Protection of Pregnant Women in the Workplace

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There are several federal laws in place to protect pregnant women and women with newborns in the workplace. Over time, the laws have become more expansive so as to not only prevent discrimination based on pregnancy, but to provide leave entitlement and most recently to provide lactation privacy rights. The laws promote the necessity of women in the workforce while recognizing the importance of motherhood.

In 1978, 14 years following its passage, Title VII of the Civil Rights Act of 1964 was amended to include the Pregnancy Discrimination Act (PDA). A new subsection was added that provided as follows:

“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in Section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion.”

While pregnancy in and of itself may not be considered a disability as defined by the Americans with Disabilities Act, pregnancy can cause other conditions (i.e., gestational diabetes or pre-eclampsia) that may be considered a disability under the more lenient 2008 amendments to the ADA.

Moreover, if an employer provides accommodations to temporarily disabled employees, it must do so for pregnant employees. As such, an employer may have to provide light duty, alternative assignments, disability leave or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Pregnant employees are also entitled to freedom from harassment based on pregnancy. This is an area where frequent claims may arise. Taking bets on delivery dates, jokes about the baby delivering while the employee is at work and comments that might be intended as an expression of caring for the employee can often lead to charges of a hostile work environment.

Perhaps the law that has had the most impact on a woman’s ability to balance work and motherhood is the Family and Medical Leave Act. The FMLA was enacted in 1993 and provides different types of leave relating to pregnancy and childcare:

- Pregnancy leave: Expectant employees may use FMLA for pregnancy if its complications present a serious health condition.
If a doctor determines that a period of leave is necessary, expecting employees will be able to use FMLA for pregnancy.

• Parental leave: Both men and women may take parental leave following the birth or adoption of a child at any time during the first year after the child is born or adopted.

• Intermittent parental leave: New parents are also entitled to work part-time for a limited period or take some time off immediately following the birth or at a later date.

It is extremely difficult for employers to administer intermittent parental leave and this type of leave is often subject to abuse. However, it is this type of leave that is intended to allow parents to not miss some of the early milestones in their child’s life.

Prior to the enactment of the FMLA, employees with newborns were limited in their ability to take leave to take care of their children and were faced with the uncompromising position of having to choose between remaining at home to care for their children or returning to work. The FMLA recognizes that in today’s society most households require the income of both parents and allows parents the opportunity to care for their children for up to 12 weeks without risking their jobs.

The most recent law that provides protections to female employees who have recently given birth is the Patient Protection and Affordable Care Act, which amended the Fair Labor Standards Act to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The amendment also requires that employers provide a place for an employee to express breast milk.

Specifically, Section 7 of the Fair Labor Standards Act of 1938 was amended to include the following:

• An employer shall provide a reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has need to express the milk, and a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.

• An employer shall not be required to compensate an employee receiving reasonable break time for any work time spent for such purpose.

• An employer that employs fewer than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer’s business.

This law recognized that nursing mothers are entitled to privacy in the workplace to express breast milk and should not be placed in a situation of having to choose between being able to nurse their newborns or return to work.

Employers need to recognize the existence of these federal laws and also be acquainted with the state laws that often provide even more expansive entitlements to their employees.

While I am a defense attorney who often defends employers alleged to have violated the various federal laws discussed herein, as a female in the workplace, I am proud to see that these laws are in place to at least try to help promote a woman’s ability to have a career without having to sacrifice the joys of motherhood.

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