

PUBLICATION

Wait A Minute? Is Pregnancy a Disability Now?

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On July 14, 2014, the Equal Employment Opportunity Commission issued guidance relating to pregnancy discrimination. Since that time, in federal courts around the country the EEOC has filed multiple lawsuits on behalf of plaintiffs asserting violations of the Pregnancy Discrimination Act (PDA) and various other federal anti-discrimination laws. This is a hot topic for employers and an area for potential landmines, because the pregnancy factor implicates not only the PDA, but also the Americans with Disabilities Act (ADA), FMLA and various state laws.

Pregnancy alone under the ADA is not a disability. However, the ADA defines the term "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having a disability. Under the Americans with Disabilities Act Amendment Act (ADAAA), there is no requirement that an impairment must last a particular length of time to be considered substantially limiting. As such, several major life activities such as walking, standing and lifting may be affected by impairments related to pregnancy. Therefore, many courts have held that pregnancy-related impairments may be disabilities within the meaning of the ADA, even though pregnancy itself is not a disability. For instance, pelvic inflammation causing severe pain and difficulty walking and resulting in a doctor's recommendation that an employee have certain work restrictions and take early pregnancy-related medical leave, and complications related to a pregnancy in a breech presentation that required visits to the emergency room and bed rest in another case, have both been held as disabilities.

As a result, a pregnant employee may be entitled to a reasonable accommodation under the ADA for limitations resulting from the pregnancy-related condition that constitutes a disability or for limitations resulting from the interaction of the pregnancy with an underlying impairment. A reasonable accommodation is a change in the workplace or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job's essential functions, or enjoy equal benefits and privileges of employment. Examples include, but are not limited to, redistributing marginal functions that the employee is unable to perform, altering how an essential or marginal function is performed, modifying workplace policies, purchasing or modifying equipment and devices, modifying work schedules, and granting leave, in addition to what an employer would normally provide under a sick leave policy for reasons related to the disability.