

# Reproductive hazards at work raise sex discrimination issues

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**NEW YORK** — Some employers are barring pregnant women and, at times, all women of child-bearing age from jobs that may pose a health threat to a fetus.

Lawyers say such "protective exclusion" policies can be a form of illegal sex discrimination. But at the same time, women who become pregnant are beginning to demand the right to transfer out of jobs they believe to be hazardous, even when there is only sketchy scientific evidence of any hazard.

That irritates employers, who do not want to accommodate unfounded fears but are wary of a barrage of liability lawsuits from children of employees citing injury before birth.

Existing labor laws, sex discrimination statutes and occupational health regulations do not directly address these new conflicts, and the courts that have faced them so far have reached differing, even contradictory, conclusions.

## 'Not well-defined'

"This question of women and reproductive hazards in the workplace is not a very well-defined legal area, and it can get very fuzzy on the edges," said Samuel Estreicher, who teaches labor law at New York University Law School.

The issues have arisen in many different settings:

✓ Last year a University of Massachusetts study found a sharply higher incidence of miscarriages among women who work in the rooms where computer chips are made. The American Telephone and Telegraph Co. immedi-

## Excluding women from jobs that may threaten the health of a fetus can be a form of illegal sex discrimination, lawyers say.

ately transferred all pregnant women in such rooms to jobs in other areas.

✓ Early this year a federal district court dismissed a sex discrimination suit against Johnson Controls Inc. that was based on the company's policy of refusing to hire fertile women for any jobs in its battery-making operations, where workers have shown high blood lead levels. The United Auto Workers, which brought the suit, has appealed, with arguments scheduled Sept. 15 before the U.S. Court of Appeals for the 7th Circuit, in Chicago.

✓ In June a study showing that women who worked extensively on video display terminals had almost twice as many miscarriages as others left many pregnant women who work on VDT's wondering whether they had a legal right to transfer to different jobs.

These cases, and others emerging from similar conflicts, have provoked fears that the issue of fetal health could be misused.

Estreicher said, "I'm even

aware of a situation where a pregnant woman worker said she nervous to be in a room where there was Xeroxing going on. She was able to arrange a transfer. We're all becoming much more safety conscious, and with all new office technologies, there's a lot of worry about hazards."

Lawyers have grappled with the issue of when employers may exclude fertile women from potentially hazardous jobs and when pregnant women may request transfers ever since several women at the American Cyanamid disclosed 10 years ago that they had undergone sterilization to keep their high-paying jobs at the company's West Virginia lead pigment plant. Those women subsequently, contending that the company had violated their civil rights, in 1983 they settled their claims for a total of \$200,000, their lawyers said.

## 'Protective exclusion'

Lawyers specializing in women's rights issues and occupational health experts say that while they are not aware of any other company that has required sterilization as a condition of keeping a job, many employers have a policy excluding women of child-bearing age from tasks that would put them in contact with substances that cause reproductive damage.

"There's more and more protective exclusion of women, even though the women who are being excluded are not always aware of it," said Joan E. Bertin, associate director of the Women's Rights Project of the American Civil Liberties Union.

"You may think it's just chemical companies and manufacturing industries, but I'm hearing about it in hospitals and research labs, and now there's the semiconductor industry and VDT workers. We've even heard that women are being asked for urine samples and told that it's for pregnancy tests."

While other women's rights lawyers and occupational health experts agree with Bertin that protective exclusion is increasing, one knows just how common it is. State officials and occupational health researchers in Massachusetts are surveying electronic and chemical companies to determine their practices related to reproductive hazards, the first attempt to measure the extent of protective exclusion.