

Women Battling Infertility Find a Friend in the Court

For women struggling with infertility, the unpredictable and time-consuming treatment process can wreak havoc with work schedules, causing conflicts with bosses and triggering reprisals or layoffs. Now, a federal appeals court has come down on the side

of women, fortifying legal protections on the job.

In the first decision of its kind at the federal appeals-court level, a three-judge panel in Chicago found women who



By Sue Shellenbarger

need time off work for infertility treatment may invoke the Pregnancy Discrimination Act as potential protection against adverse action. The ruling came in a case involving Cheryl Hall, a secretary who was laid off after taking time off for in vitro fertilization, then asking for more. Without ruling on the merits of her case, the court last month set a precedent by giving Ms. Hall a green light to sue her former employer for pregnancy-related bias.

The erratic nature of infertil-

ity treatment can be frustrating for employers, interfering with planning, meetings and business travel. Some procedures require women to report to a clinic several days each month for blood tests or sonograms. Retrieving eggs from a woman's uterus is usually done with a general anesthetic, requiring recovery time. Some doctors order bed rest after embryos are transferred to the uterus. Women who have long commutes to work or a clinic, as Ms. Hall did, may need extended time off.

Ms. Hall's physician ordered her to stay in bed for several

days after an embryo transfer in 2003; she took about 20 days off, court papers show. The procedure failed and she was approved for a second leave to try again; "my boss knew everything that was going on with me," Ms. Hall says in an interview. But her supervisors singled her out for lay-off before the second leave, citing absenteeism for infertility treatments, court papers show.

Courts in other cases have held that because both men and women experience infertility, sex-bias protections don't apply. In this case, the court held that because only women undergo time-consuming in vitro fertilization, they may be protected by sex-bias law. Treatment for men usually takes less time.

The ruling suggests women will have to worry less about the "repercussions of taking time off for IVF," says Eugene Hollander, Ms. Hall's attorney. A spokesman for Ms. Hall's former employer, Nalco, declined to comment on the case, but it said the company is committed to treating all employees fairly. Nalco is seeking a rehearing before a full 11-judge panel of the court. While the decision applies only in Indiana, Illinois and Wisconsin, it could influence other courts or, if a conflict arises, trigger a Supreme Court petition.

The ruling expands a trend toward recognizing infertility as a medical problem; 13 states have laws mandating insurance plans to pay for in vitro fertilization, says the Pacific Research Insti-

tute, a think tank. Also, more employees are seeking time off for treatment under the federal Family and Medical Leave Act; this law, which entitles covered workers to up to 12 weeks' unpaid time off, may apply in some cases if a doctor certifies the treatment is for a serious health condition.

Although the ruling would seem to clear the way for employees to disclose infertility treatment at work, most women keep it secret for personal reasons, assuming they have enough job flexibility to do so. Heather Gaillard, Alexandria, Va., who underwent treatment on a former job as a university administrator, says secrecy "made it easier for me to just do my job instead of having people wonder if I was pregnant, wonder if I was going to leave, etc." She cited unspecified "medical reasons" for time off and worked late to make it up.

The only reason most women disclose the procedure is to explain their absences. Susan Derex Murphy, a Skokie, Ill., teacher, told her school principal about her treatment. Getting to work after early-morning blood tests and sonograms "was always a race against the clock," she says. Sometimes, "I'd come in late or with a bad result and be in tears."

The reward, however, was worth the struggle: The birth of a daughter.

Email sue.shellenbarger@wsj.com.