PREGNANCY DISCRIMINATION

Discrimination because of pregnancy, childbirth or related medical condition is unlawful under Title VII of the Civil Rights Act of 1964. Nonetheless, this type of sex discrimination persists. Leadership should understand discrimination and accommodation laws involving pregnancy. This bulletin offers risk management guidelines to fairly administer your organization's pregnancy discrimination prevention policy and accommodation procedures.

PREGNANCY DISCRIMINATION ACT OF 1978

The Pregnancy Discrimination Act (PDA) is an amendment to Title VII. This federal law prohibits employment discrimination on the basis of pregnancy, childbirth or related medical conditions for organizations with more than 15 employees. Pregnancy discrimination is a form of sex discrimination. The PDA requires that businesses treat workers who are pregnant or affected by related conditions the same as other workers who have temporary medical limitations or disabilities. Similarly, individual state laws also prohibit adverse actions based on pregnancy related conditions.

EXAMPLES OF PREGNANCY DISCRIMINATION INCLUDE:

- Refusing to hire or select a candidate or volunteer for employment based on pregnancy or the possibility of future pregnancy;
- Terminating or demoting a pregnant employee;
- Disparately applying leave laws or policies to pregnant employees; and
- Denying the same or similar job or position to an employee when she returns from pregnancy related leave.

For employees that feel they may be subjected to pregnancy discrimination, your organization must maintain and advertise its multiple avenues of internal complaint. The organization must promptly investigate any reports of discrimination, discipline offending parties, and take appropriate measures to prevent future occurrences.

HIRING & SELECTION

As long as a pregnant woman can perform the essential functions of the job, an employer cannot refuse to hire or select the woman because of her pregnancy related condition, because of prejudices against pregnant workers, or the prejudices of coworkers, clients or customers. An employer is not required to hire or select pregnant women or show preferential treatment, but instead treat them the same way as other applicants with temporary disabilities.

Avoid discussing an applicant's pregnancy or potential for pregnancy during the interview or selection process, even if her condition is divulged or may be apparent. Instead focus on job requirements and the candidate's ability to satisfy them.

PREGNANT WORKER TREATED AS IF TEMPORARILY DISABLED

Pregnant employees must be permitted to work as long as they are able to perform their jobs. The employee is responsible, with the advice from her healthcare provider (physician), to determine how long she will be able to safely continue in her normal assigned position, performing the essential job functions. If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled member of the workforce. Examples include providing modified tasks, alternative assignments, disability leave or leave without pay.

THE PREGNANT WORKERS FAIRNESS ACT

ACCOMMODATIONS FOR PREGNANT WORKERS

The Pregnant Workers Fairness Act (PWFA) went into effect on June 27, 2023. This law "prohibits employment practices that discriminate against making a reasonable accommodation for qualified employees affected by pregnancy, childbirth, or related medical conditions. A qualified employee is an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the position, with specified exceptions. The PWFA requires employers with 15 or more workers to provide reasonable workplace accommodations for pregnant employees unless it presents an undue hardship to the organization.

Create an accommodation request procedure offering multiple avenues of internal reporting. Don't jump to conclusions that an employee cannot perform the essential functions of the job because she is pregnant. Your organization should determine the feasibility of all requested accommodations, considering various factors, including, but not limited to the nature and cost of the accommodation, overall financial resources, and the accommodation's impact on the organization's operations, including its impact on the ability of other workers to perform their duties. Seriously consider involving the organization's retained labor and employment attorney to help address accommodations.

Follow the organization's policy and past practices that may allow a worker with a temporary disability or medical condition to transfer to a position that better accommodates the condition or to work part-time. Generally, however, your organization will not be required to create a modified duty position vacancy where one does not exist in order to accommodate an individual who cannot fulfill the essential functions of the position.

OTHER RELEVANT LEAVE ISSUES TO CONSIDER:

- **Rely on Medical Professionals –** Remaining consistent in its personnel practices, an organization has the right to require return-to-work certification from a physician following any temporary disability leave. The essential physical and mental requirements set forth in a written job description should be the guide. If the organization has questions about the member's medical certification, such that the organization reasonably believes the member may not be able to return to work and presents an imminent threat of harm to herself or others, the organization is entitled to get a certification from the organization's appointed doctor. A physician should determine which, if any, of the duties the pregnant member cannot perform, and at what point performance and safety is compromised. Only with professional guidance should the organization make changes, such as restrict or limit a member's job due to pregnancy.

- **Reinstatement after early complications –** If a member has been absent from work as a result of a physician documented pregnancy related condition and recovers, the organization may not require her to remain on leave until after the baby's birth if that member has been medically released back to duty.

- **Avoid predetermined leave dates –** An organization may not have a rule which prohibits a member from returning to work for a predetermined length of time after childbirth. Likewise, the organization should not predetermine a date at which time the pregnant member is automatically deemed unfit for duty. Allow the employee's physician to make the determination of when leave is necessary and provide an updated job description and any other information to make an accurate assessment. Each return-to-work situation should be assessed on a case-by-case basis while remaining consistent with past practices for other temporarily disabled members.

- **Family and Medical Leave –** Pregnancy related leave is covered by the PDA, Family and Medical Leave Act (FMLA), and in limited circumstances, the Americans with Disabilities Act (ADA). Consult with your organization's labor and employment attorney to determine the applicability of these federal laws and other similar state leave laws.

- **Benefits –** If an organization provides benefits to workers on leave, the same benefits should be provided to those on leave for pregnancy related conditions.

- **Policies and Training –** Implement clear and detailed policies and procedures addressing pregnancy discrimination and accommodations. Train all personnel, particularly supervisors on relevant laws and organization guidelines.

ADDITIONAL INFORMATION

Equal Employment Opportunity Commission Overview | Glatfelter Ministry Care resource for Management Liability and Employment Practices.

Equal Employment Opportunity Commission | The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting discrimination.