REID AND RIEGE P.C.
COUNSELLORS AT LAW

EMPLOYMENT LAW ALERT

July 2014

EEOC Updates Enforcement Guidance on Pregnancy-Related Issues

On July 14, 2014, the EEOC published its *Enforcement Guidance on Pregnancy Discrimination and Related Issues*, which reiterates that pregnant women cannot be discriminated against because they are pregnant, have recently been pregnant, or intend to become pregnant, and clarifies more recent hot-topic issues such as lactation discrimination and pregnancy leave under the FMLA and ADA.

The EEOC's guidance focuses on pregnancy-related protections under the Pregnancy Discrimination Act ("PDA") and the Americans with Disabilities Act ("ADA"). By way of background, the PDA requires that pregnant employees be treated the same as non-pregnant employees who are similar in their ability or inability to work. The ADA protects individuals from employment discrimination on the basis of disability. While pregnancy itself is not a disability, pregnant workers and job applicants are not excluded from the protections of the ADA. Currently, pregnant workers with pregnancy-related impairments may be entitled to reasonable accommodations under the ADA. Reasonable accommodations available to pregnant workers with impairments that constitute disabilities might include allowing a pregnant worker to take more frequent breaks, to keep a water bottle at a work station, or to use a stool; altering how job functions are performed; or providing a temporary assignment to a light duty position.

Both the PDA and the ADA apply to private and state and local government employers with 15 or more employees, labor organizations, employment agencies, and apprenticeship and training programs. The PDA applies to employees in the federal sector, as does Section 501 of the Rehabilitation Act of 1973, which applies the ADA's employment nondiscrimination standards. Beyond these federal laws, state and local laws in some jurisdictions provide additional protections, such as Connecticut General Statutes § 46a-60(a)(7).

The EEOC's new guidance addresses:

- The fact that the PDA covers not only current pregnancy, but discrimination based on past pregnancy and a woman's potential to become pregnant;
- Lactation as a covered pregnancy-related medical condition;
- The circumstances under which employers may have to provide light duty for pregnant workers;
- Issues related to leave for pregnancy and for medical conditions related to pregnancy;
- The PDA's prohibition against requiring pregnant workers who are able to do their jobs to take leave;
- The requirement that parental leave (which is distinct from medical leave associated with childbearing or recovering from childbirth) be provided to similarly situated men and women on the same terms;
- When employers may have to provide reasonable accommodations for workers with pregnancy-related impairments under the ADA and the types of accommodations that may be necessary; and
- Best practices for employers to avoid unlawful discrimination against pregnant workers.

The guidance focuses a great deal on the "light duty" requirements related to pregnancy. If an employer's policy is to provide "light duty" to disabled employees who meet certain criteria, but refuses to provide a "light duty" option to a pregnant employee because pregnancy does not constitute an injury, illness, or disability, that employer has violated the PDA. The critical element in the analysis of whether the employer has violated the PDA will be whether the employer has

applied its light duty policies equally and fairly to all eligible employees. The EEOC notes that an employer cannot deny a nondisabled pregnant worker light duty where it provides light duty to employees injured at work or who are disabled under the ADA. This part of the guidance is probably the most controversial because the extent to which an employer must accommodate a pregnant, nondisabled employee has recently been certified to the Supreme Court in *Young v. United Parcel Service*. We will update you when the Supreme Court rules. In the meantime, employers with light duty policies that apply only to persons injured at work should be aware that the EEOC's guidance conflicts with the law in many states.

In addition, the EEOC has made clear that if an employer provides parental leave (leave for purposes of bonding with a child and/or providing care for a child) to women, parental leave must also be provided to similarly situated men on the same terms.

Under the guidance, leave related to pregnancy, childbirth, or related medical conditions may be limited to women affected by those conditions, but parental leave must be provided to similarly situated men and women on the same terms. For example, if an employer extends leave to new mothers beyond the period of recuperation from childbirth, it cannot lawfully refuse to provide an equivalent amount of leave to new fathers for the same purpose. In addition, the FMLA requires covered employers to provide 12 weeks of job-protected leave for covered employees to care for and bond with a newborn baby or a recently adopted child.

Here are steps prudent employers should take in light of this new guidance:

- Review current policies and evaluate whether changes are appropriate.
- Assess how reasonable accommodation leaves for pregnant employees are handled.
- Monitor future developments closely – there are likely to be more significant changes in the future.

Even though the EEOC's guidance does not have the force of law, many courts will find it persuasive authority. Employers should carefully evaluate its impact on their own practices.

Please contact Reid and Riege if you have questions about the enforcement guidance and how it may affect your business. The enforcement guidance, Q&A document, and fact sheet will be available on the EEOC's website (eeoc.gov/laws/guidance/).

This issue of the Employment Law Alert was written by Karen L. Brand, Agnes Romanowska and Peter K. Rydel. For information or additional copies of this newsletter, or to be placed on our mailing list, please contact Karen (860-240-1089 or kbrand@rrlawpc.com), Agnes (860-240-1088 or aromanowska@rrlawpc.com), Peter (860-240-1007 or prydel@rrlawpc.com), or other members of Reid and Riege, P.C., One Financial Plaza, Hartford, CT 06103. For other information regarding Reid and Riege, P.C., please visit our website at www.rrlawpc.com.