

Accommodating Pregnant Employees in the Workplace

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Two new lawsuits cast light on employers' obligations to provide job accommodations to pregnant employees.

On September 20, 2018, the U.S. Equal Employment Opportunity Commission (EEOC) sued Walmart in federal court in Wisconsin, claiming systemic pregnancy discrimination. The suit, *EEOC v. Wal-Mart Stores East, LP*, alleges violations of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA).

The EEOC claims Walmart treated Alyssa Gilliam and other pregnant distribution center workers unequally by denying them job accommodations that workers with other types of medical or physical limitations are regularly granted. The PDA requires employers to provide a pregnant employee with work restrictions the same accommodations it makes to non-pregnant employees "similar in their ability or inability to work."

According to the EEOC's lawsuit, Gilliam had lifting limitations due to pregnancy-related medical complications, and, at various times, she asked for, but was denied, "light duty," use of a chair, shorter work days, and additional breaks. Walmart asserts it is in full compliance with applicable laws.

Less than two weeks later, on October 3, 2018, an Avon executive filed suit in federal court in New York claiming she was fired for asking to work from home for one week during a high-risk pregnancy. The suit, *Ruiz v. New Avon LLC*, alleges violations of the PDA as well as the Americans with Disabilities Act (ADA) and New York state and New York City anti-discrimination and anti-retaliation laws.

According to the executive, the company denied her request to work remotely temporarily even though it frequently allowed colleagues to work from home to deal with issues like jet lag. Avon asserts the termination was for poor performance.

When a pregnant employee requests light duty, to sit, shorter work days, additional breaks, to work remotely, or another accommodation, what laws come into play?

- As mentioned above, the **PDA**, in prohibiting discrimination based on pregnancy, requires that pregnant employees be treated like other employees similar in their ability or inability to work. This means that if an employer provides light duty or other accommodations to employees, for example, on workers' comp or with a broken arm, the employer would likely have to provide similar accommodations to a pregnant employee or an employee who has just been pregnant.
- The **Family and Medical Leave Act (FMLA)** may entitle an employee who has a pregnancy-related "serious health condition" or a birth or adoption-related need to unpaid leave. (Some states, but not North or South Carolina, have laws similar to the FMLA that require paid leave.)
- The **ADA** prohibits discrimination against a qualified individual with a disability, and requires that such an individual be provided with a reasonable accommodation absent undue hardship.

While a "normal" pregnancy is not a disability covered by the ADA, a pregnancy or post-pregnancy-related condition that substantially limits a major life activity or bodily function may be covered. Pregnancy-related conditions that may qualify for ADA protection include severe back pain, gestational diabetes, and preeclampsia. A post-pregnancy-related condition that may qualify includes complications after a Caesarean section. Upon request by a pregnant employee or new mother, an employer can engage in an interactive process with the employee to determine if she has a disability and, assuming she does, whether a reasonable accommodation is available.

- Finally, for employers in South Carolina, the **S.C. Pregnancy Accommodations Act** requires employers to provide reasonable accommodations to pregnant employees and new mothers, and to notify employees in writing at the time of hire of their right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions. [Click here](#) and [here](#) to learn more about the S.C. statute.

It is a best practice for employers to periodically review and, if needed, update policies on equal employment opportunity, reasonable accommodation, attendance, and to train managers and supervisors on how to handle requests for light duty and other accommodations.

The Nexsen Pruet Employment and Labor Group is discussing pregnancy-related issues during our current quarterly breakfast briefing series. [Click here](#) to learn more about the briefings, and to sign up for one of the remaining sessions.

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