Civil Rights Act of 1964 insofar as they treat disability associated with normal pregnancy and delivery differently from other disabilities. These provisions will no longer be enforceable in their present form as of May 1 of this year. At that time, claims for disability benefits based on pregnancy, childbirth or related medical conditions must be treated the same, for purposes of eligibility and benefit payments, as all other claims.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MICHAEL S. BOKAR
Deputy Attorney General

1. The Report of the House Committee on Education and Labor, through an apparent oversight, fails to make specific reference to the *Geduldig* decision. It does, however, explicitly point to the fact that "five states have temporary disability laws under which employees of private employers are assured partial wage replacement if they become temporarily disabled." It specifically cites in this respect the New Jersey law, which it notes covers complications of pregnancy "on same basis as other disabilities" while covering disability associated with normal pregnancy for "four weeks before and four weeks after childbirth." This explicit reference to the five states with laws of this kind, including the California law considered in *Geduldig*, leaves no doubt as to the intent of Congress to effectively nullify the Court's holding in that case by preempting state laws that treat disability associated with normal pregnancy on a different basis than complications of pregnancy and other disabilities.

2. In *Formal Opinion No. 1—1975*, we concluded that these provisions treat disability associated with *complications* of pregnancy, such as caesarian section delivery and vaginitis, no differently from other disabilities for which up to 26 weeks of benefits may be paid. Hence, our conclusion here as to the invalidity of these provisions directly affects only normal pregnancy.