



# BOHBOT & RILES, LLP

ATTORNEYS AT LAW

## SPRING 2013

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### **Gender/Pregnancy Discrimination: Alive and Well . . . and Disguised as Morality**

#### **Have you ever seen a “Community Covenant” agreement before?**

Well, if you choose to attend or be employed by a certain college in El Cajon, California, you could be required to sign a “Community Covenant” stating that you would not engage in “sexually immoral behavior including premarital sex, adultery, pornography and homosexuality.”

Hello Elizabeth:

The new year is well under way, and happily, many people are feeling a renewed sense of consumer confidence.

Construction crews are busy and the housing market is going up, which is a good sign for the economy, in general.



Another sign of people's optimism about the future is that birth rates are going back up. That means there are more pregnant women in the workforce. As our article below indicates, we have received a lot of calls from women who want to know their rights when it comes to maternity leave.

We both have young children, so there's nothing we don't know about balancing a demanding career and a family. Maternity leave in the US is not particularly generous, so women want to make sure they make the most of their allocated time off.

If you fail to follow that covenant and decide to engage in premarital sex, or the other behaviors, as one employee recently found out, you will lose your job.



**The college terminated the employee when it found out she was pregnant, but rewarded the baby's father with a job!**

### **Setting the stage for double standards**

So, is a policy like this discriminatory? The California Fair Employment and Housing Act (the "FEHA") prohibits discrimination on the basis of sexual orientation and marital status.

As ostensibly written, this covenant makes a person who is single agree that he or she will not have sexual relations, but does not prohibit the same for married individuals. Such a double standard and different treatment is clearly what the FEHA had in mind in its anti-discrimination policy.

That is only one way that this policy is potentially discriminatory. When considered in the light of the thousands of legally married same-sex couples in California<sup>[1]</sup>, this covenant would discriminate against them by prohibiting their relationships, while not discriminating against other legally married couples.

**Some religious organizations permitted to discriminate**

The economics of this are important as well--starting a family is an expensive undertaking that doesn't go away. There is another important financial issue--many of the women with whom we are talking are older, having waited to start their families until they had established their careers.

These women want to make sure they have jobs to come back to--that they haven't been replaced by younger, male or childless employees who are happy to take less salary, work more hours and do not have the demands of a family to care for. If you are ready to start your family or you think that you might be getting differential treatment because you have recently started a family and have questions about your rights, give us a call.

Our best to everyone,

Elizabeth and Karine

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### **Pregnancy Leave 101**

Recently, Bohbot & Riles has been contacted by a spate of pregnant women seeking advice and counsel about what rights they have to medical leave and how they should be treated by their employer when pregnant.

#### **Pregnancy: with celebration comes anxiety**

Learning that you are pregnant should normally be such a joyous time, but it also carries with it such vulnerabilities. You have concerns about becoming a parent for the first time or adding new members to your family. You worry about your health and how the pregnancy will go and affect your body. Finally, you worry about how you will manage your work responsibilities, what kind of leave you can take and how it will be paid for, if at all. So, here are the basic facts about pregnancy leave.

#### **Four months of leave to use for any pregnancy-related disability**

Every employer that has at least five employees is required to provide four months of pregnancy disability leave. This leave is for pregnancy, childbirth or other medically related conditions. This means that if you are at all disabled because of your pregnancy, you are entitled to leave. The disability

However, keep in mind that under both Title VII, the federal law protecting employees from discrimination, and the FEHA, some religious organizations and religious nonprofits are *permitted* to discriminate in employment, particularly where the employee is engaged in religious or ministerial activities. Although this exception may not apply where the organization is essentially running a hospital or school that is open to the public, it is something to evaluate on a case-by-case basis.

The nature of the entity and the employee's duties would thus be reviewed carefully to determine whether the exception applies. Looking closely at the facts is important because, like the example given above, the entire situation may reveal that a concern for morals had nothing to do with the employment decision to terminate.

### **Punish the mother; reward the father with a job**

There, the evidence revealed that the college terminated the employee two months after it discovered from "multiple sources" that she was pregnant, with the college claiming the decision to terminate her was not due to *this* little fact, but rather that this fact confirmed she had violated the no-premarital sex rule.

Yet even more interesting was the college's subsequent decision to offer the woman's "baby daddy" (*i.e.*, the father of her child and clearly the other half of the premarital sex team) a job!

So, you be the judge, was this really a case of termination because of premarital sex or was it a case of

could range from morning sickness that makes you late in the morning, severe morning sickness that keeps you out of work temporarily, or being placed on bed rest for the last few months of your pregnancy. These four months can be used all at once or intermittently throughout the pregnancy.

### **Employer obligations for reasonable accommodations**

Your employer is also required to find reasonable accommodations for you should your pregnancy prevent you from being able to perform your normal job duties, including perhaps transferring you to a position that will accommodate your condition. These requirements are in addition to any other requirements under the law. That means that if you are placed on bed rest for you pregnancy in month three, when you reach the end of the four months, there are still options available.

Your employer is obligated to engage in an interactive process with you to discuss possible accommodations, just like they would have to for any other disabled employee. If a reasonable accommodation can be found, including longer leave, beyond the four months, then the employer is obligated to try it.

### **FMLA Leave and CFRA Leave**

Employers with 50 employees or more also have to offer their employees FMLA (Family Medical Leave Act) and CFRA (California Family Rights Act) leave. FMLA leave allows you to take time off to care for your own serious medical condition, which would include any disability because of pregnancy. FMLA leave would run at the same time as any California Pregnancy Disability Leave. FMLA leave, if not exhausted during pregnancy, would also provide for bonding time with your baby after he/she is born. You are only allotted 12 weeks of leave under this law however.

### **CFRA leave is different; it does not cover conditions related to pregnancy**

But, it does cover bonding time with your baby after he/she is born. CFRA leave is also for a total of 12 weeks. It can be taken at any time, intermittently, up until the child is one year old. FMLA leave and CFRA leave to bond with your child can also be

pregnancy and gender discrimination? Could the school really stand on its “moral high horse” once it agreed to hire the woman’s boyfriend? What would a jury decide?

### **What is the lesson to be learned here?**

If you are part of an organization that requires you to execute a “morals clause”, like this one, it may be illegal. Take a careful look, seek some advice and think twice before signing.

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[1] Between the initial California Supreme Court decision making same-sex marriage legal in June of 2008 and the subsequent passing of Proposition 8 in November of 2008 making same-sex marriage illegal in California, it is estimated that some 11,000 same-sex marriages happened. All of which remain legal marriages in California.

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## **Ten Years in January!**

In January, we celebrated our tenth year in business. It's been a challenge, and we continue to learn and evolve. We've built many wonderful relationships along the way that have played an important role in our success.

A special thank you to all of our colleagues, friends, family and clients who have supported us over the past decade.

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## **Tireless Advocates for Our Clients**

**"We are advocates, consistently looking out for the employee who has been treated unfairly."**

What makes Karine and Elizabeth effective employment issue

used by a spouse to bond as well. The only limitation is if you both work at the same employer. In such a case, the employer can limit the leave to 12 weeks total between both parents.

### **After all that, how do you get paid?**

All of these leaves are for unpaid leave. However, if your employer does not provide paid leave, there are ways to supplement your pay. State disability will provide disability pay if you are disabled from work due to your pregnancy. Additionally, after the birth, you are generally entitled to 4 weeks of disability after a vaginal birth and 6 weeks after a cesarean. Once this is exhausted, Paid Family Leave, also provided by the state, will give up to 6 weeks of supplemental pay for bonding time.

To help put it all in clearer form, here is a chart that might help:



So these are the basics you should know. If you have any other questions, definitely talk to your Human Resources department about what is available, or consult an attorney.

Class dismissed!

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## **About Bohbot & Riles**

Bohbot & Riles is a women-owned law firm that prides itself on placing its clients' needs before its own goals.

Karine Bohbot and Elizabeth Riles are the seasoned partners of Bohbot &

advocates? Their passion, hard work ethic, their ability to understand and balance career and family and their compassionate championing of the rights of their clients.

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Riles. They have more than 30 years of collective experience and have successfully represented California employees who have been subjected to discrimination, sexual harassment, retaliation, employers' failure to provide reasonable accommodations, FMLA violations and other leave issues, wage-hour violations and disputes regarding severance pay.



**Elizabeth Riles** graduated from Stanford and UC Berkeley's Boalt Hall School of Law

In 2011, Karine and Elizabeth were honored by the City of Lancaster for their work in obtaining a significant verdict in a gender discrimination and hostile work environment case against a nationally known long-haul trucking company.



Karine and Elizabeth were also chosen as Finalists for the 2012 Street Fighter of the Year Award by the Consumer Attorneys of California, and have been named **Super Lawyers' Northern California Rising Stars** every year since 2009.

**Karine Bohbot** received her J.D. from Hastings School of Law and speaks fluent French

“ It may be true that the law cannot make a man love me, but it can stop him from lynching me, and I think that's pretty important. ”

*-- Martin Luther King, Jr.*

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