

Accommodations for Pregnant Employees

When handling requests, employers should heed Court decisions and their implications

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MEDICAL PRACTICES face challenges when handling employee requests for temporary disabilities. The Americans with Disabilities Act (ADA) requires employers to engage in an interactive process to accommodate an employee's disability so the worker can perform the essential job function. The Family and Medical Leave Act (FMLA) requires employers to allow employees to take medical leave for a qualifying medical condition. These requirements apply equally to an employee who suffers impairments related to a pregnancy.

Impairments Under the ADA

In 2008, the ADA was amended to make it much easier for an employee to demonstrate that a medical condition is a covered disability. Thus, impairments resulting from pregnancy, such as gestational diabetes or preeclampsia, may qualify as disabilities under the ADA.

An employee who is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth must be treated in the same way as any other temporarily disabled employee. Thus, an employer must offer a reasonable accommodation. This can take the form of temporary leave, light duty or modification that enables an employee to perform her job due to a disability related to pregnancy. An accommodation must be provided unless it would result in significant difficulty or expense to the employer.

Leave Under the FMLA

Practices with 50 or more employees may also need to comply with the FMLA when a pregnant employee seeks leave for a serious health condition. The FMLA entitles eligible employees with up to 12 weeks of unpaid leave in a 12-month period.

The FMLA provides that employees seek leave 30 days in advance if the leave is foreseeable. In addition, employees should provide an anticipated return to work date when feasible. However, pregnant employees who develop complications often require leave that is not foreseeable and often are not certain of a return to work date.

The Seventh Circuit Court has held that a former employee of a residential nursing care facility did not relinquish her FMLA rights despite not providing an anticipated return to work date because her leave was unforeseeable. In *Gienapp v. Harbor Crest*, the court reversed the lower court's decision and held that the FMLA does not require

employees to specify how much leave time they will need if they do not yet know. The Seventh Circuit held that the employer violated the FMLA when it hired a replacement because the employee's leave was "unforeseeable."

Protections Under the PDA

The Pregnancy Discrimination Act of 1978 (PDA) creates further protections. The Act forbids discrimination based on pregnancy related to any aspect of employment, including hiring, firing, compensation, job assignment, promotion, or a fringe benefit, such as leave policies and health insurance.

In a Supreme Court decision, *Young v. United Parcel Service*, the court held that an employer may be required to provide a reasonable accommodation to pregnant workers if it accommodates non-pregnant employees with similar requests. This is in addition to ADA accommodations for medical conditions arising from pregnancy.

The Supreme Court's recent decision involved the denial of light duty work to a UPS driver. As an employee she was expected to lift packages of up to 70 pounds. But after the employee became pregnant, her doctor advised lifting no more than 20 pounds early in her pregnancy and 10 pounds after 20 weeks. UPS denied the request for light duty, and the employee was forced to take leave without pay. She sued UPS alleging its conduct violated the PDA because UPS had accommodated other non-pregnant workers with lifting restrictions.

Rejecting UPS' argument that the PDA simply prohibits discrimination based on pregnancy and does not require accommodations, the court held the Act requires pregnant employees to be treated the same way as other employees who are "similar in their ability or inability to work." Thus, a denial of an accommodation to a pregnant employee that is offered to other similarly situated non-pregnant employees may violate the PDA.

This decision has obvious implications for medical practices who require staff to perform physically taxing work. As such, employers must follow the Supreme Court's guidance when a pregnant employee requests an accommodation.

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"The clear lesson is that employers should tread carefully when handling requests for leave from employees when the leave is unforeseeable and no specific return to work date is provided."