

Florida Poised to Become next State to Outlaw Pregnancy Discrimination

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On April 24, 2015, the Florida Legislature passed a bill banning discrimination against pregnant women at work and in public places. While passing unanimously in the Florida Senate and receiving near-unanimous passage in the Florida House of Representatives, Governor Rick Scott must approve and sign the bill before it becomes Florida law. The law would become effective July 1, 2015.

The bill amends the Florida Civil Rights Act (“FCRA”) to include pregnancy as a protected class joining the existing protected classes of race, sex, and physical disability.

The bill codifies the April 2014 decision of the Florida Supreme Court, *Delva v. Continental Group, Inc.*, holding by a vote of 6-1 that the FCRA applies to pregnancy discrimination in addition to sex discrimination. The female employee alleged employment discrimination based on pregnancy but the lower courts dismissed her complaint for failure to state a cause of action.

The Florida Supreme Court addressed the circuit split regarding the issue of the FCRA’s coverage of pregnancy discrimination. Prior to its ruling, the Third and First District Courts of Appeals held that the FCRA does not prohibit pregnancy discrimination while the Fourth District Court of Appeals held that the Act does indeed prohibit pregnancy discrimination.

In reversing the Third District Court of Appeals, the Florida Supreme Court reasoned that the FCRA’s prohibition of sex discrimination includes pregnancy as pregnancy is a “natural condition and primary characteristic unique only to the female sex.” The Florida Supreme Court looked to the Supreme Court of Massachusetts and the Minnesota Supreme Court to determine that pregnancy is a natural condition unique to women. The Florida Supreme Court also emphasized the point that the FCRA states it is to “liberally construed” and therefore reasoned its holding is consistent with the statutory interpretation.

Interestingly, in light of the Florida Legislature’s recent attempt to amend the law, the Florida Supreme Court adopted the Fourth District Court of Appeals’ reasoning that because the Florida statute is patterned after the Federal Civil Rights Act, which considers pregnancy discrimination to be sex discrimination, it is not necessary for the Florida Legislature to amend the FCRA to specify that pregnancy discrimination is prohibited. The Florida

Supreme Court stated that “it is unnecessary to ascribe any meaning to subsequent legislative inaction in this context.” The lone dissenter, Justice Polston, dissented for the rationale that the plain meaning of the FCRA does not encompass pregnancy discrimination, but that the plain meaning of the term “sex” means “gender- whether one is female or male.” He also noted that “recourse for pregnancy discrimination unquestionably exists for Floridians under the plain meaning of current federal law.”

While Justice Polston is correct that employees allegedly subjected to pregnancy discrimination have recourse under the plain meaning of current federal law, i.e. the Pregnancy Discrimination Act amending Title VII of the Civil Rights Act, the addition of pregnancy as a protected class to the FCRA does have implications for employers. For example, if Rick Scott signs the bill, a Florida plaintiff now has the option of bringing a pregnancy discrimination claim in state court under the FCRA instead of only having the option of bringing a pregnancy discrimination claim in federal court under Title VII.

Additionally, a plaintiff must file a Charge of Discrimination under Title VII with the EEOC within 180 days of the date that the alleged discrimination took place or the Title VII claim is dismissed as untimely. However, a plaintiff must file a Charge of Discrimination under the FCRA with the Florida Commission on Human Relations within 365 of the alleged violation or the FCRA claim is dismissed as untimely. Consequently, if the bill becomes law, a plaintiff could miss the 180-day deadline to file a Charge of Discrimination under Title VII for pregnancy discrimination but still be able to file a Charge of Discrimination under the FCRA for pregnancy discrimination if it is within the 365-day deadline.

With these implications in mind, be sure to follow if and when Governor Rick Scott signs the bill and the FCRA is amended to include pregnancy as a protected class. With questions, contact Hinshaw’s Ft. Lauderdale office.

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