

EEOC ISSUES ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION

By: Joette S. Doran

On July 14, 2014, the U.S. Equal Employment Opportunity Commission (EEOC) issued Enforcement Guidance on Pregnancy Discrimination and Related Issues, along with a question and answer document about the guidance and a Fact Sheet for Small Businesses. The EEOC reports that “in 2008, a study by the National Partnership for Women & Families found that pregnancy discrimination complaints have risen at a faster rate than the steady influx of women into the workplace.”

The EEOC states that “this suggests that pregnant workers continue to face inequality in the workplace. The issues most commonly alleged in pregnancy discrimination charges have remained relatively consistent over the past decade. The majority of charges include allegations of discharge based on pregnancy. Other charges include allegations of disparate terms and conditions of employment based on pregnancy, such as closer scrutiny and harsher discipline than that administered to non-pregnant employees, suspensions pending receipt of medical releases, medical examinations that are not job related or consistent with business necessity, and forced leave.”

The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment. This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy, absent undue hardship (significant difficulty or expense). The ADA Amendments Act of 2008 makes it much easier to show that a medical condition is a covered disability.

The EEOC states that “the Enforcement Guidance is the first comprehensive update of the Commission's guidance on the subject of discrimination against pregnant workers since the 1983 publication of a Compliance Manual chapter on the subject. This guidance supersedes that document and incorporates significant developments in the law during the past 30 years.”

In addition to addressing the requirements of the Pregnancy Discrimination Act (PDA), the guidance discusses the application of the Americans with Disabilities Act (ADA) as amended in 2008, to individuals who have pregnancy-related disabilities.

With regard to the Enforcement Guidance, EEOC Chair Jacqueline A. Berrien stated that, "Pregnancy is not a justification for excluding women from jobs that they are qualified to perform, and it cannot be a basis for denying employment or treating women less favorably than co-workers similar in their ability or inability to work. Despite much progress, we continue to see a significant number of charges alleging pregnancy discrimination, and our investigations have revealed the persistence of overt pregnancy discrimination, as well as the emergence of more subtle discriminatory practices. This guidance will aid employers, job seekers, and workers in complying with the Pregnancy Discrimination Act and Americans with Disabilities Act, and thus advance EEOC's Strategic Enforcement Plan priority of addressing the emerging issue of the interaction between these two anti-discrimination statutes."

The EEOC states "that much of the analysis in the enforcement guidance is an update of longstanding EEOC policy. The guidance sets out the fundamental PDA requirements that an employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions; and that women affected by pregnancy, childbirth or related medical conditions must be treated the same as other persons similar in their ability or inability to work. The guidance also explains how the ADA's definition of "disability" might apply to workers with impairments related to pregnancy."

Among other issues, the EEOC states that the guidance discusses:

- The fact that the PDA covers not only current pregnancy, but discrimination based on past pregnancy and a woman's potential to become pregnant;
- Lactation as a covered pregnancy-related medical condition;
- The circumstances under which employers may have to provide light duty for pregnant workers;
- Issues related to leave for pregnancy and for medical conditions related to pregnancy;
- The PDA's prohibition against requiring pregnant workers who are able to do their jobs to take leave;
- The requirement that parental leave (which is distinct from medical leave associated with childbearing or recovering from childbirth) be provided to similarly situated men and women on the same terms;
- When employers may have to provide reasonable accommodations for workers with pregnancy-related impairments under the ADA and the types of accommodations that may be necessary; and
- Best practices for employers to avoid unlawful discrimination against pregnant workers.

The Enforcement Guidance, Q&A document, and Fact Sheet are available on the EEOC's website at www.EEOC.gov.

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