

PREGNANCY DISCRIMINATION - EEOC ISSUES IMPORTANT ENFORCEMENT GUIDANCE

The Equal Employment Opportunity Commission on July 14, 2014 issued [Enforcement Guidance on Pregnancy Discrimination and Related Issues](#), along with [Questions and Answers](#) about the guidance and a [Fact Sheet for Small Businesses](#).

This is the first comprehensive update of the EEOC's guidance on the subject of discrimination against pregnant workers since 1983. This guidance supersedes the EEOC's previous guidance and incorporates significant developments in the law during the past 30 years. In addition to addressing the requirements of the Pregnancy Discrimination Act ("PDA"), the guidance discusses the application of the ADA to individuals who have pregnancy-related disabilities.

UPDATE ON EEOC POLICY

Much of the analysis in the enforcement guidance is an update of longstanding EEOC policy. The guidance sets out the fundamental requirement that an employer may not discriminate against an employee on the basis of pregnancy, childbirth or related medical conditions and that women affected by pregnancy, childbirth or related medical conditions must be treated the same as other persons similar in their ability or inability to work. The guidance also explains how the ADA's definition of "disability" might apply to workers with impairments related to pregnancy.

BROAD SCOPE

Among other issues, the guidance discusses:

- The fact that the PDA covers not only current pregnancy but discrimination based on past pregnancy and a woman's potential to become pregnant;
- Lactation as a covered pregnancy-related medical condition;
- The circumstances under which employers may have to provide light duty for pregnant workers;
- Issues related to leave for pregnancy and for medical conditions related to pregnancy;
- The PDA's prohibition against requiring pregnant workers who are able to do their jobs to take leave;
- The requirement that parental leave (which is distinct from medical leave associated with childbearing or recovering from childbirth) be provided to similarly situated men and women on the same terms;
- When employers may have to provide reasonable accommodations for workers with pregnancy-related impairments under the ADA and the types of accommodations that may be necessary; and
- Best practices for employers to avoid unlawful discrimination against pregnant workers.

WHAT TO DO NOW?

Employers should understand that the EEOC has identified pregnancy discrimination as a crucial issue that has resulted in the filing of more charges. The new guidance appears to blend the obligations to reasonably accommodate individuals with disabilities under the ADA with the obligation under the PDA not to discriminate. The result seems to indicate that employers must consider reasonably accommodating employees who are, were or may become pregnant. That issue is set to be heard by the U.S. Supreme Court in its next term and will decide whether employers that provide work accommodations to non-pregnant employees must also provide work accommodations to pregnant employees with similar work limitations. In any event, it is important for all employers to review their current policies and practices regarding accommodating employees affected by current, past or future pregnancies.

If you have any questions, please contact Steve Lyman at Slyman@hallrender.com or your regular Hall Render attorney.