

EEOC Issues new Guidance on Pregnancy, Outlines Broader Accommodation Requirements for Pregnant Employees

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On July 14, the Equal Employment Opportunity Commission (EEOC) issued new guidance on pregnancy discrimination in the workplace. The document, titled [*Enforcement Guidance: Pregnancy Discrimination and Related Issues*](#), is the first official update of the Commission's position on pregnancy since 1983. The Guidance document is comprised of four parts: Part I, discussing equal treatment of pregnant and non-pregnant employees under the Pregnancy Discrimination Act (PDA); Part II, addressing treatment of pregnancy and pregnancy-related conditions as disabilities under the Americans with Disabilities Amendments Act (ADAAA); Part III, reviewing other federal and state laws impacting pregnant workers; and Part IV, setting forth the EEOC's best practices for employers. While not rising to the level of new law or regulations, the EEOC's Guidance will be looked to by the Commission's own investigators and, most likely, by federal courts. As such, the Guidance is a significant new tool for employers as they seek to avoid claims of discrimination involving gender and pregnancy.

In practical terms, the most significant development for employers involves accommodation of pregnant employees in the workplace. The Commission's Guidance provides that, to comply with the PDA's requirement that "pregnant employees be treated the same as non-pregnant employees," the accommodations provided to pregnant workers must be equal to accommodations provided to disabled non-pregnant employees, *regardless of whether the pregnant workers are disabled under the ADA*. (In a dissent from the Guidance, one Commission member described this as "me too" coverage — "whatever a person with a disability under the ADA is entitled to, I'm entitled too, to.") In other words, under the PDA, pregnant employees who do not even have a disability under the ADA are entitled to reasonable accommodations if they merely have job restrictions that are similar to an individual with a disability. The EEOC directly discusses this policy in the context of light duty work: if an employer offers light duty work to employees who are unable to perform their normal duties due to ADA disabilities, the employer must provide similar light duty work to a pregnant employee (for example, due to a lifting restriction or discomfort standing) without even inquiring into whether the pregnant employee is disabled. (This is true even if the employer's policy is narrowly drafted to provide light duty only to employees hurt on the job — according to the EEOC, if even one employee can have light duty, every pregnant employee gets it too.) This is a drastic change from PDA law as established by the federal courts. As such, employers should be aware that this change could be

short-lived: a dispute over this very issue will be heard by the U.S. Supreme Court next year in [Young v. UPS](#), where the Court will be asked to decide whether disabled workers are appropriate “comparators” to pregnant workers when determining whether discrimination occurred under the PDA.

In addition to that most significant new position, the EEOC has made some other noteworthy statements in its Guidance, including that: (i) an employer may risk discrimination claims merely by discussing pregnancy plans with job applicants and employees; (ii) the anti-discrimination law covers not only active pregnancy but also discrimination based upon past pregnancy and a woman’s potential to become pregnant; and (iii) under the ADAAA, most pregnancy-related impairments are disabilities regardless of how temporary they may be. Lastly, the Commission has taken the controversial position that an employer discriminates against women by excluding contraception from otherwise comprehensive health care coverage — the EEOC acknowledges, however, that this position is most likely circumscribed by the Supreme Court’s recent decision in [Burwell v. Hobby Lobby](#) that certain employers may not be lawfully compelled to provide contraception under the Affordable Care Act.

The Guidance is extensive, and addresses a number of matters and issues not addressed here. Employers, therefore, are encouraged to review the [Guidance](#) or the [shorter “Q&A” document](#) issued by the EEOC, and to immediately assess all current policies and practices to ensure compliance.

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