

## Practice Update

# EEOC Broadens Pregnancy Discrimination Protections

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On July 14, 2014, the Equal Employment Opportunity Commission (“EEOC”) issued an updated enforcement guidance on pregnancy discrimination and related issues, and significantly widened the employee protections. The guidance addresses requirements under the Pregnancy Discrimination Act (“PDA”) and the application of the Americans with Disabilities Act, (“ADA”), as amended, to individuals with pregnancy-related disabilities.

Initially, the guidance sets out the PDA requirements that an employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions. An employer may not have policies that disproportionately affect pregnant employees unless they are job-related and consistent with business necessity. Further, an employer may not take adverse action on the basis of a past pregnancy, current pregnancy, potential or intended pregnancy, or medical conditions related to pregnancy or childbirth. Discrimination may take the form of harassment, the failure to provide light duty where provided to other employees who are similarly unable to perform their jobs, forced leave or unequal access to leave provided to other employees.

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An employer may not base its decisions on stereotypes or assumptions regarding pregnancy or related medical condition. For example, an employer may not refuse to hire a pregnant employee on the basis of an assumption that the employee will have attendance problems.

A causal connection between past pregnancy and adverse action may be found where the employee is discharged during medical or parental leave following the pregnancy. An employer may not take an employment action over concerns about workplace risks to the employee or her fetus, as such decisions must be left to the parent. Further, because an employer may not take action on the basis of an intention to become pregnant, an employer should not make inquiry of job applicants regarding such intention. In limited circumstances, infertility treatment discrimination may implicate Title VII where employees are penalized for time off taken to undergo surgical impregnation, a procedure that only applies to women. Female employees cannot be subjected to adverse action on the basis of use of contraceptives.

The guidance states that women affected by pregnancy, childbirth, or other related medical conditions must be treated the same as others not so affected but who have a similar ability or inability to work. In the most dramatic change from current law, an employer must treat a pregnant employee temporarily unable to perform her job the same as other employees temporarily unable to perform due to other circumstances and must provide similar accommodations. Thus, employers may have to provide pregnant employees with the same accommodations provided to employees with comparable disabilities. For example, if an employer offers light duty to disabled employees hurt on the job, the employer must offer the same light duty opportunity to pregnant employees.

Under the PDA, employees may not be subjected to discrimination on the basis of lactation or

breastfeeding, and employees who need to express milk must be given the same accommodations, such as leave or break time, as provided to other employees with non-incapacitating medical conditions.

Under the ADA, employees may be subjected to discrimination where the pregnancy or pregnancy-related condition qualifies as a disability and the employee has a disability, has a record of a disability, or is regarded as having a disability. Pregnant employees whose condition meets the expanded definition of disabilities under Americans with Disabilities Act Amendments Act of 2008 must be provided with reasonable accommodations.

Significantly, the guidance states that “[c]hanges to the definition of the term ‘disability’ resulting from the enactment of the ADA Amendments Act of 2008 make it much easier for pregnant workers with pregnancy-related impairments to demonstrate that they have disabilities for which they may be entitled to reasonable accommodation under the ADA.” Such accommodations may include more frequent breaks, altering how job functions are performed, or providing a temporary assignment to a light duty position.

The above only highlights the provisions of the thirty-page guidance. Employers are encouraged to read the guidance in its entirety and the accompanying Questions and Answers document. Clearly, the guidance will result in an increase in pregnancy-related claims under the PDA and ADA, and employers must ensure that their policies and supervisory actions are in compliance with the current EEOC standards.

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