

Claims of Workplace Pregnancy Discrimination Increase July 17, 2008

According to the EEOC, more women are pursuing claims of pregnancy discrimination, up almost 14% to 5,587, in the period FY 2007. Attention was recently given to this in a Wall Street Journal article by Sue Shellenbarger, March 2008, who pointed out that the recent increase in claims may be due to women working longer into their pregnancy and the presence of advocacy groups such as the National Partnership for Women and Families, the 9 to 5 National Association of Working Women, and Women Employed. Claims of Workplace Pregnancy Discrimination concern women who believe they have been fired, demoted or otherwise treated improperly by employers because of their pregnancy.

The Pregnancy Discrimination Act (PDA), an Amendment to Title VII of the Civil Rights Act of 1964, was passed in 1978 to address issues of unlawful gender discrimination on the basis of pregnancy, childbirth or related medical conditions. Through the PDA, rights were created; the right against being adversely treated because of pregnancy and the right to be treated like other employees concerning temporary disability when pregnant, ill, and unable to work. Employers with fifteen or more employees cannot refuse to hire a woman solely because of her pregnancy as long as she is able to perform the major functions of her job. Similarly, a pregnant woman may not be fired simply because she is pregnant. If a woman becomes temporarily unable to perform her job due to pregnancy related health issues, she must be treated as any other employee with a temporary disability. She must be permitted to work as long as she is able to perform the essential tasks of her job, and extending reasonable accommodations to her is mandatory. If she must be absent from work as a result of a pregnancy related condition and recovers, she may not be required to remain out of work by the employer. Employers must keep the pregnant woman's job open for her the same length of time jobs are held open for other employees on sick or disability leave. She also has rights under the Family Medical Leave Act (FMLA).

A review of the EEOC statistics for FY 2007 finds the following: of the 5,587 cases alleged and received, 51.6% were found to have "no reasonable cause," 3.7% were determined to have "reasonable cause" and about 45% were, therefore, undetermined. Many of the undetermined cases find their way into court cases for resolution. Lastly, the EEOC reported in 2007 that \$30M in benefits was obtained, not counting those acquired through litigation.

News/Event:

According to the EEOC more women are filing cases of pregnancy related discrimination.

Analysis:

The Pregnancy Discrimination Act (1978) is an Amendment to Title VII of the Civil Rights Acts of 1964; it prohibits discrimination on the basis of pregnancy, childbirth or related medical conditions.

Application:

Generally, forensic psychiatrists will soon notice an increase in the number of requests made for evaluations relating to claims of pregnancy discrimination.

Cases of normal and uncomplicated pregnancy may be rather straight forward concerning the claim of discrimination, and the facts of the case will rest primarily on employment records and workplace deposition transcripts. The emotional impact of an alleged wrongful termination or demotion may become an issue for evaluation.

Cases in which the pregnancy was complicated and/or at high risk may involve issues about whether the individual was able to return to work prior to, and perhaps well after, the delivery. In these situations it will be important to remember that a variety of medical problems can worsen during pregnancy including pre-existing cardiovascular, pulmonary, renal and hepatic disease. Metabolic and endocrine disorders are also known to develop and/or worsen during pregnancy. Physical and mental disorders may become relevant issues in the litigation of these cases. While pregnancy is generally well tolerated, even by those with a significant mental health history, there are exceptions, and the fact of pregnancy may have necessitated an alteration in the psychopharmacologic approach. After delivery some women develop postpartum depression, which may become a significant source of disability. Forensic psychiatric evaluation in complex cases may be particularly relevant to the issues before the court concerning claims of pregnancy discrimination in the workplace.