

EEOC Issues New Guidance on Pregnancy Discrimination: Pushes the Envelope on Employee Protection

The U.S. Equal Employment Opportunity Commission (“EEOC”) issued new guidance on the Pregnancy Discrimination Act (“PDA”) which updated prior guidance in light of legal developments over the past 30 years. The PDA amended Title VII to prohibit discrimination based on: current pregnancy, past pregnancy, intended or potential pregnancy as well as medical conditions related to pregnancy or childbirth. The EEOC’s guidance provides a safe harbor for employers, but may well be more protective of pregnant employees than the law requires.

Employers should be aware that the following actions may violate the PDA:

- Taking an action to protect women who have childbearing capacity or who intend to become pregnant;
- Asking employees or applicants about their intention to become pregnant;
- Taking employment actions related to a female employee’s use of contraceptives or excluding coverage for prescription contraceptives; and
- Taking an action based on a woman’s decision to have or not to have an abortion.
- Imposing policies including weight-lifting restrictions, light duty restrictions, and restrictive leave that disproportionately affect pregnant women
- Denying light duty when it is offered to similarly situated employees.

The following actions usually will not violate the PDA:

- Excluding health insurance coverage for abortions unless the woman’s life is endangered and
- Excluding infertility treatments under employer provided health insurance. (Insured plans in Connecticut must offer this coverage)

Employers must provide equal access to benefits to both pregnant and non-pregnant employees alike.

- For example, some leave policies have been found to impact pregnant women unfairly including a 10-day ceiling on sick leave and a policy denying sick leave during the first year of employment.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

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Under the Americans with Disabilities Act (“ADA”) as amended in 2008, courts have found that some pregnancy-related impairments qualify as disabilities under the Act.

- Employers must make reasonable accommodations for pregnant workers suffering from disabilities unless they can prove the accommodation causes undue hardship.

Other requirements prescribed by law that affect pregnant employees include:

- The Family and Medical Leave Act (“FMLA”) which allows 12 workweeks of leave during a 12 month period for birth and care of an employee’s child;
- Executive Order 13152 Prohibiting Discrimination Based on Status as Parent;
- Section 4207 of the Patient Protection and Affordable Care Act providing reasonable break time in a private location for women who are breastfeeding to express milk; and
- State laws which sometimes provide greater protections than the PDA. (Connecticut requires employers to offer pregnancy related disability leave; Massachusetts requires family leave)

For a list of suggested best practices, please click [here](#). Additionally, the EEOC has provided a Questions and Answers page about the new Enforcement Guidance on the Pregnancy Discrimination Act that can be found by clicking [here](#).

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