Pregnancy Discrimination in the Fire Service
A Review and an Update

Editorial Note: This is Part II in our series on informative pieces about your rights, under the law, in the workplace.

By Alisa Arnoff

Why is pregnancy different from other protected classes, like race and religion?

One of the thorny issues involving pregnant employees, regardless of profession, is the issue of how, or in some cases, whether, to temporarily accommodate a pregnant employee. The state of being pregnant is not a permanent one, unlike race, religion (barring a conversion), color or national origin. The state of being pregnant, unlike race, religion, color or national origin, may have a direct, although temporary, impact on an individual’s ability to do the job for which she was hired. Thus, the tension in the workplace — what to do when an employee becomes pregnant. And, in the fire service, the question is even more crucial, given that physical nature of a firefighter’s job and the hazards to which a firefighter is exposed. Add to that such things as properly fitting gear, heavy PPE, the dependence on teamwork and the desire for a healthy child — the considerations can be, and often are, daunting.

Employers generally have addressed the issue of pregnancy in three ways. Some employers wish to be paternalistic, and as a result, institute policies forbidding women who have reached a particular point in their pregnancy from performing certain job duties, without regard as to whether this forced accommodation is necessary or not. Such policies were declared illegal years ago by the United States Supreme Court, in the case of International Union v. Jonson Controls, 499 U.S. 187 (1991). In that case, the company, a battery manufacturer, even took things a step further — it prohibited all women of childbearing ages from working in any job which exposed them to lead. In the absence of a relevant business necessity or legitimate job requirement, pregnant women cannot be excluding from working in a specific position. Otherwise, a company faces liability for violating the sex discrimination prohibition of the federal law known as Title VII of the Civil Rights Act (“Title VII”). Continued on Page 3

2012 Volunteer Fire Chief of the Year — Congratulations Chief Jona Olsson

FIRE CHIEF named Chief Jona Olsson of the Latir Volunteer Fire Department in Questa, N.M., as the recipient of the 2012 Fire Chief of the Year.

Jona Olsson, a longtime member of iWomen, began her career in the fire service in 1999 as a volunteer with Latir. She rose through the ranks, serving as training officer, deputy chief, and finally fire and EMS chief for the department in 2006. Olsson also is the founder and director of Cultural Bridges to Justice, which provides social-justice workshops and programs for non-profits and communities. She has facilitated training to individual departments and fire conferences across North America, as well as the United Kingdom. Cont’d Page 4
We had a great few days at Fire Rescue International (FRI) in Denver, Colorado August 1-4, 2012. For those that do not know what that is, it is a big conference for Fire Chief’s and Company Officers. They have lectures throughout and a huge forum for vendors and organizations to display who they are, what they do and of course what products you can buy. We had our annual board meeting and got a lot accomplished. It was a great time as this was the first time we had a face to face with our new trustees, Jan Chatelain from Los Angeles County Fire Department, Mary Ann Hubbard from Austin Fire Department and Deborah Pendergast of Laconia Fire Department in Central New Hampshire. Unfortunately, Becky Hartley our Volunteer Trustee from Aurora Ross Fire and Hardin South Marshal Fire Department was unable to join us as well as President Jeanne Pashalek and International Trustee Karen Simpson. We welcome our new trustees and look forward to working hard for our members.

We met a lot of people at FRI. Ernie Mitchell, the US Fire Administrator took the time to meet with us as well as Mark Light CEO of IAFC and Al Gillespie IAFC President.

We had the pleasure of having Alisa Arnoff, Scalambrino & Arnoff, LLP review our position statements and provide great feedback. She took the time to meet with us at our meeting. We will have those newly revised position statements up on our website very shortly on the left side bar under “Position Statements & SOGs”. We also had Sheri Bemis, iWomen member and member of the IAFC Human Relations Committee come to the meeting and give us updates from their work.

This year the Fire Chief of the Year for Volunteers was iWomen member Jona Olsson of Latir Fire in New Mexico. Alongside jona, for Fire Chief of the Year, career was Chief Kelvin Cochran of Atlanta Fire. It was an honor to attend the recognition ceremony hosted by Fire Chief Magazine.

Everyone worked hard to meet and greet potential members and promote what iWomen is all about. We will be looking to conference sponsorships to come from the connections that were made and those that have been developed over the years.

We will be co-locating with FRI next year August 13-14, 2013, in Chicago, Illinois. This will be our Leadership Conference which will showcase many courses that will help develop the talents you already have. Members will have an opportunity to participate in the Company Officer Leadership Symposium (COLS) program at FRI as well. We are planning to hold our stand alone International Conference in 2014, the location is yet to be determined.
On the other hand, some employers take the position that pregnant employees should not be treated “differently” at all – if a pregnant employee cannot do the job for which she was hired, she should be shown the door, and not returned to work until she can work on full duty. Such logic flies in the face of Title VII, which includes the Pregnancy Discrimination Act: a pregnant employee must be provided the same rights as any other employee with a temporary condition (for more information, go to the Equal Employment Opportunity Commission’s website at http://www.eeoc.org.) Many states have similar requirements. In addition, all public entities, regardless of size, are required to provide pregnant employees with leave under the federal Family & Medical Leave Act (check the Department of Labor’s website at http://www.dol.gov go to the Equal Employment Opportunity Commission’s website at http://www.eeoc.org.) Many states have similar requirements. In addition, all public entities, regardless of size, are required to provide pregnant employees with leave under the federal Family & Medical Leave Act (check the Department of Labor’s website at http://www.dol.gov for more information).

Finally, there are some employers, hopefully the majority, which are cognizant of their obligations under the relevant laws and which have instituted policies addressing the issue of how to accommodate a pregnant employee. More discussion of policy development follows below.

Are there specific laws or standards addressing pregnancy in the fire service?

Some states specifically require that, under certain conditions, a pregnant employee must be temporarily transferred to another position within the company. Under Illinois law, for example, it is discrimination to “refuse to temporarily transfer a ...pregnant female firefighter to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated.” 775 ILCS 5/2-102(H). Putting aside the fact that Illinois law makers felt the need to refer to “pregnant female firefighters,” rather than just “pregnant firefighters,” the law is necessary, especially given that pregnancy is not, in every state, recognized as a disability for purposes of providing an employee with an accommodation; under the Americans with Disabilities Act and its state counterparts, disabled persons must be accommodated when doing so does not pose an undue burden on the business.

California has a similar provision to Illinois, but it is much broader in scope. It provides the same protection that the Illinois law does to employees generally, not simply those in public service. Cal. Gov’t Code §12945(a)(3)(C).

More recently, the National Fire Protection Association (“NFPA”) has revised NFPA Standard 1582, which addresses the treatment of pregnant firefighters. While the standards are not law, they do represent a professional consensus as to how various medical conditions should be evaluated for purposes of the job. The NFPA was kind enough to provide us with an “advance” copy of the revision for this article. It will be recommended that Fire Departments provide to all firefighters, regardless of gender, educational information discussing risks the job poses to reproductive health. The Department physician should be consulted once a pregnancy has been confirmed, so that the Department and the firefighter can work together on determining what essential tasks (i.e., emergency response activities, exposure to toxins, wearing self-contained breathing apparatus, climbing, searching, dragging) may need to be removed from the firefighter’s duties at particular points in her pregnancy. A form will be added, intending to educate pregnant firefighters or those considering pregnancy with respect to issues which may arise in their position. It includes a list of risks, by trimester, which a woman should discuss with her treating physician. The form also addresses post-delivery and lactation issues.

Finally, an entire chapter has been added in the form of an annex. It discusses physical hazards to the pregnancy and to the fetus. It also makes general recommendations as to what activities should be avoided during certain times of the pregnancy. It, too, discusses post-delivery and lactation issues.

These additions to NFPA 1582 are a big step forward for women in the fire service, and hopefully will be utilized thoughtfully.

Continued on Page 10
Continued from Front Page

"I first met jona in Glendale, AZ in 2008, at the iWomen Conference. I attended her workshop “When I Doubt Myself, I Doubt Others”. Her presentation skills, knowledge and personal affect had a profound impact on me. I left there with a much better understanding of how I treated other women and why. It definitely changed my life. Since then, I have had the pleasure of getting to know her personally and have always thought of jona as a mentor and leader for women and all people. She demonstrates her dedication and commitment to helping others in everything she does without prejudice and biases. She is an authentic person that I am very proud to have as a friend. She drinks a wicked cranberry juice!!!," stated Battalion Chief and iWomen President Jeanne Pashalek.

“When I first met Chief Olsson, I knew her passion for making a difference in the fire service was genuine. Through her teachings, actions, stories and leadership she makes a difference every day. Her participation in iWomen and many teachings nationally have impacted her audiences. I am proud of Chief Olsson and congratulate her on receiving this award. She makes us all better with her genuine caring for equality and the leadership she provides to not only her community, but to us all on an International level," commented Deputy Chief/Fire Marshal and iWomen’s Vice President Laura Baker

Olsson has continued to expand her department, increasing both training hours and the number of qualified personnel. She wrote and received more than $350,000 in federal and state grants. All 18 of Latir’s firefighters are structure trained, 13 are qualified with wildland Red Cards, and nine have EMS licenses. Olsson has developed and strengthened an active Junior Firefighter program that has nurtured firefighters for Latir, as well as for other departments.

Olsson is currently chair of the Enchanted Circle Regional Fire Association, and, in addition to iWomen, serves as a member of the International Association of Fire Chiefs (IAFC) Volunteer/Combination Officers Section, serves on the IAFC Human Relations Committee, the National Volunteer Fire Council, the Taos Community Foundation – LGBT Advisory Council, and the Anti-Racism Educators/Organizers National Network.
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
Cases challenging the validity of firefighter entrance tests continue through the court system. One is pending here in federal district court here in Chicago, Illinois. It was filed last year by Samantha Vasich, a woman who failed the PAT (Physical Abilities Test), against the City of Chicago, alleging that the test discriminated against women, given that the components of the test did not effectively test the skills necessary to successful firefighting; as a result, she alleges, women were disproportionately excluded from joining the Chicago Fire Department. Class action status is being sought. Lawyer and former Fire Chief Curt Varone summarized the case filing quite nicely – you can read his summary here at http://firelawblog.com/2011/07/chicago-fire-department-faces-sex-discrimination-suit/. His summary also contains a link to the original complaint. The complaint alleges that every PAT since 1996 has unlawfully screened out women.

The complaint was amended in March of this year to add additional women as class representatives. Settlement discussions have been ongoing. In June, the City filed a motion asking the court to rule early on two matters. The first issue is procedural, but important, in that it seeks to limit the number of women allowed in the lawsuit who failed the physical portion of the exam and thus could potentially be in the class and recover damages and other relief if the lawsuit is successful. The City is seeking a determination that the potential class members be limited to only those women who failed the PAT on or after June 27, 2009. The significance of that date? Samantha Vasich, the woman on whose behalf the original complaint was filed, filed her discrimination charge with the Equal Employment Opportunity Commission (the federal agency where discriminate charges must originate, www.eeoc.gov), on April 10, 2010. Under the law, the City is arguing, potential claims can only go back three hundred days before Ms. Vasich filed her charge, thus, to June 27, 2009. A person must file a charge with the agency within three hundred calendar days of the alleged discriminatory event, which is where the City came up with the time frame it is claiming should be applied. Thus, the City argues, it was never on notice before that time of possible discrimination, as the claims filed by the other women did not timely put the City on notice. The women’s attorneys have responded, stating that the charges filed by some of the women named in the amended complaint properly put the City on notice of class-wide discrimination related to the PAT prior to June 27, 2009, and thus the period should not be so limited.

The second issue the City is seeking an early ruling on concerns one of the remedies (think of this as a fix to the alleged wrongdoing) the aggrieved women are seeking. The plaintiffs are seeking a ruling that the City can no longer use the current PAT. However, the City says, it already has decided not to use the PAT which is being challenged, and is in the process of selecting a vendor to develop a test that will have less of an adverse impact on (not screen out as many) women but still validly test for the skills a firefighter must have. The women have responded that, among other things, the request for that relief is still proper as the same decision makers that approved the use of the PAT are the ones who will be decided what new test to use.

The City is due to reply on July 23. There is no date by which the Court is required to rule on the City’s motion. We will keep track of the case and keep you advised.

There is a second case involving physical abilities testing pending in Chicago, this one filed in 2008 by licensed female paramedics who failed the physical abilities test required by the City of Chicago to be a paramedic, and thus were not hired, despite having worked as paramedics elsewhere for years. The lead plaintiff in that case is Samantha Ernst. Allegations include that the test was administered unprofessionally by untrained personnel, allowing female candidates’ scores to be altered and/or improperly calculated, resulting in a disproportionate number of women being excluded from being hired. Three years after filing the original complaint, the plaintiffs sought to amend it, to turn it into a class action which would involve approximately 263 women. Given the delay in seeking certification, and the introduction of numerous new issues into the case if amendment was allowed, the court denied the motion earlier this year. Thus, the case is limited to the five women who filed the original lawsuit.

The parties are currently engaging in expert discovery, meaning generally that each is presenting different people to testify on what is appropriate to include in a physical abilities test for a paramedic candidate. The Judge has said that their battle of the
Job Postings

Fire Chief
$125,000+
Deadline: 09/30/2012
Kansas City, MO
Kansas City, Missouri (pop. 460,000) is conducting a national search for an innovative and committed fire professional to serve as their next Fire Chief.

Ideal candidates must have strong leadership and interpersonal skills to provide a business approach to delivering responsive, cost-effective and fully integrated emergency medical and fire services to this cultural and economic center. Extensive experience with sound and effective labor relations will be expected. Known for being a relationship builder, the top candidate will also have a reputation for establishing and maintaining a high level of trust between management and rank and file.

Annual salary up to $164,688 DOQ plus car allowance and generous executive benefits program which may include relocation assistance. Kansas City residency will be required.

Submissions should include a compelling cover letter, comprehensive resume, salary history, and professional references to:
apply@ralphandersen.com
Confidential inquiries welcomed to Dave Morgan or Heather Renschler, Ralph Andersen & Assoc. at (916) 630-4900. Detailed brochure available at:
www.ralphandersen.com

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
$40,000-$59,999
Deadline: 09/14/2012
Davenport, IA
Under general supervision performs work of routine difficulty in fire suppression and prevention and the maintenance of fire department property and equipment; and performs related work as required. Go to additional qualifications.

Only online applications will be accepted. Written exam study guides and CPAT Preparation Guides may be obtained from City Hall, HR Office, 226 West 4th Street, Davenport, IA 52801. You must have a completed application on file in order to obtain study guides.

Out of town applicants may obtain study guides by calling 563-326-7711. Important Note: Additional information regarding the testing process is included in the information packet. Be sure you get this information packet and read it carefully. This information packet can be downloaded off of the HR website www.cityofdavenportiowa.com
Go to 2012 Firefighter Information Packet.

In order to be considered for this position, you must take the written examination on Sat. Nov. 10, 2012. The test will be administered at the RiverCenter, 136 E. 3rd Street, Davenport, IA.

Job Postings i-women.org Job Board is a great way to locate qualified fire and EMS professionals at all levels.
For more information

www.i-women.org
Editor’s Note: Members will be introduced to feature writers from across the globe as we experience Fire fighting through our sister’s eyes. This article was translated with permission from the writer.

How does fire fighting work in Switzerland?

My name is Murielle Glauser – I attended the iWomen Conference this year in Tampa, Florida, and met many women fire fighters. I'm a professional fire fighter in Switzerland and have been for nine years! I’m one of only thirteen women in my Country!!! I started in 1998, almost 15 years ago as a volunteer fire fighter back in my hometown. In 2003 - I got the chance to do it for my permanent business after attending fire fighter school in Zurich. Prior to 2003 being a fire fighter wasn’t an official job by law (hard to explain in a foreign language). It means nobody had a certification or something - we just did what we did. So every City had her own program and guidelines to hire new fire fighters.

Normally in Switzerland you have to have a certification for your profession.

Since 2009 the job of a fire fighter has become a national admitted profession! Still, there is no consistency and every City can hire how they want and to what standards. Therefore in the bigger cities you have to perform a physical agility and a writing test. However in my station, for example, we hire fire fighter candidates like you do for an office job! You are sent to the fire fighter academy and you have to have some skills that will allow you entrance to the academy. You need, at least, a high school degree and you need to have learned another job skill as well. That means after high school at the age 15/16 - you do an apprenticeship for 3-4 years, depends on the job, that is more like a practical job than an office job. You cannot become a fire fighter or paramedic first; it's a second job you learn.

Switzerland is about half the size of South Carolina and we have almost 8,000,000 people so almost double of South Carolina. We have in our little country four languages (see picture) German, French (west), Italian (south) and Rätoromanisch (east)! We have about 1200 professional fire fighter in the whole country and only 13 are women!

Most of the professional stations work the 24 hours and 48 hour off, and some have a two-shift system. We are not allowed to work after a 24 hour shift - like you sometimes do. Twenty-four hours is the law and it’s even a special thing for fire fighters! Paramedics are only allowed 12 hour shifts, so they do day and night shifts.

Part 2 will cover – details of our job and fires. Nice to share with you all, Murielle
Tallahassee Fire Department Chief Cindy Dick was honored by Mayor John Marks in a recognition ceremony held recently. This summer, the Florida Fire Chiefs’ Association, which represents 2,200 fire professionals throughout the state, named her Fire Chief of the Year, said Mike Bellamy, TFD spokesman.

“Bear with me,” Marks said, as he began reading a lengthy proclamation, “because this is very well-deserved.”

In the course of celebrating Chief Dick’s accomplishments, including graduating from Harvard University’s Senior Executives in State and Local Government Program, Marks mentioned her Masters of Business Administration from the University of Florida, prompting the mock-chagrined Dick to hide her face behind Marks’ shoulder. “We still love you,” he said. Chief Dick was handed the proclamation as a roomful of firefighters, city employees and Tallahassee citizens gave her a standing ovation. The first woman to be named Fire Chief of the Year, Dick is the second Tallahassee fire chief to earn the designation. The first was Chief Earl Levy, in 1977. Dick, who has served TFD since 1987, became fire chief in 2005.

“The gender thing isn’t significant for me,” Dick said. The honor from Mayor Marks and her peers, however, was. “I’ve dedicated my life to the fire service,” she said. “To be recognized by the fire service is as good as it gets.”

Cindy wrote “Who’s Journey Is It Anyway” in our July 2011 edition of FireWork offering her advice on advancing in the fire service. It’s a great article and well worth reading again.
Earlier this year, a contractor operating a government-owned ammunition depot in Nevada settled a pregnancy discrimination case for an undisclosed amount. One pregnant firefighter’s physician placed her on light duty for a week. When told she would not be accommodated, her doctor returned her to full duty; she missed shifts, using sick pay to cover the necessary time off. Another pregnant firefighter was initially accommodated with light duty as requested, but then placed on medical duty when light duty became unavailable. The parties disputed whether male firefighters were accommodated with light duty for non-work-related injuries. Given the dispute, the judge told the parties to get the case prepared for trial, which apparently led to settlement discussions. The case is *Brophy v. Day & Zimmerman Hawthorne Corporation.*

In a lawsuit currently pending in Iowa, a pregnant firefighter claimed she was denied light duty even though it is offered to firefighters with work-related injuries. She says she could have handled such tasks as inspections, checking fire hydrants for proper water volume, training and teaching fire prevention. That case is *McQuistion v. City of Clinton.* The City has filed an answer to the complaint, and a status hearing is set for August 1. This case was filed under Iowa’s version of Title VII, and is pending in an Iowa state court.

A Rockledge, Florida firefighter, Geri Miller, is grieving her Department’s decision to place her on unpaid maternity leave for one hundred eighty days, rather than place her in a light duty position where she can continue to earn wages. The collective bargaining agreement provides:

**Maternity Leave.** Employees covered by this agreement may request a leave of absence without pay for the period immediately preceding, during, and following the delivery of a baby. Such leave shall not be less than that recommended by the employee’s physician, but in no case shall the leave exceed 180 days.

One of the issues with this policy is that it covers “maternity,” which in legalese refers to the period after childbirth – it is akin to child-rearing. Under the law, men and women have to be provided the same amount of child-rearing leave – if men receive less than women, then the sex discrimination provision of Title VII is being violated. There is a paternity leave policy in the collective bargaining agreement:

**Paternity and Adoption.** Employees covered by this agreement will be allowed to use up to ninety-six (96) hours of accrued sick leave for the purpose of being with their spouse during and following the delivery of a child or for the purpose of taking care of the business of a scheduled adoption. This leave shall be subject to the limitations of Article 28.6 of this agreement.

Thus, it appears that in Rockledge, the maternity leave policy is intended to be a pregnancy policy, but has been mislabeled as a maternity leave policy – clearly, as being applied to Miller, it is not specifically designed to cover child-rearing. Further, a review of the Fire Department roster shows that Miller is one of two women in the Department; also, she is an EMT.

**What about policy development?**

Let’s be frank – developing a policy which addresses pregnancy leave for firefighters which covers all the bases, addresses everyone’s concerns, and makes everyone happy, all the time – probably is not going to happen. However, that difficulty, while presenting a challenge, should not hinder the development and implementation of a policy which tries to meet all the concerns. There is plenty of guidance available. 

---

You have received this newsletter because you are a member of the International Association of Women in Fire and Emergency Services (formerly, Women in Fire Services and Women Chief Fire Officers). If you would like to opt-out of this type of communication, please log into your member account on our website and select “unsubscribe” or contact our staff office via email at staff@i-women.org.