



## EEOC Issues New Enforcement Guidance on Pregnancy Discrimination

07.18.2014

BY: LAURA D. WINDSOR AND ERICA MITCHELL\*

Most employers are generally familiar with the 1978 Pregnancy Discrimination Act (PDA) and its prohibition of employment discrimination based on pregnancy, childbirth, or pregnancy-related medical conditions. On July 14, 2014, for the first time in over thirty years, the EEOC issued Enforcement Guidance on pregnancy discrimination that suggests that the PDA's coverage may be much broader than many employers previously thought.

First, as described in detail in the EEOC Guidance, the PDA covers much more than just pregnancy. The PDA also prohibits employment discrimination based on an employee's:

- Past pregnancies;
- Potential or intended pregnancy;
- Use of contraception;
- Infertility treatment;
- Lactation and breastfeeding;
- Abortion; and
- Reproductive risk.

Next, the EEOC Guidance describes in detail the interplay between the PDA and Americans with Disabilities Act, as it was amended in 2008 (ADA). Although pregnancy in and of itself is not a disability within the meaning of the ADA, the EEOC Guidance notes that pregnant workers may have impairments *related* to their pregnancies that could qualify as ADA-covered disabilities. As such, a pregnant employee may be entitled to an ADA reasonable accommodation for her pregnancy-related disability. For example, preeclampsia and gestational diabetes are pregnancy-related conditions that could implicate ADA accommodation requirements. Therefore, an employer could be required to allow a pregnant employee with preeclampsia to take a leave of absence as an accommodation for her medical condition if the employer would allow leave for other employees who are similarly unable to work due to non-pregnancy-related medical conditions.

The Guidance also provides compliance assistance relating to employers' parental leave policies.

The EEOC advised that employers should carefully distinguish between leaves of absence related to pregnancy or childbirth and other parental leave benefits for the purpose of allowing a new parent to bond with her child. The Guidance explained that if an employer provides parental leave to new mothers, it cannot lawfully fail to provide an equivalent amount of parental leave to new fathers for the same purpose. For example, if an employer provides six months of paid leave for a new mother to bond with her baby, but does not provide paid parental leave for new fathers, the policy is discriminatory because it does not treat women and men equally.

The Guidance also sets forth the EEOC's position on pregnant employees' access to light duty assignments. The EEOC Guidance concludes that the PDA requires an employer to treat a pregnant employee who is temporarily unable to perform the functions of her job because of her pregnancy or a pregnancy-related medical condition the same as it treats other employees who are unable to perform their regular duty jobs because of a non-pregnancy-related impairment. In other words, if a pregnant employee needs a light duty assignment, and the employer offers light duty assignments to other disabled or temporarily impaired workers, it must also offer that light duty assignment to the pregnant employee.

This pregnancy accommodation and light duty assignment issue has been the subject of recent debate in the courts. Most notably, in 2013 in *Young v. United Parcel Service, Inc.*, the Fourth Circuit Court of Appeals found that, if an employer has a policy that limits the availability of light duty positions to employees who are injured on the job, the employer does not violate the PDA by refusing to provide light duty assignments to a pregnant worker. The Court found that UPS's light duty policy was gender-neutral and, thus, not discriminatory. The new EEOC Guidance, of course, directly conflicts with that opinion. On July 1, 2014, the U.S. Supreme Court granted Ms. Young's petition for review of the Fourth Circuit's decision. The Supreme Court's decision could undercut or bolster the EEOC's interpretation of the PDA, and employers should expect even more developments on the PDA later this year.

*\*law student at University of Michigan Law School*

## **Related People**

- Laura D. Windsor ? 804.420.6466 ? lwindsor@williamsmullen.com

## **Related Services**

- Labor, Employment & Immigration