

1978 S.C. Op. Atty. Gen. 71 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-45, 1978 WL 22527

Office of the Attorney General

State of South Carolina

Opinion No. 78-45

March 8, 1978

***1 SUBJECT: Maternity Leave**

Maternity leave procedure for Highway Patrol Personnel.

TO: Colonel William J. Seaborn
Director of Law Enforcement
South Carolina Highway Department

QUESTION:

What procedures must the Highway Patrol follow in providing maternity leave for its personnel.

AUTHORITIES:

[Section 8–11–40, South Carolina Code](#) of Laws, 1976; Budget and Control Board Sick Leave Guidelines.

DISCUSSION:

Maternity leave provisions are found within the sick leave regulations promulgated by the Personnel Division of the Budget and Control Board pursuant to the authority of [Section 8–11–40, South Carolina Code](#) of Laws, 1976. As promulgated, the rules apply to all permanent full-time employees and certain permanent part-time employees. As a practical matter, the rules treat maternity leave as any disability leave due to illness or injury.

The sick leave guidelines provide that the decision as to the date on which the employee is to begin her maternity leave is left to the employee and her doctor. Sub-section 1–10 of the sick leave guidelines requires the employee when taking maternity leave to exhaust all accumulated sick leave, unless an exception is granted by the Chief Highway Commissioner, after which, she may request additional leave on a 'leave without pay' status (she may exhaust annual leave subsequent to sick leave at her option). However, the agency shall require a physician's certificate or equivalent describing the nature of an expected duration of the disability prior to approving the request. The request shall not be denied for any bona fide disability (e.g. pregnancy) for employees serving satisfactorily for a period of at least six months. This sub-section provides further that maternity leave shall not exceed one hundred eighty (180) calendar days of combined leave with pay and leave without pay or one hundred eighty (180) working days of leave with pay. In extenuating circumstances the Chief Highway Commissioner can extend the period to a total of three hundred sixty-five (365) days. As long as the leave taken does not exceed the prescribed period, the employee shall not lose seniority or position.

The guidelines do provide one exception to the rule that maternity leave begin at a time decided upon by the employee and her physician. The rule states that the appointing authority may unilaterally prescribe the date upon which leave is to begin only upon 'the basis of professional medical opinion that the employee is physically incapable of performing normal duties or that the continuing to perform normal duties will be hazardous to the health of the employee.' It would appear that in extreme circumstances the Highway Patrol could require patrol personnel to submit to medical

examination and upon being informed that the patrol duty presented a health hazard or that the employee was incapable of performing normal duty due to disability, the Highway Patrol might prescribe leave unilaterally. Should the date upon which the leave was compelled run the employee afoul of the one hundred eighty (180) day period, the Chief Highway Commissioner could then find a showing of extenuating circumstances and extend the leave period. For instance, should the patrolwoman feel compelled to request leave at a time at which she is two months pregnant, the Highway Commissioner might extend her leave beyond the one hundred eighty (180) day period falling at the eighth (8th) month of pregnancy to provide leave for childbirth and recuperation.

*2 Again, it should be remembered that for all practical purposes a patrolwoman's pregnancy must be treated by the Highway Patrol as any other non-job related disability. Strict compliance with the sick leave guidelines will achieve this purpose.

CONCLUSION:

The South Carolina Highway Patrol must follow the maternity leave guidelines hereinabove outlined as promulgated by the Personnel Division of the Budget and Control Board.

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