

Practice Update

Florida Civil Rights Act Prohibits Pregnancy Discrimination

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The Florida Civil Rights Act prohibits pregnancy discrimination in employment, according to an April 17th decision by the Florida Supreme Court, *Delva v. The Continental Group, Inc.*, Case No. SC12-2315 (Fla. April 17, 2014).

Resolving a split among Florida appellate courts, Florida's highest court ruled that the FCRA's prohibition on sex discrimination in employment includes a prohibition on pregnancy discrimination, "which is a natural condition and primary characteristic unique to the female sex," according to the court's opinion. The court concluded that this interpretation of the statute is consistent with legislative intent, "as expressed in the FCRA itself, that the FCRA 'shall be liberally construed.'" The court rejected the employer's argument that the Florida legislature's failure to amend the FCRA specifically to include pregnancy discrimination, similar to the way Congress amended Title VII of the Civil Rights Act with the Pregnancy Discrimination Act of 1978 (PDA), evidenced the Florida legislature's original intent not to include pregnancy within the meaning of sex discrimination.

The *Delva* decision does not change Florida employers' legal obligations. As noted by Judge Polston in his dissent, Florida employers with 15 or

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more employees have been prohibited from engaging in pregnancy discrimination in the workplace since passage of the PDA in 1978. The Delva decision merely conforms the FCRA, which also covers employers with 15 or more employees, to the existing standards of federal law.

But the Delva decision will have two significant practical effects. First, because state court judges are generally less inclined than federal judges to grant employers' motions for summary judgment, Delva will encourage plaintiffs to sue for pregnancy discrimination in state court under the FCRA rather than in federal court under Title VII. The result is that the defense of pregnancy discrimination claims will be more difficult. Second, because the FCRA does not contain a cap on compensatory damages like its federal counterpart, employers defending pregnancy discrimination claims under the FCRA will be subject to greater potential liability.

In short, while the Delva decision does not change Florida employers' legal obligations toward pregnant employees, it makes compliance with those legal obligations more critical than ever.

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