

July 15, 2014

EEOC Issues New Enforcement Guidance on Pregnancy Discrimination

Yesterday, the Equal Employment Opportunity Commission (EEOC) issued new enforcement guidance on the treatment of pregnant employees under the federal Pregnancy Discrimination Act (PDA), a 1978 amendment to Title VII of the Civil Rights Act, and the Americans with Disabilities Act. The EEOC's guidance is effective immediately and clarifies the EEOC's position on a number of topics involving pregnant employees. For example:

- The PDA prohibits discrimination based not only on current pregnancies, but also on past pregnancies, an employee's potential, or intention, to become pregnant in the future, infertility treatments, the use of contraception, abortion, and lactation.
- Absent proof of a bona fide occupational qualification, employees cannot be compelled to take leave just because they are pregnant.
- A broad range of pregnancy-related conditions (i.e. limitations with walking, carpal tunnel syndrome, sciatica, mandatory bed rest, depression, nausea, painful swelling) may be considered disabilities under the Americans with Disabilities Act (ADA).
- Reasonable accommodations for pregnancy-related impairments may include redistributing marginal job functions, altering how an essential or marginal job function is performed, modifying policies, modifying work schedules and providing modified or light duty work.
- Leave related to pregnancy, childbirth, or related medical conditions can be limited to women affected by those conditions, but parental leave must be provided on an equal basis to men and women.

A significant portion of the EEOC's guidance focuses on light duty work for pregnant employees. The EEOC's position is that employers must treat a pregnant employee who is temporarily unable to perform her job in the same manner as it treats other non-pregnant employees with similar limitations in their ability to work. The EEOC also maintains that if an employer provides light duty assignments to any of its employees who temporarily are unable to perform their full duties, then similar accommodations should be made for pregnant employees who cannot perform their full duties. According to the EEOC's guidance, an employer can limit the number of light duty positions that it has available to its workforce, but it cannot prohibit pregnant employees from obtaining those positions based on the source of their limitations. In other words, it is illegal to make light duty positions available only to employees whose limitations are caused by on-the-job injuries, while excluding those with limitations caused by pregnancy. The EEOC's guidance also suggests that an unpaid leave of absence is not a reasonable accommodation for a pregnant employee who can perform many of her essential job functions, or where other light duty work is available.

While the EEOC's guidance is not binding on the courts, many courts will find it persuasive. Likewise, this new guidance is a

blue print for what the EEOC will be looking for in its investigations of pregnancy charges filed under the PDA. Accordingly, employers should read the guidance and ensure that their policies and training are updated accordingly.

The EEOC's guidance and recommended best practices can be found [here](#).