

## **Opinion No. 79-10**

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**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** John F. Kennedy, Assistant Attorney General

**TO:** Representative Russell Autrey, New Mexico House of Representatives, State Capitol Building, Santa Fe, New Mexico 87503

### **PUBLIC OFFICERS AND EMPLOYEES**

After April 30, 1979, governmental bodies employing fifteen or more employees must provide maternity insurance benefits on a par with other medical disabilities under the provisions of Public Law 95-555.

### **QUESTIONS**

Are city governments, such as the Town of Old Mesilla, mandated to provide maternity insurance coverage for their employees?

### **CONCLUSIONS**

See analysis.

### **ANALYSIS**

Under New Mexico law there is no specific provision which currently requires maternity insurance coverage. Such coverage will be required, nevertheless, under the terms and conditions of Section 701 of the 1964 Civil Rights Act, commonly known as Title VII. That title applies to governmental agencies and political subdivisions regularly employing fifteen or more employees in any governmental activity, and prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, religion, sex or national origin. 42 U.S.C. 2000e.

### **OPINION**

On October 31, 1978 Congress approved Public Law 95-555, thereby amending Title VII to provide that its prohibitions against discrimination "because of sex" or "on the basis of sex" shall include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions. The legislative history underlying this amendment indicates clear congressional intent to override the narrow interpretation given Title VII by the United States Supreme Court in several cases on the subject of denial of pregnancy benefits. Congress felt such decisions have eroded

national policy of nondiscrimination in employment and resulted in inconsistent practices in the States. These cases include **Geduldig v. Aiello**, 417 U.S. 484, 41 L. Ed. 2d 256, 94 S. Ct. 2485 (1974); **General Electric Co. v. Gilbert**, 429 U.S. 125, 50 L. Ed. 343, 97 S. Ct. 401 (1976); **Nashville Gas Co. v. Satty**, 434 U.S. 136, 54 L. Ed. 2d 356, 98 S. Ct. 347 (1977).

Under the new amendment, women affected by pregnancy, childbirth, or related medical conditions must be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as are other persons not so affected but similar in their ability or inability to work. The particular question for discussion here relates to a fringe benefit, insurance coverage. If no insurance coverage is offered by the Town of Old Mesilla as part of its employment package, no maternity insurance {24} need be extended to female employees. On the other hand, if medical insurance is provided covering conditions which render employees unable to work, maternity insurance must be included in such coverage pursuant to the provisions of Public Law 95-555.

Several other provisions of Public Law 95-555 should be noted as well. First, an employer is not required to include health insurance benefits for abortion, except where the life of the mother is endangered or where medical complications arise from an abortion. Second, the requirements of Public Law 95-555 as to fringe benefits are not effective until 180 days after the enactment of the Act, i.e., April 30, 1979. Third, employers who are not currently in compliance with the Act are prohibited from reducing the level of benefits provided as of October 31, 1978 as a means of coming into compliance with the Act, although readjustments of coverage and benefits for reasons unrelated to compliance are permitted. Fourth, where the cost of a fringe benefit, such as health insurance, is apportioned between the employer and employee as of the date of the Act, any additional payments or contributions required to comply with the provisions of the Act may be made in the same proportion. In other words, if there is an increase in cost in order to broaden the scope of insurance coverage to include pregnancy benefits, and the insurance costs had been split evenly by the employer and employee as of October 31, 1978, then the increase in cost likewise may be split evenly.

Consequently, if the Town of Old Mesilla provides health insurance benefits to its employees, maternity insurance benefits must be provided as of April 30, 1979 on a parity of coverage with other medical disabilities.

#### **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General