

## The pregnant police officer: examining fairness, equity and Title VII

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### ABSTRACT

Officer Polania has worked for the Los Tesoro Police Department (LTPD) for just over three years. She has earned a reputation for being a tough but fair officer who regularly volunteers for extra shifts and who has worked on several high profile cases that were successfully prosecuted. When she discovers she is pregnant, she informs her supervisor and the HR director who inform her she must take a leave of absence without pay. Her husband consults an attorney who informs them of her rights, specifically as it relates to Title VII. This case examines the actions of the police department, HR director, and the supervisor as it relates to the issues regarding employment law and the resulting options and direction taken by Officer Polania, particularly relative to potential discrimination against women who are pregnant. The case details an actual situation with names of all officers, attorneys, and names of the police department and city disguised.

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## INTRODUCTION

Officer Angela “Pepper” Polania was hired as a Trooper for the Los Tesoro Police Department (LTPD) three years ago and has earned a reputation for being tough but fair. She regularly volunteers for extra shifts and has earned several awards and recognitions for her service within the department. Known as Pepper by her fellow officers, she has worked on several high profile cases that were successfully prosecuted. She has completed several training programs and patrol schools and currently serves as the department’s sole qualified polygraph examiner. She has missed only one day of work during her three years with the LTPD due to what she thought was a stomach bug and fatigue. After visiting her physician, she is informed that she is in fact, pregnant.

Her reaction is joy followed quickly by concerns about her career and her standing in the department she has served. She is a proud officer in a field dominated by males, and she has fought to prove herself worthy of her assignment. She is only one of seven female officers in the LTPD and has a foreboding about how her pregnancy may impact her career.

She informs her supervisor and the HR director. Her supervisor just stared at her and said, “Take it up with HR. However, the HR director emails her that she must take a leave of absence without pay. Stunned, Officer Polania makes an appointment with the HR director to determine if this is an official response by the police department. The HR director, Ms. Emily Fairchild, affirmed but offered the following additional options:

1. Take a leave of absence without pay.
2. Resign.
3. Enroll in another patrol school or other training program.

Ms. Fairchild also informed Officer Polania that “Since we probably will never change the organization, that’s your best option (referring to the third option). When Officer Polania arrived home that evening and told her husband about the conversation with the HR director, he immediately called an attorney.

This case examines the actions of the police department, HR director, and the supervisor as it relates to the issues regarding employment law and the resulting options and direction taken by Officer Polania, particularly relative to potential discrimination against women who are pregnant.

## TITLE VII

Officer Polania and her husband, after the initial, made an appointment with their attorney and shared the relevant details. The attorney, Cline Beauregard, specializes in employment law and informs Officer Polania that the police department is in violation of Title VII of the Civil Rights Act, prohibiting employment discrimination based on race, color, religion, sex, and national origin.<sup>1</sup> She was further advised that the police department should treat her pregnancy as a disability.

Because only women may become pregnant, any job discrimination encountered because of pregnancy is a violation of Title VII of the Civil Rights Act of 1964. This includes internal policies that benignly affect the pregnant worker, and intentional discrimination. (Gordon) Sex is included in the protected classes under Title VII; male and female. Employers who offer health

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<sup>1</sup> The Civil Rights Act of 1991 (Pub. L. 102-166) ( CRA ) and the Lily Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amend several sections of Title VII.

care plans must continue their coverage of the employee during the absence for the birth, and this coverage must include childbirth. (Gordon) Employers may not “force pregnant women to stop working until after birth.” They also cannot “mandate a specific leave of absence for pregnancy or birth.” (Gordon)

The Family and Medical Leave Act (FMLA) offers additional protections. Under this Act, many employees are given up to twelve weeks of unpaid leave from their jobs within a twelve-month period. They may take the leave for a variety of reasons, the most common one being the birth of a child, but there are others such as caring for family members with serious health conditions, and taking medical leave. To qualify for this, the employee must have been employed with their current employer continuously for the previous twelve months, and must have worked at least 1,250 hours of service. (FMLA) Given that the average number of hours worked for a U.S. full time employee within a year is 2,080 (FreshBooks), this number is readily achievable. To qualify for this, the employee’s company must have at least fifty employees working within seventy-five miles, or be a public agency. (FMLA) This leave also applies to the spouse of the employee taking leave.

Under the Pregnancy Discrimination Act:

1. “An employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions; and
2. Women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other persons not so affected but similar in their ability or inability to work.” (EEOC)

Any employer discriminating against a woman for being pregnant, especially in a public servant capacity, has violated laws in Title VII of the Civil Rights Act, the Pregnancy Discrimination Act, and the Family and Medical Leave Act and has drawn the ire of the U.S. Department of Labor and the U.S. Equal Employment Opportunity Commission.

## **THE DILEMMA**

Officer Polania is faced with a dilemma. Her attorney, Mr. Beauregard advised her that the police department, supervisor, and HR director have violated the law. He is anxious to represent her in a lawsuit against the police department. In fact, Mr. Beauregard’s law firm, Dewey, Soo, and Beauregard, PC, have a long history of successfully representing employment law cases, but prior to his affiliation with DS&P, PC, Beauregard had built a successful solo practice that was known for bringing cases against police officers and police departments. He himself was a former police officer and had been employed in Internal Affairs of the LTDP prior to attending law school. However, Officer Polania has no desire to cut ties with her police department. She considers herself a team player and is dedicated to police work. She desires a long career in policing and does not want to jeopardize or in any way impede her reputation as an officer. She has no desire to create problems for the police department.

There are a multitude of theoretical foundations that have links to gender roles or a woman’s presence as well as a woman’s underrepresentation in a management role. Women suffer from many different barriers while working in male-dominated workplaces. This challenge of accepting women into police work creates a distinct recognition approach since law enforcement is slow to accept women. Those who study the issue of women in the workforce, particularly as it relates to working in male dominated careers and institutions will often cite three common terms: barrier, career advancement, and career development.

Barrier refers to any invisible or artificial obstacle that hinders a female from advancing and promoting within the OHP (Budworth & Mann, 2010). Career advancement refers to the forward or progressive motion to a higher rank or position within the workplace (Chao, 2009). Career development refers to the focus of an ongoing process and lifelong sequence on the protégé's career within the organization (Single, Donald, & Almer, 2018). Through the study and analysis of industries and organizations, management has the opportunity to understand these barriers that women must overcome in male-dominated profession like law enforcement, and can implement strategies to reduce barriers, advance careers and career development among women.

### **Social role theory**

According to Franke, Crown, and Spake (1997), the social role theory is a social psychological theory that males and females will behave according to the stereotypes associated with the social roles they occupy. Moreover, the theory is flexible in the manner that people occupy multiple roles and may change behaviors accordingly (Shalen, 2015). As women continue to pursue careers, there is still a gender role expectation that women are to maintain the subordinate, lower-status role to men at home and in the workplace.

According to the social role theory, there is correspondence between the types of actions people partake in and their inner characteristics (Archer, 2012). Characteristics such as affectionate, helpful, kind, sympathetic, and gentle are used to describe women. Eagly and Karau (2002) argued that gender stereotypes follow men and women in sex-typical social roles. Thus, history has shown that women were the homemakers while men worked to provide for the family (Whetstone & Wilson, 1999). In law enforcement, which is a male-dominated field, women often experience challenges between the behaviors linked with their gender and the behaviors linked with their work identity or roles.

### **Role congruity theory**

The history of women in law enforcement has been a challenging transformation. Gutek, and Morasch (1982) argued that gender roles overflow into the workplace from home life. Gender roles are unconsciously stimulated by gender-related cues learned in home life and occurs virtually in all situations. Hence, the stereotypical female gender roles have entailed communal roles, which consist of nurturing, caring, and sensitivity (Elsesser & Lever, 2011). The general workplace had been previously viewed with distinct roles for men while the women tended to the household duties. When women did begin to enter the workforce, they were seen as subordinate and took positions such as a nurse, secretary, teacher, and so forth (Clark & Bower, 2016). Nonetheless, many police departments attempted to discourage women from applying to become police officers. However, women pursued law enforcement jobs and succeeded.

There are many different types of law enforcement agencies across the United States that range from small town departments to large federal agencies. According to Roufa (2019), the primary purpose of law enforcement is to uphold the laws of jurisdiction, investigate crimes, and provide patrol. The state and local (municipal, tribal, county, and regional) law enforcement agencies consist of local police, deputy sheriffs, special jurisdiction police, state police, and highway patrol while federal law enforcement agencies consist of the U. S. Customs and Border Protection, the Federal Bureau of Investigations (FBI), Immigration and Customs Enforcement, and the Federal Bureau of Prisons.

From guardettes and copettes to police in petticoats, women have held many law enforcement titles. In 1845, New York City hired the first female police officer as a matron (Mullenback, 2016). Up until that time, men had taken care of all the duties involving both women prisoners and any women that came into contact with the police (Snow, 2010). Many women entered law enforcement as matrons and transitioned into “protectors of women and children and as law enforcers” (p. 3) through the prison system in New York (Mullenback, 2016). Women were hired as social workers with badges and could hold no real police duties. Furthermore, women were not allowed to carry guns due to their job responsibilities.

The history of who was the first policewomen is not clearly defined. In 1893, the Chicago Police Department declared to have the first policewoman, Mrs. Marie Owens, a widow of a policeman (Mullenback, 2016; Schulz, 2004). Yet, Alice Stebbins Wells is considered the pioneer of policing for women and is widely recognized by historians as the first female police officer in the United States dating back to 1910 in the City of Los Angeles (Mullenback, 2016; Snow 2010; Schulz, 2004). Wells founded the Los Angeles Policewomen’s Association in 1925 and the Women’s Peace Officers Association in 1928. The Suffrage Movement in the late 1890s and early 1900s initiated the process of women into law enforcement (Snow, 2010). Major cities across the nation began to hire policewomen in response to female advocates demanding equal rights amongst the genders. For instance, Portland, Oregon hired the city’s first policewomen, Lola Baldwin, in 1908 (Snow, 2010).

According to Schulz (2004), Baldwin was hired to deal with social conditions threatening the moral safety of young girls and women at the 1905 Lewis and Clark Exposition. New York City followed by hiring the agency’s first detective, Isabelle Goodwin, in 1912 (Snow, 2010). Then, San Francisco hired the city’s first three policewomen, Kate O’Connor, Kathlyn Sullivan, and Kathryn Eisenhart in 1914, better known as the “Three Kates” (Snow, 2010; Schulz, 2004). Schulz (2004) stated that the United States confirmed Daisy Dickinson as the first sheriff in 1916 in Lamb County, Texas. However, at the end of World War I in 1918, a policewoman’s gains were aborted by the Depression (Schulz, 2004).

Moreover, Washington, D.C., hired two policewomen setting the tone for bureaus throughout the nation in 1915 (Schulz, 2004). According to Snow (2010), Indianapolis, Indiana had 23 policewomen by 1921. The vast increase of policewomen continued as 188 cities across the United States hired policewomen by 1925 (Schulz, 2004). However, the 1930s era was a decline for policewomen. O. W. Wilson, one of three leaders in the 1930s, brought about the dividing line between early and modern law enforcement by not advocating for expanding the roles for policewomen (Schulz, 2004). But, in the mid-1930s, police departments finally began requiring policewomen to carry firearms.

By 1939, as men were drafted into World War II, women began to fill the vacancies in the workplace again. Along with those vacancies came childcare centers, laundry services, and cooked meals to help the women perform their duties. Women fulfilled various roles nationwide until the men returned and took back their jobs by 1945. However, in law enforcement, police departments employed and retained more than 1,000 policewomen nationally during World War II. And, within five years, the number of policewomen in the United States increased considerably to a little over 2,600 (Snow, 2010). Moreover, from 1945 to 1960, the Women’s Rights Movement in the United States took place and impacted women in law enforcement which led to the 1950s being a period of growth for policewomen. Women demanded a change and began to seek mobility through police ranks. By the 1960s, the International Association of Women Police (IAP) was established, and women began uniformed patrol duties.

Unfortunately, many women encountered the same predicaments of returning to their gender-specific jobs within police departments, a situation that remained static until 1968. As history shows, policewomen played a very limited role in most police departments such as social worker, dispatcher, or a clerk. Thus, leading various groups to devote time and energy to equal rights for women. A major turning point for women in the workplace occurred on July 2, 1964. The United States legislation passed the Title VII of the Civil Rights Act of 1964 to eliminate discrimination against a person by race, color, religion, national origin and sex (Bornstein, 2009).

With the passage of the Civil Rights Act, the Equal Employment Opportunity Commission (EEOC) was created. Amended many times, Title VII currently makes it unlawful for an employer: (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin (Bornstein, 2009).

As a result of the advancing laws and movements, a total of 5,627 policewomen actively served nationally by the end of the 1960s (Schulz, 2004). In 1968, a modern, women-on-patrol took a different approach which began a new era. The Indianapolis Police Department assigned Betty Blankenship and Elizabeth Coffal to patrol becoming the first policewomen to wear uniforms, strap gun belts to their waists, drive a marked patrol car, and answer general purpose police calls on an equal basis with policemen (Schulz, 2004). Yet, the Secret Service and the Federal Bureau of Investigations did not hire female agents until 1972 as well as state police agencies hiring female state troopers (Snow, 2010). But simply hiring without adequate support is insufficient. Proactive measures such as mentoring (Whitlock, Hampton, Campbell, 2023) are also means of ensuring success for women in male-dominated work environments.

Table 1: Women Pioneers in Law Enforcement

Police Officer*	Agency	Years of Service
Penny Harrington	Portland Police Department	1985-1986
Elizabeth “Betsy” Watson	Houston Police Department Austin Police Department	1990-1992 1992-1997
Beverly Harvard	Atlanta Police Department	1992-2002

\*Note. These three women are widely considered to be pioneers in large law enforcement agencies.

According to Hughes, Ginnett, and Curphy (2009), many women remain the social role of primary caregiver in the home while taking on management roles in the workplace.

The dilemma Officer Polania faces is one encountered by many women, from a wide variety of careers. To sue is in all likelihood to gain a favorable outcome, as there are emails, documented meetings, and in spite of the candid options offered by the HR director, Ms. Fairchild is known to be honest and there is every reason she will accurately describe the options she gave whether by deposition or in court. Officer Polania’s own supervisor reiterated in a hallway discussion in front of three other officers those same options, and all three officers—in spite of their own reluctance to be at odds with the department—have assured her that they will accurately reflect the truthfulness of what she has reported. However, in doing so, she will surely

offend her supervisor and perhaps others higher in the hierarchy, and in so doing potentially gain a reputation for being a trouble-maker or bad fit for police work. What is your advice for her?

## CONCLUSION

In the end, Officer Polania requested an appointment with both her supervisor and the HR director, Ms. Fairchild. At the meeting, she sat across the table from them and stated, “Thank you for agreeing to meet with me. As you know, I was taken by surprise by response to my report that I am pregnant. When I was informed as to my three options, I was alarmed and shared my concerns with my husband. As you know, I have sought to be a team player, and love police work and my colleagues. My husband was very concerned and consulted an attorney who has advised us that your response to my pregnancy is a clear violation of Title VII. While the attorney is urging me to bring a case against the department, I want nothing except to be treated in accordance with the law and to continue my career in law enforcement with this department. I am requesting you reconsider the options you gave me.”

Her supervisor started to speak but was interrupted by the HR director. “Please accept our apologies. Let me discuss this with your supervisor and the Chief. May I contact you this afternoon?” Officer Polania nodded and politely left the room. About an hour later, the HR director contacted her and informed her, “Thank you for your patience. Again, I am sorry for the situation you were put in and you have every right to be concerned. After consulting with the Chief and your supervisor, it has been determined that the department acted improperly. On behalf of the department, we apologize. Your pregnancy is determined to be a medical condition for which accommodations will be made, including a desk assignment at current rank and pay. I assure you this will not happen again.”

With that, Officer Polania dropped her plans to bring legal action, accepted the apology, took the desk assignment for the duration of her pregnancy, and went on to have a long career within law enforcement.

## QUESTIONS

1. How many weeks are employees entitled to have of Family Leave?
2. During child bearing years, may women be restricted from being employed in dangerous jobs? Why?
3. Are women treated differently than men overall and specifically in male-dominated career fields like police work?
4. What are some actions that organizations and industries can take to ensure fairness and equity?
5. How should the supervisor handled the situation differently?
6. How should HR have managed the situation and what recommendations do you suggest for the HR department going forward?
7. Discuss the ethical issues involved in how this officer was treated regardless of the legal issues.

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