

Employment Law Update: EEOC Trends – Pregnancy Guidance

The EEOC recently released an updated Enforcement Guidance on Pregnancy Discrimination. The EEOC appears concerned that the Pregnancy Discrimination Act of 1978 (PDA) was not being properly followed when viewed in combination with Title VII and the Americans with Disabilities Act. The EEOC took the following positions in this guidance:

- Pregnancy discrimination includes discrimination based on current or past pregnancy and on a woman's potential to become pregnant;
- Lactation is a pregnancy-related medical condition and the PDA prohibits adverse treatment of lactating women;
- The PDA applies to issues related to leave for pregnancy and for medical issues related to pregnancy;
- The PDA requires employers to provide parental leave to men and women on the same terms as each other and as a woman who has given birth and takes additional leave to bond with the baby;
- While pregnancy itself is not a disability, pregnancy-related medical impairments may be a disability within the meaning of the ADA entitling the employee to a reasonable accommodation.

The EEOC's guidance offers the following best practices:

- Develop a written policy defining unlawful conduct based on pregnancy, childbirth and related medical conditions and protecting against retaliation; provide multiple avenues for complaint and respond to and investigate complaints promptly and thoroughly; take prompt remedial action;
- Train managers on your policy and on all relevant laws; review relevant federal and state laws periodically;
- Conduct employee surveys and review policies and practices that may disadvantage women based on pregnancy, childbirth or related medical conditions or that can perpetuate the effects of historical discrimination;
- During interviews or performance reviews, focus on job qualifications—do not ask about pregnancy, family, plans to have a family or related medical issues;
- Develop specific, job-related qualification standards unrelated to pregnancy, childbirth or related medical conditions and apply them equally to all eligible employees;
- Notify all eligible employees of job openings;
- Base all hiring decisions on qualifications and legally appropriate criteria;
- When possible, explain reasons for not hiring or promoting; document all hiring and promotion decisions and retain documentation for at least as long as required by statute;
- Disclose information about fetal hazards and, when possible, accommodate resulting requests for transfers.
- Review any restrictive leave policies (e.g. shorter leave for probationary workers) to see if they disproportionately impact pregnant women;
- Review policies that may limit flexibility (e.g. fixed work hours, mandatory overtime), light duty, compensation and performance appraisal systems for disparate impact on those affected by pregnancy, childbirth or related medical conditions and revise if feasible.

EEOC guidance can be found here:
http://www.eeoc.gov/laws/types/pregnancy_guidance.cfm. For more information on how these or any other employment law guidelines may affect you or your business, please

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