

EEOC Enforcement Guidance on Pregnancy Discrimination

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On July 14, 2014, the Equal Employment Opportunity Commission ("EEOC") issued Enforcement Guidance on Pregnancy Discrimination, which marks the first comprehensive update in over three decades. In the Enforcement Guidance, the EEOC forewarns that it will be much easier to demonstrate that pregnancy-related impairments are "disabilities" under the Americans with Disabilities Act ("ADA"). This change will expand employees' rights under the Pregnancy Discrimination Act ("PDA") and require employers to make a reasonable accommodation to pregnant employees.

While pregnancy itself is not a disability, a pregnant worker may have impairments related to their pregnancies that qualify as disabilities under the ADA even though they are temporary, such as pregnancy-related carpal tunnel syndrome, gestational diabetes, pregnancy-related sciatica, and preeclampsia. In such instances, employers will be required to consider providing light duty, alternative assignments, disability leave, or extended unpaid leave as "reasonable accommodations" for pregnant employees if it does so for employees who are similar in their ability or inability to work.

EEOC's Enforcement Guidance expands the existing protection of the PDA which protects pregnant workers from discrimination arising from current, past and potential pregnancy – even if the employer believes its actions are in the employee's best interest. Examples of "reasonable accommodations" for a pregnancy-related disability include:

1. redistributing marginal or nonessential functions such as occasional lifting that a pregnant worker cannot perform, or altering how marginal function is performed;
2. modifying workplace policies by allowing a pregnant employee more frequent breaks or access to water at their workstation;
3. modifying a work schedule for an employee who experiences severe morning sickness;
4. allowing an employee placed on bed rest to telework where feasible;

5. granting leave in addition to what an employer normally provides under a sick leave policy; and
6. temporarily reassigning an employee to a light duty position.

In essence, the PDA requires that a “covered employer” (i.e. one that employs 15 or more employees) treat women affected by pregnancy, childbirth, or related medical conditions in the same manner as other applicants, or employees who are similar in their ability or inability to work. Therefore, if an employer’s light duty policy restricts the number of light duty positions or the duration of light duty assignments, the employer may lawfully apply those restrictions to pregnant workers as long as the same criteria is used for other workers in their ability to work. Employers now must be cognizant of federal and state laws governing the treatment of pregnant employees.

EEOC’s Enforcement Guidance cautions employers that they may not deny light duty to a pregnant worker based on a policy that grants light duty to solely to those who experience an on-the-job injury. Further, employers may not discriminate against an individual whose pregnancy-related impairment constitutes a disability under the ADA and must provide the employee with a reasonable accommodation if needed, unless the accommodation would result in “undue hardship” (i.e. significant difficulty or expense). While the EEOC Enforcement Guidance on Pregnancy Discrimination - and related fact sheet - provide guidance, it is important for business owners to consult with an employment attorney to ensure they do not violate the rights of pregnant employees and that they maintain proper policies and documentation.

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