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annually. While sexual harassment and gender equity issues often garner more attention, how to deal with a pregnant employee who may have work limitations continues to vex ...

Richard D. Alaniz • May. 24, 2022

Women comprise over half the American workforce, and that number increases annually. While sexual harassment and gender equity issues often garner more attention, how to deal with a pregnant employee who may have work limitations continues to vex employers. It's an issue that's often a source of consternation, and if improperly handled could result in legal liability to employers.

In 1978 Congress passed the Pregnancy Discrimination Act (PDA), which established

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Priority" under the 2017–2021 EEOC Strategic Enforcement Plan (SEP).

The Americans with Disabilities Act (ADA) also imposes certain employer obligations regarding pregnancy. Generally, the ADA requires employers to provide reasonable accommodation to employees with a "disability" that affects their ability to perform their job. While pregnancy is not a disability, numerous pregnancy-related conditions qualify as disabilities requiring employers to potentially provide accommodation. The ADA Amendments Act (ADAAA) passed in 2009 expanded the definition of a "disability." Thus, pregnancy-related impairments might more easily qualify as "disabilities" today than before the amendments. For example, the following pregnancy-related conditions could constitute a disability under the ADAA: anemia, depression, gestational diabetes, morning sickness, preeclampsia, and swelling of the feet and legs.

The Supreme Court addressed employers' responsibility to accommodate pregnant employees in 2015. In the case of *Young v. UPS*, the Court ruled in favor of a pregnant UPS driver who challenged UPS's denial of light duty work assignments during pregnancy to accommodate her lifting restrictions. UPS had successfully argued before the lower courts that light duty was properly reserved for employees injured on the job and that pregnancy was not similar. The Court concluded that an employer is required to offer a reasonable accommodation to a pregnant employee to the same extent that it offered an accommodation to any other employee that was similarly limited.

In 2019 the House of Representatives proposed a bill entitled The Pregnant Workers Fairness Act with the stated purpose of clarifying the ruling in the *Young v. UPS* case. It was contended that despite the provisions of the PDA and the *Young* decision, similar situations of pregnant employees denied accommodation continued to arise in many workplaces. According to Gillian Thomas, a senior attorney with the ACLU's Woman's Rights Project, "[r]oughly a quarter of a million women a year do not get

the accommodations they need to keep working." She noted despite the clear legal

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condition. This is true even if the employer believes it is acting in the employee's best interest. Similarly, an employer may not discriminate based upon an employee's intention or potential to become pregnant. Nor may an employer force an employee to take leave because she is pregnant. If the employee is limited in the performance of her job duties and is entitled to accommodation under the PDA or ADA, an employer may need to provide reasonable accommodation.

Not all pregnant employees develop limitations affecting their ability to perform their job. However, when limitations do arise, employers should carefully consider the following questions:

1. What limitations is the employee experiencing?
2. How do these limitations affect job performance?
3. What specific tasks that pose a problem? and
4. What accommodations could reduce or eliminate the job performance issues?

The broad categories of functions that can be affected by pregnancy-related limitations include bending, carrying, climbing, kneeling, lifting, pushing and/or pulling, sitting, standing, temperature sensitivity, toileting or grooming issues, and dietary needs.

Among the types of accommodations employers should consider to address pregnancy-related limitations are reassigning marginal or nonessential job functions that pose a problem for the pregnant employee, modifying a work schedule, modifying workplace policies such as allowing a pregnant employee more frequent breaks, temporarily reassigning the employee to light duty, and granting leave.

In light of the continuing focus on employer workplace obligations to pregnant employees, defending a claim of failure to accommodate a pregnant employee's job

limitations may prove increasingly difficult for employers. Such claims are clearly a

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Labor Relations Board, first in Washington D.C. and later in Minneapolis where he coordinated the NLRB's enforcement actions in the five-state Midwestern region.

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