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EEOC Issues New Enforcement Guidance on  
Pregnancy Discrimination

The U.S. Equal Employment Opportunity Commission (“EEOC”) recently issued **enforcement guidance, a question-and-answer guide, and a fact sheet** for small businesses regarding employer obligations under the Pregnancy Discrimination Act of 1978 (“PDA”), which amended Title VII of the Civil Rights Act of 1964, along with other federal laws. This enforcement guidance (“Guidance”) sets forth the EEOC’s policies relating to pregnancy-based employment discrimination prohibitions. Specifically, the EEOC has set forth a more expansive view of the protections to be afforded to pregnant employees by extending employer obligations to provide reasonable accommodations under the Americans with Disabilities Act (“ADA”) to such employees.

The Pregnancy Discrimination Act makes it unlawful to discriminate in the workplace based on pregnancy, childbirth, or related medical conditions. It also requires that women affected by pregnancy, childbirth, or related medical conditions be treated the same as “other persons not so affected but similar in their ability or inability to work.” The Guidance addresses the relationship between the PDA and the ADA. Absent undue hardship, the ADA requires an employer to provide a reasonable accommodation to an employee or job applicant with a disability. Though pregnancy itself is not an established ADA qualified “disability,” the Guidance provides that pregnancy-related impairments may

so qualify as disabilities under the ADA. The Guidance further offers examples, such as pregnancy-related sciatica, gestational diabetes, and preeclampsia, as impairments that may substantially limit one or more major life activities, and thus, would constitute a disability under the ADA, potentially requiring a reasonable accommodation.

In the absence of a pregnancy-related impairment that qualifies as a disability under the ADA, the Guidance may still require accommodations for pregnant employees in certain circumstances. Drawing on the PDA’s requirement that pregnant individuals be treated the same as others similar in their abilities or inabilities to work, the Guidance provides that:

“[I]f a pregnant worker requests a change that the employer is providing as a reasonable accommodation to a co-worker with a disability, the employer may evaluate the pregnant employee’s request in light of whether the change would constitute an ‘undue hardship,’ since this would amount to treating the pregnant employee the same as an employee with a disability whose accommodation request would also be subject to the defense of undue hardship.”

On a related point, the Commission also takes the position that an employer is required to provide light duty to a pregnant employee if it provides light duty for

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employees who are not pregnant but similar in their ability or inability to work. Specifically, the new Guidance states:

“The Commission rejects the position that the PDA does not require an employer to provide light duty for a pregnant worker if the employer has a policy or practice limiting light duty to workers injured on the job and/or to employees with disabilities under the ADA.”

This represents a very broad interpretation of the PDA, but is unlikely to be the final word on the matter for long. The Supreme Court has agreed to review a decision by a federal appellate court holding that the PDA does not require employers to offer light duty to pregnant employees with work restrictions, even if light duty is available for certain categories of non-pregnant employees. Clearly, this ruling is directly at odds with the Guidance.

A legislative initiative is also in the works; the Pregnant Workers Fairness Act is pending before Congress, and seeks to amend the PDA to require employers to grant reasonable accommodations for pregnant workers, an obligation the Guidance presumes already exists in the PDA. The bill was introduced in 2013 and has been referred to committee in both the House and Senate. While the bill enjoys strong Democratic support, including that of President Obama, it currently lacks the bipartisan support it would need to pass in the House.

In addition to its controversial stance on accommodations for pregnant employees, the following are some of the additional,

noteworthy positions set forth in the Guidance:

- The PDA protects not only employees who are currently pregnant, but also bars discrimination based on past pregnancy and a woman’s potential to become pregnant;
- Lactation is a covered pregnancy-related medical condition;
- Employers may not take an adverse employment action against a pregnant employee due to concern about her health and safety if the employee is able to perform her job; and
- Parental leave (which is distinct from medical leave associated with childbearing or recovering from childbirth) must be provided to similarly situated men and women on the same terms.

The Connecticut Fair Employment Practices Act also prohibits employers from discriminating on the basis of pregnancy or disability. Employers may not refuse to grant an employee a reasonable leave of absence for a disability resulting from her pregnancy. In addition, an employer must make a reasonable effort to transfer a pregnant employee to any suitable temporary position which may be available when an employee has given written notice of her pregnancy and the employer or employee believes that continued employment in the position held may cause injury to the employee or to the fetus.

Employers should stay tuned for updates on this topic. In the meantime, they

should review their anti-discrimination, benefits, leave of absence, light duty, and accommodation policies to ensure compliance. Furthermore, and equally important, managers and human resources professionals should be trained on the requirements of the PDA, the ADA, and the Family and Medical Leave Act, particularly as they relate to the duty to accommodate restrictions arising in connection with pregnancy, childbirth, or lactation. Keep in mind that while the guidelines do not carry the force of law, they provide a clear statement of what the EEOC’s position will be on these issues when investigating allegations by protected employees under any of these laws.

*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*