

PUBLICATION

Baby on Board: The EEOC's Updated Enforcement Guidance on Pregnancy Discrimination

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July 16, 2014

On July 14, the Equal Employment Opportunity Commission issued updated enforcement guidance on pregnancy discrimination and related issues. "In addition to addressing the requirements of the Pregnancy Discrimination Act ("PDA")," explained the EEOC's press release, "the guidance discusses the application of the Americans with Disabilities Act ("ADA") as amended in 2008, to individuals who have pregnancy-related disabilities."

EEOC Chair Jacqueline A. Berrien identified the reason for the updated guidance:

Despite much progress, we continue to see a significant number of charges alleging pregnancy discrimination, and our investigations have revealed the persistence of overt pregnancy discrimination, as well as the emergence of more subtle discriminatory practices. This guidance will aid employers, job seekers, and workers in complying with the Pregnancy Discrimination Act and Americans with Disabilities Act, and thus advance EEOC's Strategic Enforcement Plan priority of addressing the emerging issue of the interaction between these two anti-discrimination statutes.

As part of its rollout, the EEOC has also issued a Q&A document as well as a fact sheet. Each of these documents, including the enforcement guidance, may be accessed below.

Much of the EEOC's guidance is focused on the PDA's interrelation with the ADA. The ADA was amended in 2008, and the amendments, in part, substantially broadened the definition of "disability" under the ADA. In its guidance, the EEOC stresses the point that pregnancy or a related medical condition/impairment will almost inevitably be considered a disability under the ADA. This means that employers must be mindful of their obligation to engage in the interactive process should a pregnant or recently pregnant employee raise a concern about *any* medical condition or impairment. The EEOC has demonstrated a strong commitment to expanding the powerful reach of the ADA, and pregnancy-related discrimination provides yet another area for expansion.

We can also expect increased EEOC scrutiny with regard to the issue of leave. The EEOC notes in its guidance that leave in addition to that provided under an employer's normal leave policy may be a reasonable accommodation that must be provided to an employee suffering from a pregnancy-related medical condition or impairment. The EEOC further makes clear that it will look unfavorably on policies that require a pregnant employee to go on leave because the employer believes the employee poses a direct threat to her own or others' safety in the workplace. Additionally, with regard to leave, the EEOC highlights a cautionary example in which an employer unlawfully discriminates by denying a male employee leave to care for an infant child but granting such leave to a female employee. Requests for leave are common in the workplace, and given the EEOC's recent and heightened focus on them, employers need to be responsive to such requests and document well the reasons such requests were granted or denied.

The issuing of enforcement guidelines means pregnancy discrimination is glowing bright on the EEOC's radar. As it did after it issued updated guidance on criminal background checks, the EEOC's next move will be to

increase the number of pregnancy-related lawsuits (or enforcement actions) that it files against employers. The EEOC will do this in an effort to have its enforcement guidelines adopted by the courts. How the courts will respond to the guidelines remains to be seen. For now, employers need to be cautious in how they approach any pregnancy-related issue in the workplace.