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EEOC revises framework for how to treat pregnant workers

The Equal Employment Opportunity Commission recently published revised enforcement guidance regarding the Pregnancy Discrimination Act, expanding its protections and, significantly, making clear that many pregnancy-related medical conditions will constitute “disabilities” under the Americans with Disabilities Act.

The EEOC’s July 14 guidance contains several important points. Foremost, the EEOC has taken the position that many pregnancy-related medical conditions come under the ADA. If an employee has a pregnancy-related disability that is covered by the ADA, the employer is required to provide a reasonable accommodation to the employee and is prohibited from discriminating against the employee on the basis of the disability.

For example, according to the EEOC, if an employee suffers from pregnancy-related complications requiring bed rest, the after-effects of labor or delivery, pregnancy-related carpal tunnel syndrome, gestational diabetes, pregnancy-related sciatica and preeclampsia (pregnancy-induced high blood pressure), the employee will be covered by the ADA. In these instances, the employer would be required to provide a reasonable accommodation to the employee so that she could perform the essential functions of her position, similar to if the employee had any other disability, such as cancer or diabetes.

The EEOC provided several examples of potential reasonable accommodations for employees with pregnancy-related disabilities, including:

- Redistributing ancillary job functions (e.g., occasional lifting) that a pregnant employee cannot perform, or altering how an essential job function is performed.
- Modifying workplace policies

by allowing a pregnant employee more frequent breaks or allowing her to keep a water bottle at a workstation, even though that employer generally prohibits employees from keeping drinks at their stations.

- Shifting a work schedule so that a pregnant employee experiencing severe morning sickness can arrive later than usual and leave later than the usual stop time (to make up the time missed).

- Allowing a pregnant employee placed on bed rest to telecommute, where feasible.

- Granting additional leave to a pregnant (or recently pregnant) employee beyond the amount of leave generally provided by a sick leave policy.

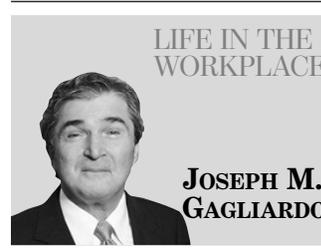
- Purchasing or modifying equipment, such as a stool for a pregnant employee who needs to sit while performing tasks typically performed while standing.

- Temporarily assigning an employee to light duty.

Notably, the guidance also addresses parental leave taken by male employees.

The guidance also provides that employers must treat pregnant employees the same as other employees similar in their ability or inability to work. Therefore, if a pregnant employee is not able to work for pregnancy-related medical reasons, that employee has the same rights as other employees with regard to leave privileges and other benefits. Thus, employers must apply their leave policies uniformly to employees for pregnancy-related conditions as they would to employees with different conditions.

Employers should be cautious, however, not to take any “altru-



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istic” measures, against the employee’s wishes, with the intent of benefiting pregnant employees. For example, employers should be cautious to not transfer a pregnant employee out of a position that involves strenuous activity or exposure to chemicals if the employee does not want to be transferred from the position.

As another example, employers should not force a pregnant employee to stop working during the latter stages of her pregnancy if the employee wishes to continue. This is so because, according to the EEOC, “An employer’s concern about risks to the employee or her fetus will rarely, if ever, justify sex-specific job restrictions for a woman with childbearing capacity.”

Another key point highlighted by the guidance is that the protections of the PDA are not limited to employees who currently are pregnant. Thus, according to the EEOC, if an employee is fired “during her pregnancy-related medical leave (i.e., leave provided for pregnancy or recovery from pregnancy) or her parental leave (i.e., leave provided to bond with and/or care for a newborn or adopted child), and if the employer’s explanation for the discharge

is not believable, a violation of Title VII [and the PDA] may be found.”

The guidance also addresses lactating mothers and provides that an employee who is lactating “must have the same freedom to address such lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions.”

“If an employer,” the EEOC explains, “allows employees to change their schedules or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances.”

In addition, prudent employers should note that, with regard to lactating employees, employers are required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.”

Notably, the guidance also addresses parental leave taken by male employees. The EEOC has taken the position that parental leave must be provided to similarly situated men and women on the same terms. “If, for example, an employer extends leave to new mothers beyond the period of recuperation from childbirth (e.g., to provide the mothers time to bond with and/or care for the baby), it cannot lawfully fail to provide an equivalent amount of leave to new fathers for the same purpose.”

Clearly, the EEOC guidance contains many important takeaways for employers. Prudent employers should review and, if necessary, revise their employment policies (particularly their leave and disability-related policies) to limit potential liability for pregnancy discrimination claims.