

HR Weekly Podcast 08/06/2014

Today is August 6, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns new guidelines on pregnancy discrimination recently released by the Equal Employment Opportunity Commission, or the EEOC.

For the first time in over 30 years, the EEOC has issued enforcement guidance on pregnancy discrimination. On July 14, 2014, the EEOC issued the Enforcement Guidance: Pregnancy Discrimination and Related Issues, as well as a questions and answers document about the guidance and a fact sheet for small businesses. The guidance sets out the Pregnancy Discrimination Act, or PDA, requirements 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 employees who are similar in their ability or inability to work. In addition, the guidance includes how the 2008 amendments to the Americans with Disabilities Act, or ADA, as amended by the ADA Amendments Act of 2008, or the ADAAA, may apply to employees with pregnancy-related disabilities.

The EEOC suggests that employers develop, distribute, and enforce policies addressing the types of conduct that would constitute unlawful discrimination based on pregnancy, childbirth, and related medical conditions, and to ensure that those policies provide multiple avenues for raising concerns. It also encourages employers to develop specific, job-related qualification standards for each position that reflect the position's duties and minimize the potential for gender stereotyping and discrimination on the basis of pregnancy, childbirth, or related medical conditions. Also, the EEOC's Guidance suggests that employers evaluate restrictive leave policies to determine whether they disproportionately impact pregnant workers and, if so, whether they are necessary for business purposes. The Guidance suggests that employers ensure that any such policies indicate that employees may qualify for leave as a reasonable accommodation. It also states that leave related to pregnancy, childbirth, or related medical conditions can be limited to women affected by those conditions, but parental leave must be provided to similarly situated men and women on the same terms. The EEOC further encourages employers to review workplace policies that limit employee flexibility, such as fixed hours of work and mandatory overtime, to ensure that they are necessary for business purposes. The Guidance suggests that employers should, when feasible, temporarily reassign job duties that employees are unable to perform because of pregnancy or related medical conditions.

The EEOC encourages employers to have a process in place for considering reasonable accommodation requests and to state explicitly in any written accommodation policy that reasonable accommodations may be available to individuals with temporary impairments, including those related to pregnancy. In addition, employers should train managers to recognize requests for reasonable accommodation and that the definition of the term "disability" is broad.

The Guidance also details employer obligations regarding employees who are breastfeeding, stating that lactation is a pregnancy-related medical condition under the PDA. A breastfeeding employee "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."

The EEOC's Guidance is not binding law, but is the standard the EEOC will use when evaluating discrimination complaints. The EEOC's enforcement guidance, as well as the questions and answers document and fact sheet, can be found at www.eeoc.gov. If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.