PREGNANCY: Basic Workplace Protections

Editorial Note: The iWomen office receives requests daily from women firefighters seeking information. Lately many of the requests involve pregnancy and maternity issues, as well as recent—real life pregnancy inequities in mediation in the fire service today. We spoke to legal professionals who will provide two informative pieces about your rights, under the law, in the workplace in this and September’s issue.

Throughout the past few decades, lawmakers and courts have increased protections for pregnant workers. These protections are especially important if you are a pregnant worker in a field like firefighting, which can be physically demanding and present possibilities for exposure to hazardous substances during pregnancy. In this two-part series, we will discuss the protections available to pregnant firefighters, starting with a general outline of the employment laws that apply to all pregnant workers and the protections available during pregnancy. The second article will review the applicable statutes and protections after pregnancy, including during maternity leave and after your return to work. In addition, the second article will cover a few special pregnancy-related issues, like miscarriage and infertility.

In 1978, Congress passed the Pregnancy Discrimination Act (PDA), which prohibits employment discrimination based on pregnancy. In addition to the PDA, which is specific to pregnancy, other employment laws can apply to pregnant workers. For example, the Family and Medical Leave Act (FMLA) allows women to take up to twelve weeks of unpaid leave for, among other things, their own serious health condition, such as one that may occur during pregnancy, or to care for a newborn baby. The Americans with Disabilities Act (ADA) does not apply to ordinary pregnancies, but it may protect certain pregnant women if pregnancy results in a disability. Finally, pregnant women may have additional protections under state specific antidiscrimination laws. But note that these laws do not necessarily apply to all employers—most apply only where the employer has at least a certain number of employees.

So what do these various laws do? For one thing, the PDA prohibits employers from taking an adverse employment action against you on the basis of pregnancy unless pregnancy actually interferes with your ability to do your job. An adverse employment action is any action that changes the terms and conditions of your employment. It includes big actions, like termination, as well as less catastrophic things like a demotion or a change in pay. Courts have even held that, in certain circumstances, moving an employee to a less desirable position can be an adverse employment action. It also means that an employer cannot, Continued on Page 3
On June 21-22nd, 2012, iWomen and several affinity groups were invited to partake in a meeting hosted by the National Fire Academy, which include members from USFA, IAFF, IAFC, NAHF, IABPFF, Virginia Equity and Diversity Council, and the Maryland Fire & Rescue Institute. The meeting was held to discuss a national recruiting standard with a model program that all organizations would be able to take back to their respective communities to utilize in the diversification of our profession. The IAFF has been working closely with the Department of Labor and the Secretary of Labor-Hilda Solis to bring this to fruition. They submitted a proposed model of recruitment last month. The previous discussions with the above groups and the IAFF focused on military veterans, but the model is generic and could be used with any group. Another accomplishment at the meeting was a review and final editing of a statement about each organization’s commitment to diversity, which will be relayed to the respective Board of Trustees/CEO’s for approval so that all the representatives present demonstrate the same commitment and deliver the same message.

We also had a presentation on the USFA’s “Blue Campaign” which is a campaign against human trafficking. Sandy Facinoli provided us with an overview and information on this alarming crime. Read more about this issue on Page 4.

I want to extend a thank you to Mary Beth Michos (IAFC’s Deputy Executive Director) and the IAFC for hosting a Meet & Greet for me with local iWomen members. It was the perfect opportunity to meet everyone and discuss current issues. Additionally, I would like to thank Dr. Cassi Fields for a very informative and insightful discussion on Succeeding on Promotional Processes. See Page 8 for more on this topic.

There have been a number of incidents brought to light about pregnancy disparages to women firefighters. iWomen Board of Trustees have increased their attention to this issue by revisiting and researching our policy statements and providing our members with information about your legal rights. Read about it throughout this issue.

Meet & Greet participants pictured Left to Right: Donah Samuel, Prince William County Fire; Diane Zuspan, Montgomery County Fire and Rescue Service; Mary Beth Michos, IAFC; Jeanne Pashalek, Lincoln Fire & Rescue, Nebraska; Dr. Cassi Fields, Fields Consulting Group; Deb Weymouth, Henrico County Division of Fire; and Sandra Houghton.
Pregnancy—Basic Workplace Protections Part 1
(Continued from Front Page)

fail to hire an applicant just because she is pregnant unless the employer has a legitimate business reason for doing so. Additionally, the PDA prohibits harassment based on pregnancy.\(^6\) For example, if you are getting unwelcome, repeated comments from co-workers about your hormones or other things related to your pregnancy, you have a right to complain to your employer, and your employer may have an obligation to stop the comments. To be actionable, however, harassment must be so severe or pervasive that it changes the terms and conditions of your employment.

Some pregnant firefighters may wish to request light duty due to the physical nature of the job. An employer must honor that request if the employer grants light duty for other reasons, such as for an employee’s medical restrictions.\(^7\) However, if the employer does not give light duty work to anyone, then it also does not have to do so for pregnant women.\(^8\) This type of policy is known as a “pregnancy-blind” policy, and it is not discrimination because it treats pregnant women the same as everyone else. But the PDA does not prohibit an employer from favoring pregnant women over other workers.\(^9\)

Similarly, an employer cannot force you to take an unpaid leave just because you are pregnant so long as you are able to perform your job.\(^10\) That type of action is discrimination based on your pregnancy. But if you do take a leave due to your pregnancy, your employer cannot treat you differently than other employees on leave, meaning that, for example, if other employees are eligible for benefits while on leave, then women who are on leave for pregnancy reasons also must be eligible.\(^11\)

In addition to the PDA, the FMLA may also provide you with certain protections. If, during your pregnancy, you develop a serious health condition, you may take up to 12 weeks of unpaid leave under the FMLA if you are FMLA eligible.\(^12\) To be FMLA eligible, you must have worked a minimum number of hours in the previous year, and your employer must employ at least 50 employees.\(^13\) Additionally, your employer may require you to submit a form signed by your medical provider documenting your need for the leave.\(^14\) In addition to taking blocks of time off, you may also take FMLA leave on an intermittent basis, meaning that you can use FMLA leave to reduce your schedule.\(^15\) Note that you only may take 12 weeks per year, so any amount of FMLA leave that you take during your pregnancy will decrease the amount of FMLA leave that you make take after birth.

The ADA may also provide you with additional protections if your pregnancy causes you to have an impairment that substantially limits a major life activity, even if the impairment is temporary.\(^16\) If you do have such an impairment, your employer has an obligation to provide you with a reasonable accommodation of your impairment. For example, if you develop gestational diabetes, your employer may be required to give you more frequent breaks.

Along with the basic protections outlined above, you may have additional rights under state and federal employment laws. If you have any questions about your legal rights and protections while working during your pregnancy, please contact an attorney in your state.

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2-29 U.S.C. § 2601 et seq.

See comments we received from members on this issue on Page 5.
Help the DHS Blue Campaign Make a Difference—Combat Human Trafficking

By: Sandy Facinoli

In 2010, the Secretary of the Department of Homeland Security (DHS) Janet Napolitano launched the Blue Campaign. It is a first-of-its-kind initiative to coordinate and enhance the Department’s anti-human trafficking efforts. The United States Fire Administration (USFA) has joined with our sister components of DHS to help combat human trafficking. Our work focuses on outreach efforts to help increase the awareness for our first responders about the devastating effects of human trafficking. We know we can most effectively increase awareness by working with our partners, like I-Women, to get important information into the hands of our first responders.

What is human trafficking? It is a modern-day form of slavery, and involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act. Human Trafficking exists in every country and in every state of our union. It exists in cities, the suburbs, and rural areas. The victims are young children, teenagers, women and men, runaways, new immigrants, and people from all socioeconomic groups. They are victims of commercial sexual exploitation, involuntary servitude, and forced labor. The perpetrators of these actions are reprehensible, causing pain and suffering and using others for their own financial gain. They hold people in terrible conditions, forcing them to work endless hours for no pay. They destroy the innocence of children by selling them for sex.

Human trafficking is often “hidden in plain sight.” There are a number of red flags, or indicators, which can help alert you to human trafficking. Recognizing the signs is the first step to identifying victims:

- Is the victim in possession of identification and travel documents; if not, who has control of the documents?
- Does the victim show signs of physical and/or sexual abuse, physical restraint, confinement, or torture?
- Does the victim act fearful, anxious, depressed, submissive, tense, or nervous/paranoid?
- Does the victim defer to another person to speak for him or her?
- Can the victim freely contact friends or family?

It is important to know that human trafficking is different from human smuggling. Trafficking is exploitation based and does not require movement across borders or any type of transportation. Human smuggling requires the movement of people from one place to another. Smuggling typically ends when the agreement to facilitate illegal entry into the United States is complete and the fee is paid. Human smuggling can turn into trafficking if the smuggler uses force, fraud or coercion to hold the person against their will for the purpose of labor or sexual exploitation.

Human trafficking is a global problem that touches every country in the world; thousands of men, women, and children are trafficked into forced labor situations and into the sex trade worldwide. Although it is widespread, it is a hidden crime. Many victims go unseen and unidentified. According to the United Nations Office on Drugs and Crime, there are at least 2.4 million victims of human trafficking at any given time worldwide, and it is one of the most profitable forms of transnational crime.

Our resources are part of a “virtual toolkit” that you will find on the website for the Blue Campaign: www.dhs.gov/humantrafficking. In addition, if you suspect that a person may be a victim of human trafficking, please call the ICE Homeland Security Investigations (HSI) Tip-line at 1-866-DHS-2-ICE or report it online at www.ice.gov/tips.

The USFA has developed a “Coffee Break Training” regarding human trafficking. Coffee Break Trainings are one page training material that can be covered in the amount of time it would take to sit down and drink a cup of coffee. Please find this important training information by clicking on Human Trafficking Coffee Break Training.

If you would like to receive a CD with a Human Trafficking Toolkit for first responders, or for more information please contact Sandy Facinoli, 301-447-7569 or sandra.facinoli@fema.dhs.gov or Lisa Makar, lisa.makar@fema.dhs.gov.

Sandy Facinoli is Chief of the Prevention & Information/National Fire Programs at the US Fire Administration, FEMA/Department of Homeland Security.

www.i-women.org
SAVE THE DATE!

People sometimes say that firefighters are “ordinary people doing extraordinary things”. It is in that same spirit that we are pleased to be planning a rather extraordinary conference for 2013…

Leadership Conference
presented by
The International
Association of Women in Fire & Emergency Services

August 13 – 14, 2013
Co-located with
Fire-Rescue International
Chicago, IL

www.i-women.org
What Women Are Saying about Pregnancy in the Fire Service

“I am a 14 year firefighter with the City of Austin Texas. I was pregnant (9 years ago) while being employed as a firefighter and had a very positive experience. We have a very supportive department when it comes to female firefighters being pregnant. We have maternity leave and a modified duty status policy during our pregnancy. We also have a uniform policy while pregnant. I believe those were written during the past few years but my experience was positive even though we didn’t have policies in place. Once I knew I was pregnant I was put in a “staff” position. My duties included working Monday-Friday 8-5pm in a position held by firefighters. I worked in our Spec Ops support division. My chain of command was supportive for my doctor’s visits and understanding of my physical limitations. After I gave birth to my beautiful son, our department was also supportive to my needs to pump during the day so I could continue to breastfeed my son. Let me know if you have any other questions. We have a few women in our department who have had children the past few years and I have heard of similar positive experiences.” FS Aimee Floyd, Austin Fire Recruiting

“My own experience with pregnancy in the fire service has not been a positive one. I have been a professional firefighter/engineer/paramedic for almost twelve years and a volunteer before that. I am currently in the midst of a lawsuit against the city for failure to offer light duty. I am the first female in our city’s history. The city has been offering light duty to the police department for over 20 years but refused to offer to fire and would not allow it to be negotiated for. Our union attempted for 10 years to get a policy without success. I recently had my first child and worked until I was 6 months pregnant. I then exhausted all sick time, vacation and Kelly days, and owed 4 Kelly days upon my return and 10, 24 hour shifts to fellow employees. I came back 7 weeks after delivery with an episiotomy. My husband who also works on the department covered numerous shifts after I went off trying to extend a paycheck. My next child will be all unpaid leave for the pregnancy and recovery. I faced a lot of negativity from my fellow firefighters. I was told by an officer that sometimes we have to make choices between this job and having a family (nice that nobody else on our department will ever have to make that choice). I have been the subject of hateful blogs on local newspaper sites and social media. We still have a long way to go on this issue.” Karen McQuistion

“I was a volunteer during my entire pregnancy with my son. It did not slow me down at all, my doctor was not the happiest about it but cleared me to continue anyway. I ran calls and participated in trainings up until around my 6 month and then I was asked by my chief to only participate in trainings and not run calls due to liability reasons. I even took my firefighter cert. classes while pregnant. My son is now 4 years old and I have not slowed down in my fire career at all! The fire service is a huge part of my life as well as my families lives. My husband is a firefighter and my son loves to be at the fire station. I continue to thank those who made it possible for me to be a mother and still do what I love to do, including my old fire chief, my fellow firefighters and my Instructor!” Darlene Worden, Volunteer Firefighter Boiling Spring Lakes Fire Rescue, Southport, NC

“I was a career firefighter medic with a municipality in North Carolina. When we learned that I was pregnant I notified my employer, roughly 10 weeks along. My physician understood the parameters of being a firefighter/medic and advised that I should curtail the suppression side of firefighting at 3 months, especially in the heat. I was 34 years old at that time. The municipality did not have a maternity policy for firefighters nor did they have a light duty policy. I was politely told that they (the dept.) had no room for me once I could no longer perform my job duties; I ceased my employment with that municipality shortly after. As far as FMLA those benefits were not utilized as I was not an employee due to the inability to perform her job as specified in the duties. The issue of the lack of maternity policies, SOG’s & SOP’s in smaller municipalities is commonplace.” Posted by Drummond Figg

Continued on Page 7
Update on Fire Partners

iWomen participates quarterly in a teleconference roundtable sponsored by the USFA. Participants include members from the NVFC, ISFSI, NASFM, as well as representatives from the USFA. The last meeting included an update on a national campaign to bring down fire loss as well as discussions regarding a National Deployment Strategy as a resource for national and local disasters. All of the organizations offered shared information and strategies for future projects. We will keep you updated.

Job Postings

iWomen.org Job Board is a great way to locate qualified fire and EMS professionals at all levels.


See additional Job Postings here: http://www.i-women.org/job_openings.php?osCsid=1Ii2uoq2svoeo79vnkkmssqpgp7

Firefighter Recruit
$60,000-$79,999
Deadline: August 2013

The San Jose Fire Department anticipates conducting a new Firefighter Recruit examination in the near future. Test dates have not been announced yet but we anticipate establishing a new list some time in the next 9 months to 1 year.

If you are interested in being notified when future application or testing processes occur, please complete a SJFD Interest Card. Go to www.sjfd.org and go under the Recruitment section to find the interest card. You can return it to us in one of the following ways: Email: sjfdrecruiting@sanjoseca.gov or mail to: San Jose Fire Department, 1661 Senter Road, 3rd Floor, San Jose, CA 95112

Firefighter I/EMT
$20,000-$39,999
Deadline: 08/20/2012

The City of Stillwater, Oklahoma, is currently accepting applications for Firefighter I/EMT. Starting rate: $11.57/hour plus a comprehensive benefits package. More information regarding the position, benefits, and compensation can be obtained at stillwater.org. or contact Battalion Chief Rick Hauf at rhauf@stillwater.org.
Stillwater is an Equal Opportunity Employer.

Membership Renewals

Watch for your iWomen membership renewal notice in your emails. Renewal notices are emailed to you from the staff office during your anniversary month. Not sure if your membership is current? Contact our staff office: staff@i-women.org.

Go to i-Women.org

Pregnancy Policies

We received a great response to our request for SOGs regarding Maternity and Pregnancy issues on the job. The SOGs from Departments around the Country are available for your review and use as needed to prepare your Department in handling these matters appropriately.

We are preparing an Attorney referral list and plan to have it available to meet our member’s needs shortly. For more information: staff@i-women.org.

Norfolk Fire-Rescue
will host the
2012 Equity & Diversity Conference
Norfolk, VA
“Tracking Our Way to Success…”

SAVE THE DATES:
October 18-19, 2012
Pre-Registration October 17, from 6-10pm
For details: www.norfolk.gov/nfr/edc_2012.asp
Or email us at: 2012-edic@norfolk.gov
Pregnancy in the Fire Service –Continued from Page 5

My department has been "OUTSTANDING and UNDER-STANDING" throughout all my pregnancies. I am the first full-time female firefighter in my department's history, and proud of that title. I believe I have set a good precedence for future young female firefighters that you can do this job, have lots of babies, and continue being a great firefighter and a great mom too. I have started a local group FFMC (Female Firefighters of McHenry County) just to meet other females and moms who have the same desire to "DO IT ALL." We hope to educate and meet other young women who are interested in doing the same. Kelly Gitzke, Firefighter/Paramedic, Huntley Fire Protection District

"My name is Jennifer Hembroff. I am a Lieutenant for the Black Hawk Fire Department in Black Hawk, Colorado. In 2010 I was pregnant with my son and gave birth in September of that year. I am the only female on my department, so I was concerned about being pregnant since there were no SOGs in place and this situation had never happened before in the department. I was fortunate enough to have an easy pregnancy. I was able to work up to two weeks before giving birth. This being said; I was in great shape prior to being pregnant, worked out during my pregnancy, had a healthy diet, spoke with my doctor on a regular basis, kept my employer and crew in the loop as to how I was doing and on confirmed structure fires I stayed outside and took command. At any time during my pregnancy if I felt or my employer felt that I needed to go on modified duty that option was available. I was able to take a full 12 weeks of maternity leave and I was able to express milk during the times I needed on shift during my nursing period (10 months). My employer was very accommodating and I am very grateful."

"I am currently 34 weeks pregnant and a Firefighter at Portland Fire & Rescue in Portland Oregon. Although my department does not have any specific pregnancy SOG’s they do have light duty positions available for pregnant line employees. When I was about 13 weeks I got reassigned to the light duty position in the Communications Department. A lot of the work I do with this assignment is gathering and writing stories for our PF&R blog, and newsletter as well as work on many community projects. There are other light duty positions within our Bureau that are in the EMS Dept., FMO, Logistics and some others." Stephanie Adams, Firefighter, Communications Asst., Portland Fire & Rescue

"I am a uniformed firefighter in the FDNY for the past nine years and am currently pregnant with my 3rd child while in the department. As the policy states, as soon as a member feels that she can no longer perform the duties of full duty work she is placed on modified duty. When she feels she can no longer do modified duty she will be placed on medical leave. After delivery she is allowed up to six weeks, if she had a C-section, 10 weeks. A member always needs to be cleared by her physician if she is not well enough to come back to work, she will continue either medical leave or modified duty. With all my pregnancies I worked full duty in the field through my first trimester. With my first pregnancy I continued to work, modified duty until one month prior to my due date. I delivered without complications and returned to modified duty after six weeks postpartum. After two weeks I returned to full duty. I breast fed and pumped for four months. With my second pregnancy I worked modified duty until two months prior of my due date, delivered without complications and returned to modified duty after six weeks. Then, I was back in the field after two weeks, and breast fed for six months. I am currently working modified duty and plan to work the same as previously with the hopes of breast feeding for as long as I can, at least a year. The department also provides uniform duty maternity pants." Kinga Mielnik, E282, Brooklyn NY.

I have been a paid-on-call firefighter for nine years. When I had three years on, I became pregnant with my first child. I was put on light-duty immediately after informing the department of my pregnancy, even though I was only a few months along. I was able to respond to the station for calls, but I wasn’t able to participate in any physical manner. When I became pregnant with my second child six years on, there had been a few other pregnancies in between and our light duty process had been revamped. I was able to work regular duties until 20 weeks, with my doctor’s guidance. From that point on, I went on light-duty, responding to the station and doing non-strenuous work. I feel that the department supported me throughout both pregnancies, the second more than the first, and I don’t feel as though I was treated any differently than anyone else under a doctor’s care. Becki White

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Limited Exposure Theory Explains Barriers to Advancement

By Cassi L. Fields, Ph.D. of the LET Corporation and Fields Consulting Group, Inc.

For 20 years, I have dedicated my life to helping public safety departments and their employees develop career advancement programs. No employee has ever successfully challenged one of my programs. I am proud to say that I have kept the D.C. metro area and about 200 miles around the beltway out of court whereas the rest of the Country experiences many problems with, and challenges and litigation against, their promotional programs.

My work has given me the opportunity to help tens of thousands of promotional candidates succeed in their careers. It has also allowed me to meet people who have not advanced as successfully. In getting to know those people, I have created a theory I called Limited Exposure Theory (LET) that explains the reason for barriers to advancement, along with the solution – Missing Information Analysis, MIA.

Limited Exposure Theory (LET) tells us that people from disadvantaged backgrounds and women often lack exposure to key information they need to advance in their careers. What are examples of this information?

For example:
- the tasks it takes to succeed in the target rank and in the organization;
- the knowledge it takes to succeed it in the target rank and in the organization;
- the personality traits it takes to succeed it in the target rank and in the organization;
- information and exposure to promotional test components;
- information and exposure to preparation methods; and
- who the key players are in determining who will be selected.

The key to learning this information is MIA – Missing Information Analysis. It takes assertiveness and initiative to ask questions, shadow successful employees, ask for mentoring, ask for assistance in learning new tasks, and enroll in educational and training programs. It can take years to gather this information.

Oftentimes employees who have faced barriers to advancement don’t know how to ask the right questions, they don’t come from families with a fire and rescue lineage, and they may not have the connections to get the information they need. They may have the desire and the initiative, but they cannot use that desire and initiative to gather the right information. In other cases, they cannot turn that information, once obtained, into successful behaviors for advancement.

Anyone who has hit the glass ceiling or other barriers to advancement should start immediately gathering the types of information I just described. My new company, the LET Corporation (drcassifields.com) offers automated coaching, live coaches and consulting on MIA, and converting newly acquired information into a plan for advancement. We help individuals and organizations break down information obstacles so that those who have not advanced in the past, can begin to advance now.

If you are successful at gathering the right information, you will create a resume that matches your target job, you will test in a manner that demonstrates you are ready for your target job, you will interview in a way that demonstrates you are a match for your target job, and you will be the best in your target job.

iWomen Branded Products Now Available!

We have caps, job shirts, polo shirts, pad folios, t-shirts, travel mugs and decals.

Pricing & product details are available on the store’s website at PMI/iWomen Merchandise Store

Show your support of iWomen!
National Fire Protection Association 1582

The NFPA Technical Committee for Fire Service Occupational Health presented a revision to NFPA 1582 to its members during the 2012 Annual Revision Cycle where proper Amending Motions were submitted for a vote at the June 2012 NFPA Conference and Expo. The results below are the approvals to NFPA 1582 A.9.18.2 Medical Information Regarding Issues Related to Pregnancy in Fire Fighters. In addition, Annex E Pregnancy Issues was updated for informational purposes only.

6.11 Reproductive System.
See B.1.2.1.
6.11.1 Category A medical conditions shall include any genital condition that results in inability to safely perform one or more of the essential job tasks.
6.11.2 Category B medical conditions shall include the following:
(1) Pregnancy, for its duration
(2) Dysmenorrhea
(3) Endometriosis, ovarian cysts, or other gynecologic conditions
(4) Testicular or epididymal mass

This section relates to fire department candidates. The committee has added the text below to address the subject for fire department members:

9.18 Pregnancy and Reproductive Health
9.18.1 Fire Departments shall make available to all male and female fire fighters educational materials outlining the risks from fire fighting on reproductive health.

9.18.2* It is recommended that members who become pregnant report the pregnancy immediately to the fire department physician. Once informed of the pregnancy the fire department physician shall:

9.18.2.1 Inform the pregnant member of the numerous hazards to the pregnancy and the fetus encountered during routine fire fighting tasks.

9.18.2.2 If the member requests an alternative duty assignment in an environment deemed safe for the pregnancy and the fetus, the physician shall provide appropriate restrictions for essential job tasks 1, 3, 5, 6, 7, and 8 that are unsafe for her or her fetus.

9.18.3 During later stages of pregnancy the member will eventually be unable to safely perform essential job tasks 1, 2, 3, 4, 5, 6, 7, 8, and 9 due to issues with diminished aerobic capacity, balance, speed, and agility. As with any other member, when performance due to medical issues is of concern, the AHJ shall inform the Fire Department physician and a medical evaluation will be performed to determine the need for restricting the member from those activities that they are not able to safely perform.

The added text for chapter 9, as noted above, has passed the ballot of the committee and will be included in the next edition of the document.