
International Association of Chiefs of Police Annual Conference 2008

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■ ***Pregnancy & Policing:***
Are They Compatible?

Sponsored by the Diversity Coordinating Panel

Part One: Legal Issues

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The Goals of the Diversity Coordinating Panel

- The Diversity Coordinating Panel shall identify, study, consider, and determine those programs, policies, and initiatives that will enhance the diversity of law enforcement agencies. The Diversity Coordinating Panel will focus on professional standards, recruitment, hiring, retention, and promotional practices, particularly as they pertain to groups historically under-represented in the law enforcement professions, including women and minorities. The panel promotes diversity throughout the command structure.
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The Importance of Women in Law Enforcement

- Women are more capable of defusing violent situations
 - Women excel in demonstrating empathy in stressful, dangerous situations
 - Women are less likely to be accused of having used excessive force
 - Women are part of the community fabric
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However

- Women in law enforcement are often discriminated against when they choose parenthood through pregnancy
 - Pregnancy discrimination complaints made to EEOC increased 67% from 1992 to 2007
 - EEOC says that “women should never be forced to choose between motherhood and their livelihood”
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Focusing on Women in Law Enforcement

- A traditionally male dominated profession
 - Norms for performance and behavior still “unintentionally designed around the prototypical male officer”
 - In law enforcement, stereotypes about pregnancy are common and can result in gender discrimination in the workplace
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Continuing Obstacles for Women in Law Enforcement

- Inadequate facilities and equipment
 - Sexual harassment
 - Challenges to family responsibilities
 - Role conflict
 - Self doubt about competence re: male norms
 - Inadequate maternity policies
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Pregnancy Discrimination Act

- Enacted in 1978 to prevent pregnancy from being used a barrier to job opportunity
 - Employers must treat “women affected by pregnancy, childbirth, or related conditions” *the same* “as other persons so affected but similar in their ability or inability to work.”
 - PDA intended to allow pregnant women to participate fully and equally in the workforce
 - The PDA falls short of its promise
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An Employer Violates the PDA if it:

- Refuses to preserve a job for an employee on maternity leave *if* it protects jobs of others who are temporarily disabled
- Denies seniority status because of maternity leave upon return *unless* others on disability leave are treated similarly
- Refuses to grant pension service time for the maternity leave period *unless* other disabled employees are treated likewise

But see AT&T v. Hulteen, U.S. Sup. Ct. 04-16-87

Shortcomings of the PDA

- Creates only a “negative” right to be treated the same as similarly situated workers
 - Similarly situated in “all relevant respects” – pregnant v. non-pregnant?
 - PDA does *not* require employment accommodations for pregnant women, just “equal” treatment – even if that treatment is detrimental to all employees
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Interpretation Issues

- Can pregnant women ever be “similarly situated” to men?
 - Are non-pregnant persons similarly situated to pregnant persons?
 - Is the comparison men v. women?
 - Or is the comparison pregnant persons v. non-pregnant persons?
 - Is more favorable treatment for pregnant persons discriminatory as to non-pregnant persons?
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Discriminatory Policies

- Policies limited to “on duty” injuries “strongly suggest an intent to discriminate against women who are pregnant or have pregnancy-related conditions...”
 - Those that have a disparate impact on women, even if unintentional, are discriminatory
 - Those that automatically exclude women from working regular duty from the onset of pregnancy, e.g. for “fetal protection” and are discriminatory
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Automobile Workers v. Johnson Controls, Inc., 499 U.S. 187 (1991)

- An employer may not exclude pregnant women from hazardous jobs.
 - The employer should give options to pregnant women: different job or reasonable accommodations.
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Common Scenarios That Do *Not* Violate the PDA

- No accommodation for pregnant employees (e.g. alternative duty)
 - “Automatic” light duty regardless of physical condition
 - No compensation for negative consequences of long term limited duty or off duty status
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Equal Treatment Model

- The PDA is an “equal treatment” scheme
 - “Similarly situated” must be treated alike
 - While men and women may be similarly situated in many circumstances, *pregnant* women can never be “similarly situated” to men
 - Equal treatment model does not require or encourage employers to accommodate pregnant employees
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Example Under *Equal Treatment Model*

- *Uniform & Body Armor*
 - ❑ Male officer gains weight and needs larger uniform and vest – Provided
 - ❑ Female officer gains weight and needs larger uniform and vest – Provided
 - ❑ Female officer becomes pregnant and needs larger uniform and vest – Denied
 - *Regardless of physical ability*
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Equal Treatment

- Does not lead to equal *results*
 - Does not account for specific gender differences that cannot be “similar”
 - Does not diffuse stereotypes
 - And penalizes only women by not accommodating pregnancy and creates *unequal* outcomes for some women
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Stereotypes Still Exist

- Pregnant female is physically inferior from the moment of conception
 - Pregnant women need protection
 - Pregnant women are incapable of caring for themselves
 - Pregnant women miss too much work
 - Pregnant women can't focus on work
 - Pregnant women don't belong in the workforce
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Result: No Accommodation Policies

– Remove Woman from Workplace

- Exhaustion of leave time and FMLA entitlement before delivery
 - Loss of seniority, leave earnings, impact on other benefits (health, pension)
 - Diminished respect from colleagues
 - Decline in skills, personal morale
 - Unable to retain women officers
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Or Provide Inadequate Accommodations

- Disadvantages of long term light duty:
 - ❑ loss of ancillary privileges – off duty employment, use of agency equipment
 - ❑ Unable to maintain training status, State certification
 - ❑ Unable to compete for promotion
 - ❑ Negative impact on productivity for performance evaluation
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Become the Employer of Choice By:

- Recognizing that pregnancy is a unique, transient physical condition that may or may not temporarily disable a woman
 - Establishing policies that are based on the actual physical requirements of the job and the medical aspects of pregnancy
 - *Exceeding* the requirements of the PDA
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A Better Idea: *Equal Results* Model

- To achieve real equality in the workplace employers must make changes and be flexible enough to accommodate the “celebrated” differences between men and women – *U.S. v. Virginia*, 518 U.S. 515 (1996)
 - Expectant mothers should be provided with realistic and adequate employment benefits to retain their professional status
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Different Treatment Can Create Equal Results

- Different treatment is tailored to individual needs
 - Does not compel light duty until medically necessary – not a “presumption” of pregnancy
 - But provides light duty when medically necessary
 - May defer some training/exposure requirements
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Different Treatment

- Preserves seniority status
 - Provides maternity uniforms and equipment, as appropriate
 - Has adequate paid maternity leave
 - May permit job sharing and flex time
 - Assumes return to full duty when medically able
 - Bases employment status on objective medical criteria, not emotions or stereotypes
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Two Ways to Achieve Equality in the Law Enforcement Profession

- Get equal treatment by being the same as men (gender neutrality)
 - Be different without being disadvantaged by the differences (gender appreciation)
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How to Attract/Retain Women in the Profession

- Celebrate the differences by accepting and coping with the biological distinctions between men and women
 - Acknowledge the value to society of providing police services through the professional contributions of both sexes
 - Provide a welcoming workplace
 - Be the employer of choice
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References

- ***Pregnancy & Policing: Are They Compatible? Pushing the Legal Limits on Behalf of Equal Employment Opportunities*, 22 Wisc. Women's Law J. 61 (2007)**
 - ***Pregnancy Policy: Law & Philosophy*, The Police Chief, March 2006, available at:
<http://www.policechiefmagazine.org/>**
 - **IACP National Law Enforcement Policy Center, *Temporary Light Duty*, Concepts & Issues Paper, October 1, 1996**
 - **National Partnership for Women & Families, *The Pregnancy Discrimination Act – Where We Stand 30 Years Later*, October 2008**
 - **Nat'l Ctr. For Women & Policing, *Hiring & Retaining More Women: The Advantages to Law Enforcement Agencies*, 2003**
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Part Two – Medical Issues

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Section

Pregnant Officers Lose Their Guns In Test Dispute

Two pregnant court officers in Manhattan who did not want to take a gun re-qualifying exam for fear of harming their unborn children have lost the right to carry their weapons. The officers, Laura Steel, 38, and Dawn Tauber, 31, said they felt humiliated when they were forced to turn in their weapons on Thursday. State law requires court officers to take a yearly re-qualifying exam, which entails shooting 50 live rounds at a firing range. But the officers had hoped to reach a compromise with the state that would have limited their exposure to the noise and elevated levels of lead in the air at the range.

Pregnancy & Policing - Considerations

- What are the real medical risks?
 - What is the law?
 - What is a reasonable accommodation for the specific medical risks?
 - Can we define such accommodations that track the developing pregnancy?
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Job Functions That Create Risks

- Use of firearms
 - Exposure to toxic chemicals
 - Noise
 - Trauma
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Main Occupational Hazards During Pregnancy

- Exposure to Chemical Agents:

- Solvents
- Heavy metals
- Pesticides

- Physical Agents:

- Radiation
 - Noise
 - Trauma
 - “Workload”
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Firearms Issues

- Lead
 - Noise
 - Other heavy metals
 - Solvents
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Firearms Training & Lead

- Exposure routes: Ingestion and inhalation
- Toxic lead levels are not uncommon, even in outdoor ranges

Goldberg R. *Lead Exposure at Uncovered Outdoor Firing Ranges*, J. Occup. Med. 1991 Jun; 33(6):718-9.

Abudhaise BA. *Lead Exposure in Indoor Firing Ranges: Environmental Impact and Health Risk to the Range Users*, Int. J. Occup. Med. Environ Health, 1996; 9(4):323-9.

Maternal Exposure: Lead

- Increased absorption during pregnancy
- Long-term storage in bones
- Transmission from the mother to the fetus: Lead crosses the placenta

Gardella C., *Lead Exposure in Pregnancy: A Review of the Literature and Argument for Routine Prenatal Screening*, Obstet. Gynecol. Surv. 2001; 56(4):231-8.

Pregnant Women Should Avoid Exposure to Lead

- Miscarriage
 - Preterm delivery
 - Pre-eclampsia
 - Gestational hypertension
 - Premature membrane rupture
 - Congenital abnormalities
 - Neurobehavioral effects in infants and children
 - Decreased birth weight, length and head circumference
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Firearms Training & Noise

- Conversational speech: 60-65 dB
 - Threshold of pain: 140 dB
 - Pistol, .45 ACP: 157 dB
 - Pistol, 9 mm: 160 dB
 - Shotgun, 12 gauge: 161 dB
 - Carbine, .223: 165 dB
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Maternal Exposure: Noise

- No significant protection for the fetus
 - Creates risk of:
 - Miscarriage
 - Preterm delivery
 - Hypertension in pregnancy
 - Decreased birth weight
 - Hearing loss in children
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Firearms Training: Chemical Hazards

- Heavy metals: barium, antimony, copper, arsenic
 - Cleaning solvents
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Maternal Exposure: Physical Workload

- Heavy physical workload may increase the risk of preterm birth
- Dose-response relationship between workload intensity and incidence rate

Escriba-Aguir V, et al., *Physical Load and Psychological Demand at Work During Pregnancy and Preterm Birth*, Int. Arch. Occup. Environ. Health 2001 Oct; 74(8):583-8

Physical Changes in Women

- Increased risk of low back injury during pregnancy and after delivery due to weight gain and loosening of ligaments
- Impaired equilibrium, reduced muscle strength, ungainliness
- Fatigue, nausea, frequent need to urinate

Calloway, D., *Accommodating Pregnancy in the Workplace*, 25 Stetson L. Re., 1, 3-4 (1995)

Maternal Exposure: Trauma

- 56,666 law enforcement officers were assaulted in the line of duty (2001)
 - 12.2 assaults per 100 officers in 2001
 - Accidental trauma
 - Trauma suffered in training
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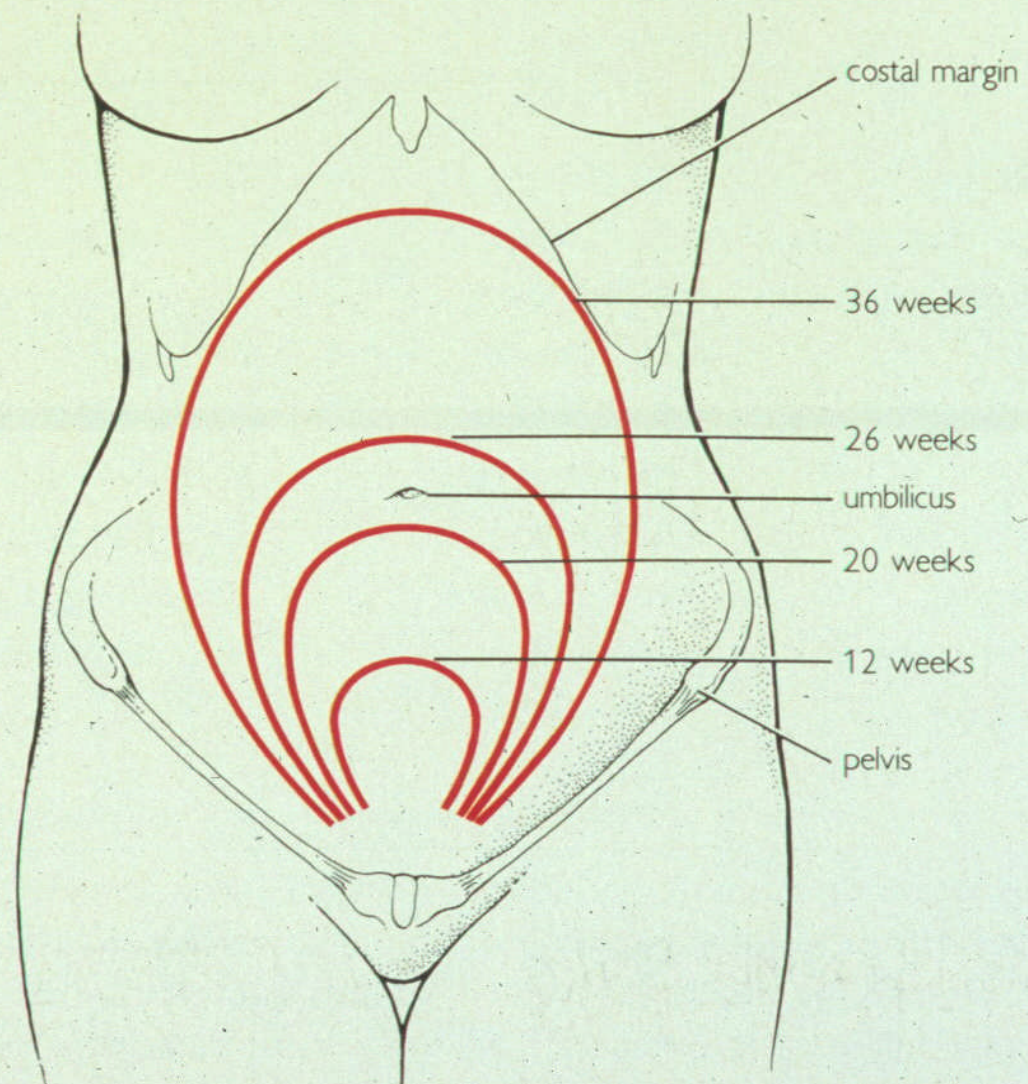
Protection from Trauma

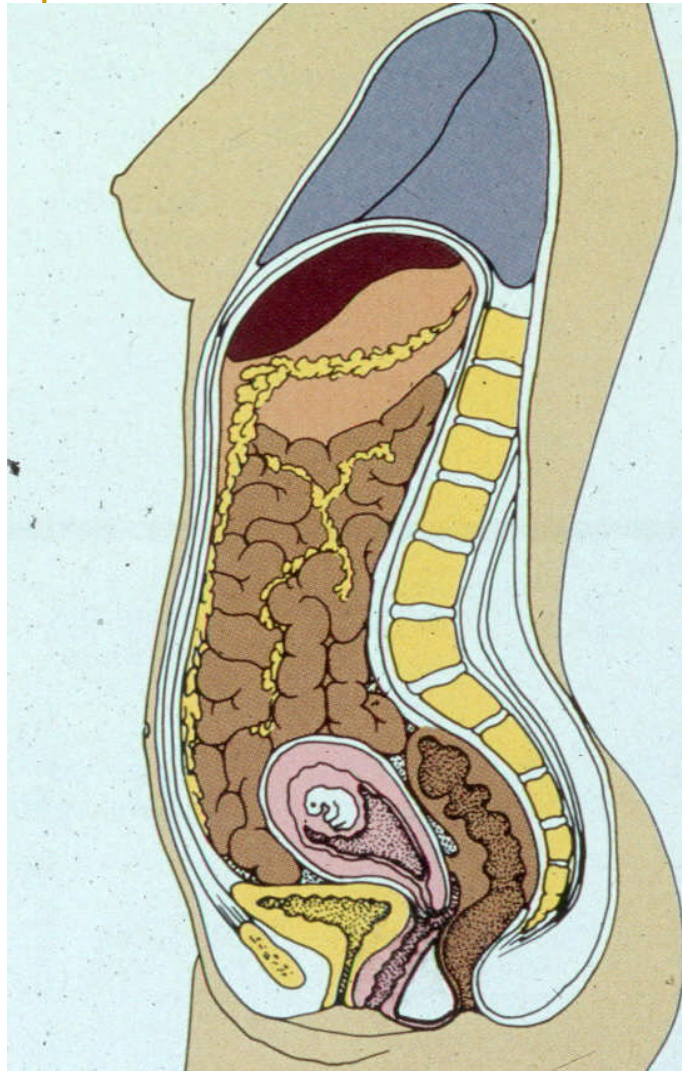
- Fetus is well protected during first trimester
 - Second trimester provides less protection, depending on rate of development
 - Third trimester creates risk
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Fetal Mortality Rates

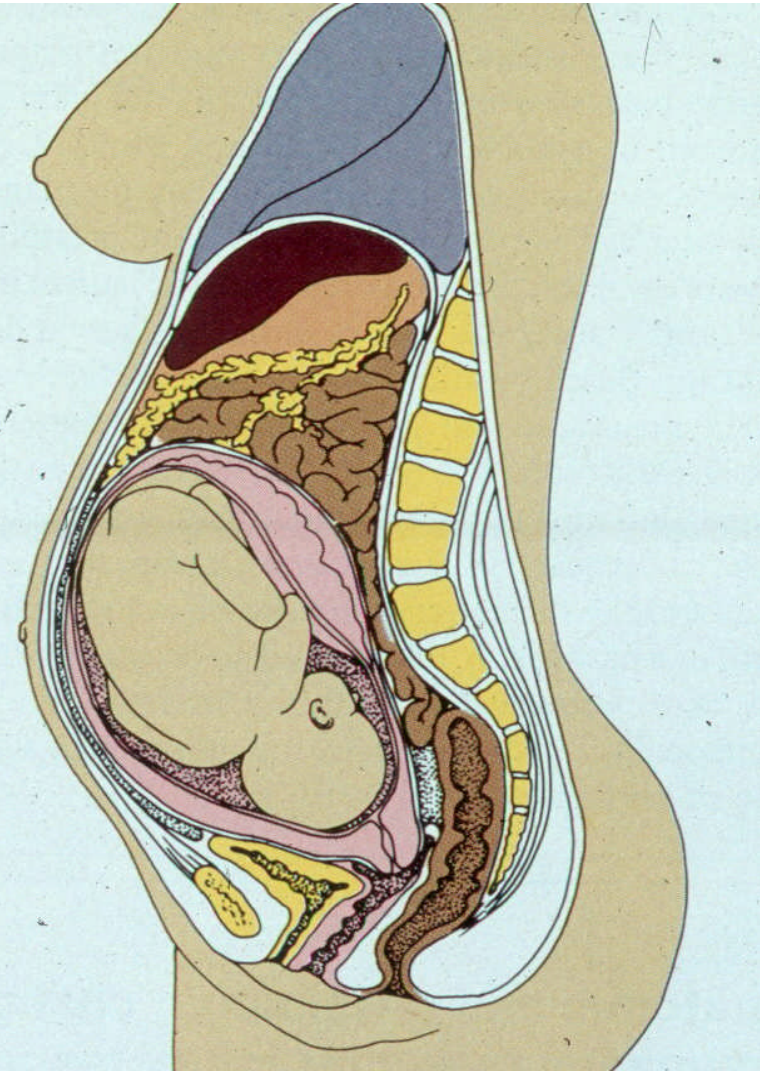
- If maternal shock : 80 %
 - Overall with major trauma: 15 to 40 %
 - Overall with minor trauma : 1 to 4 %
 - Gunshots of uterus : 80 %
 - Stab wounds of uterus : 40 to 50 %
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HOW HIGH THE FUNDUS?





Uterus at 3 months



Uterus at 7 months

Maternal Exposure: Shift Work

- ❑ Night work associated with pre-term birth
- ❑ Night work associated with low birth weight
- ❑ Three-shift work schedule associated with pre-term birth

Bodin L., Axelsson G., Ahlborg G. Jr., *The Association of Shift Work and Nitrous Oxide Exposure in Pregnancy with Birth Weight and Gestational Age*, Epidemiology 1999; 10(4):429-36.

However

- Work by itself is not correlated with the incidence of birth defects or pregnancy problems
 - Work during pregnancy can have medical benefits, such as reducing anxiety
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AMA: Positive Effects of Work on Pregnancy

The American Medical Association encourages employers to accommodate women's increased physical requirements during pregnancy; recommended accommodations include varied work positions, adequate rest and meal breaks, access to regular hydration, and minimizing heavy lifting.

First Trimester

- Patrol duties: May be permitted
 - Firearms qualification and practice: Not recommended
 - ❑ **Alternative ways to qualify**
 - ❑ **Do not remove firearm!**
(Carry permit may be required by State law)
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First Trimester Concerns

- Defensive tactics - Not Recommended:
 - ❑ High-impact activities
 - ❑ TASER exposure
 - ❑ OC exposure

 - Toxic chemicals: Not Recommended
 - ❑ Training/working at a firing range
 - ❑ Traffic control/exposure to exhaust fumes
 - ❑ Raids on clandestine drug labs
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Second Trimester Concerns

- Patrol duties: Possible, if able and willing
 - Alternative duties
 - Defensive tactics
 - No ground fighting
 - No falls or blunt trauma
 - Maternity uniform or civilian clothing
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Third Trimester Concerns

- Patrol duties: Probably not
 - Alternative duties
 - Defensive tactics: Ability to perform?
 - No standing for more than 30 minutes
 - No repetitive lifting over 25 lbs
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Recommendations - Firearms

- No firearms practice or qualification during pregnancy
 - Alternatives to firearms qualification/Simulations
 - Pregnant officers should avoid shooting ranges
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Recommendations – Work Environment

- Avoid known toxic agents
 - Avoid shift work
 - Avoid standing for long periods
 - Decrease physical workload
 - Same level of work until last 8 weeks, or possibly later if non-physical work
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Recommendation – Work Load

- Light Duty as a reasonable accommodation offered by agency
 - Avoid: patrol, contact with prisoners, arrest situations
 - Alternative: desk job, investigations
 - Look for alternative training
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[www.theppsc.org/Staff_Views/Czarnecki/
pregnant_officer.htm](http://www.theppsc.org/Staff_Views/Czarnecki/pregnant_officer.htm)

The Pregnant Officer. Clinics in
Occupational and Environmental
Medicine. Volume 3, Issue 3, Pages
369-658 (August 2003)

Part Three: Recommendations

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Former National FOP Trustee

Recommended Policies

- Insure that pregnancy does not disadvantage a woman's career progress
 - Do not treat women paternalistically
 - Do not unnecessarily invade privacy
 - Are based on true medical concerns and essential job functions
 - Address safety concerns
 - Do not give employees too much control
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Recommended Policies

- Permit the woman officer and a physician to evaluate fitness for duty based on intensity of physical workload, exposure issues, etc.
 - Allow officers to preserve leave time
 - Do not require artificially extended light duty
 - Are flexible & can be individualized
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Recommended Policies

- Are based on facts and medical advice from agency physician
 - Benefit agencies by permitting able-bodied officers to continue to work
 - Mitigate negative impacts of pregnancy
 - Maintain morale by treating women as competent adults
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Recommended Policy

- Recognizes pregnancy as a developing, not static condition
 - Allows for individual variances
 - Maintains woman's status as a professional
 - Benefits agency by retaining women and maintaining productivity
 - Gives control to woman & doctor
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Recommended Policy

- Is intended to treat pregnancy as a routine event that should not result in negative impacts on women officers
 - Recognizes that a diverse workforce is a valuable asset to the community
 - Treats experienced women as a critical resource
 - Does not assume pregnant officers are unable to work
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Applicability

- Must balance employer/employee needs
 - Reasonable not to extend pregnancy benefits to trainees
 - And to limit by time (e.g. 12 months must have passed since last use)
 - Even to limit lifetime use
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Notice Provisions

- Woman's privacy interest v. agency's need to know for planning purposes
 - If notification required, make efforts to maintain confidentiality/limit to "need to know"
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First Trimester Duty

- May allow for full duty option, if medically cleared
 - Provides for training alternatives, avoiding toxic chemicals, modified uniforms & equipment if needed
 - Allow for alternative duty if medically indicated
 - Considered to be temporary, transitional duty (“Stage One”)
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Second/Third Trimester Duty

- Growing diminished physical capacity may indicate alternative duty is required
 - Duty should be tailored to verified medical needs (“Stage two”)
 - Policy may specify issues like no alternating shift work, no defensive tactics training, no heavy lifting
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Further Medical Review

- Remains available if supervisor has concerns about abilities
- Employee may request to use medical leave if medically indicated/verified



Policy Preserves Employment Status

- Alternative duty assignments should not negatively impact on salary, seniority, pension credit earnings, eligibility for promotion or transfer
 - Must examine related personnel policies for unintended disparate impact on pregnant employees
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Implementation

- Agency Policy
 - Collective Bargaining Agreements
 - Memorandum of Understanding with employee group
 - Employee buy-in
 - Local legislation
 - Litigation
 - Educate employees & agency physicians
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Be the Employer of
Choice in Your Town!
