COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, PL 93-198 (the Act), the Council of the District of Columbia adopted Bill No. 1-101 on first and second readings July 15, 1975, and July 29, 1975, respectively. Following the signature of the Mayor on August 15, 1975, this legislation was assigned Act No. 1-48, published in the August 29, 1975, edition of the D. C. Register, and transmitted to both Houses of Congress for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has expired, and, therefore, cites the following legislation as D. C. Law No. 1-34, effective November 1, 1975.

STERLING TUCKER
Chairman of the Council

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D. C. Law No. 1-34

In the Council of the District of Columbia

November 1, 1975

To eliminate discrimination, against persons who are or who have recently been pregnant, in the administration of unemployment insurance benefits.

Be it enacted by the Council of the District of Columbia,

That this act may be cited as the "Pregnancy Discrimination Act of 1975".

Section 2. The Council of the District of Columbia finds that persons who are or who have recently been pregnant are subject to special and unfair disadvantages in obtaining unemployment compensation benefits.

Section 3. The following section 28 is added to the District of Columbia Unemployment Compensation Act (D.C. Code Title 46, Chapter 3):

"Sec. 28. There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue in the separation from employment."

Section 4. Subsection 10(h) of the District of Columbia Unemployment Compensation Act (D.C. Code, section 46-310(h)) is amended to read as follows:

"(h) The eligibility of any individual, who is or has recently been pregnant, for benefits under this

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act, shall be determined under the same standards and procedures as for any other claimant under this act."

Section 5. The District of Columbia Rules and Regulations, Title 18, section 300.4, and any other regulations, policies, and practices of the District Unemployment Compensation Board not consistent with this act, are repealed or prohibited.

Section 6. This act shall be effective at the end of the period provided for Congressional review by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

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Report

City Hall, 14th and E Streets, N.W. Fifth Floor 638-2223 or Government Code 137-3806

To Council Members

From Committee on Public Services and Consumer Affairs --
John A. Wilson, Chairman

Date July 8, 1975

Subject COMMITTEE REPORT
Bill # 1-101: to eliminate discrimination, against persons who are or who have been recently pregnant, in the administration of unemployment insurance benefits.

A. PRESENT LAW

46 D.C. Code 310(h) exempts pregnant women from receiving unemployment compensation for six weeks before the birth of their child and six weeks after. This section was added to the D.C. Code in 1954 (68 Stat. 994) in an effort to ease the administration of unemployment benefits. Prior to 1954, pregnant women were not a special class and therefore had to meet the same eligibility standards as all other claimants (46 D.C. Code 309). However, Congress felt that it was difficult to determine when a pregnant woman was actually able and available (46 D.C. Code 309), and that as several other states had such exemptions, the amendment would make D.C. law more consistent with the law in other states.

The District Unemployment Compensation Board currently has two regulations which deal specifically with pregnancy. 300.4(b) defines the procedure under 46 D.C. Code 310(h). When the Board learns that an applicant is pregnant, they estimate her due date from medical evidence, usually a doctors certificate. The woman is exempted from receiving benefits for six weeks before the expected date of birth, and for six weeks after the actual birthdate.

Regulation 300.4(a) provides that when pregnancy was an issue in the claimant's separation from employment, she is presumed incapable of working until she proves to the contrary with medical evidence, again usually a doctors certificate. Therefore, if a woman voluntarily left her job because she was pregnant, she has the burden of proving she is physically able to work before she can qualify for benefits. Although the Board says the same presumption of incapacity exists whenever health was an issue in separation from employment, there is no other regulation on the subject.

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B. LEGAL AND OTHER DEVELOPMENTS

1. Court Action

In Cohen v. Chesterfield County School Board, 94 S.Ct. 791 (1974), the Supreme Court threw down a Virginia Statute which required a pregnant school teacher to leave her job four months before her due date. The Court held that the statute created an irrebuttable presumption that the woman was unable to work for the four months before the birth of her child and therefore that it violated the due process clause. A Maryland Court, in Orner v. Board of Appeals, Employment Security Administration, Department of Employment and Social Services, Superior Court of Baltimore City, Docket 1972, Folio 86, Case No. 132572, overturned Maryland's unemployment law which exempted pregnant women from benefits for four months before the birth of their child, for similar reasons.

Although the D.C. exemption is only for 12 weeks, it does create an irrebuttable presumption of physical inability to work. The dicta of the Cohen case further, is broad and indicates that any such presumption violates due process.

2. Other States

In 1971 there were 38 states with exemptions similar to the D.C. Code 310(h). At present there remain only 21 states with such laws. Maryland's law, 95A Md. Code Ann. 6f, specifically states that a pregnant woman is eligible as long as she is able and available for work. Virginia has no statute on the subject (Title 60.1 Va. Code Ann.), so that pregnant and post-pregnant women must meet the same standards as any other claimant. Therefore, D.C. is now in the minority in exempting pregnant women and is out of line with the neighboring states.

3. Federal Policy

Not only is there no exemption in the Federal Unemployment Compensation Laws, but the Department of Labor has twice urged the states to repeal their exemptions (Program Letters #1097 (1970) and #1186 (1972)). As the Department of Labor pays for the Administration of the Unemployment Compensation, there should be no difficulty in obtaining funds to carry out Departments' express policy.

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4. Private Employers

Partly due to Title VII of the Civil Rights Act, the ERA, and the rise of Women's Liberation, the job market is more open to women now than it was in 1954. Many private employers offer maternity leaves, if not with pay, at least with full re-employment rights. The D.C. Government's own policy is that pregnant women may take sick leave if they need it, and full reemployment privileges. It is not, therefore, necessarily true that pregnant women are unemployable, although there may be greater risks involved in hiring a pregnant woman.

C. SECTION BY SECTION ANALYSIS OF THE PROPOSED BILL

The Committee made only one amendment which restructured the sections of the bill without changing the language or effect.

Purpose: The purpose of the bill is to eliminate discrimination against persons who are or who have recently been pregnant in the administration of unemployment benefits.

Section 2: Section 2 has 2 Subsections.

Subsection (a) provides that pregnancy shall not create any presumption of physical inability to work, even where pregnancy was an issue in the separation from employment. This subsection would repeal the D.U.C. Board's regulation 300.4(a). If the Board wishes to require proof of physical ability where health was an issue in separation from employment, its regulations may so specify. However, it is discriminatory for the regulations to require such proof only from pregnant persons.

Subsection (b) states that any person who is or who has recently been pregnant must meet the same eligibility standards as any other claimant under the act.

The Department of Labor recommended simple repeal of section 310(h) of Title 46 of D.C. Code, so that there would be no statutory reference to pregnancy at all. However, they did admit that because of the D.U.C. Board regulations, it may be better to clarify the status of pregnant women under the act.

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Section 3: Section 3 of the bill repeals the present 46 D.C. Code 310(h).

D. EFFECTS OF THE PROPOSED BILL

1. Legal Effects

As indicated before, the bill will abolish the presend discriminatory exemption provision in the Code. It will make D.C. law consistent with the law of Virginia and Maryland, and it will carry out the request of the Department of Labor.

2. Administrative Effects

Under the new amendment, a pregnant person will have to meet the standards in the D.C. Code (46 D.C. Code 309) which apply to all applicants. Under section 309(c-d) the applicant must have been employed for a certain length of time, and must meet the common 'able and available' standards. The courts have construed 'available' strictly: "genuinely attached to the labor market and making adequate contacts for work". Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board, 392 F.2d 479, (D.C. Cir. 1968). The Board under 46 D.C. Code 309(d) and §300.2(a) of its own regulations has broad discretion to set a schedule of reporting for any individual. Therefore a pregnant woman would be no more likely to collect unemployment without looking for work than any other individual.

A pregnant applicant would also be subject to the other disqualifying standards of 46 D.C. Code 310: leaving work without good cause, discharge for misconduct, and failure to apply for or accept suitable work without good cause. Under this amendment a pregnant applicant would be dealt with as any person suffering from a temporary physical disability. Therefore, if a woman left her job because her pregnancy rendered her unable to do that job she would not automatically be disqualified. A construction worker with a broken leg may be unable to work construction, but able to do filing or other non-physical labor. Therefore, pregnancy may be considered good cause for either leaving work or failing to accept new work; however, the applicant cannot refuse all work because of her pregnancy and still meet the initial able and available standard.

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Becoming pregnant, of course, cannot be considered misconduct, although a pregnant woman may commit misconduct.

3. Fiscal Effects

Because the extent of disability from pregnancy varies from person to person, the most equitable analysis, case by case, will necessarily involve more work by the District Unemployment Compensation Board. The costs of administration of benefits are paid by the Department of Labor. As the Labor Department itself recommends abolition of the exemption, it should not be adverse to covering the extra costs involved.

The benefits paid to any claimant are collected from their individual employers, and put into a Trust Fund which is administered by the District Unemployment Compensation Board. The D.U.C. Board says that as most pregnant women are told about the exemption, they do not apply during the exemption period. Therefore there are no realistic estimates of how many women would be affected or how much money would be paid out. However, the Board did submit two minimum estimates:

a. Benefits from November 1, 1975 until the end of fiscal 1976: $10,500

b. Benefits for fiscal 1977: $18,000

This money would come out of the Trust Fund. The percentage any individual employer pays on wages paid above a certain sum, his experience rating, is based on the amount of benefits paid by the D.U.C. Board to that employer's ex-employees over a certain period of time. The experience rating of some employers will be affected, as some women will be eligible if the bill is passed who were not formerly eligible. However, the Board did not offer any statistics on how many employers would be affected.

E. OTHER OPINIONS

The Commission on the Status of Women has expressed its support of the amendment, as has the Department of Labor. The D.U.C. Board offered no substantive comments, only financial estimates.

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