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Q&A with Paula Williams: Pregnancy-related claims remain EEOC priority



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Paula Williams, a labor and employment attorney with GableGotwals.

Pregnancy-related claims remain a priority for the EEOC

Q: What is the position of the Equal Employment Opportunity Commission (EEOC) on pregnancy-related discrimination?

A: The EEOC continues to prioritize pregnancy discrimination claims. It takes the position that pregnancy discrimination occurs when an employer fails to treat pregnant women the same as other applicants or employees with a similar ability or inability to work, including failing to reasonably accommodate pregnancy-related limitations under the Americans with Disability Act (ADA) and the Pregnancy Discrimination Act (PDA). Pregnancy discrimination includes past pregnancies, current pregnancies, and contemplated pregnancies. An employer should ensure it has taken steps to adequately educate its leaders and supervisors about the legal obligations under the ADA, PDA and Family Medical Leave Act (FMLA) to avoid claims of discrimination, harassment and interference with parents' rights.

Q: Is avoiding such discrimination that complicated?

A: One key to compliance is ensuring neither pregnancy nor pregnancy-related conditions has anything to do with any employment-related decisions and documenting the legitimate job and business-related reasons for decisions such as hiring, firing, demoting or promoting. But the intersection between the related federal laws like the ADA, PDA, and FMLA can be complicated. For example, pregnancy alone isn't a disability under the ADA, but certain pregnancy-related medical conditions may constitute a disability. Compliance can be nuanced and case specific, and an employee's eligibility for FMLA leave is different from the employee's eligibility for ADA leave accommodation. And whether an accommodation creates an undue hardship may vary from employer to employer. Employers must consider not only obligations to pregnant employees, but also expecting employees (i.e. including spouses). Effective management training can help simplify compliance.

Q: What actions should an employer take to help ensure compliance?

A: First, employers should review and update their leave, accommodation, discrimination and retaliation policies, ensuring policies are compliant with the latest amendments to ADA, PDA, FMLA and any applicable state laws. Employers also should make sure all employees, including temporary employees in certain circumstances, have received the policies. This review is best performed in partnership with legal counsel. Policies must be implemented, however, and incorporating proper training and enforcement is also essential.

Q: Who should be involved in training?

A: Employers should regularly train all employees on these policies and implement internal procedures to ensure policies are followed. Training is critical for all employees, not just managers and supervisors. Employees should understand their rights and the workplace procedures for requesting leave, accommodation, or reporting noncompliance. Managers must be trained to appropriately determine whether requests for accommodation or leave should be granted, how to handle harassment complaints, and when to involve legal counsel. Vetted policies and procedures, coupled with regular training, is the best strategy to avoid costly employment claims.

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