

Light Duty Program Excluding Pregnant Workers Given the OK by the 7th Circuit

Labor & Employment Law Update

By Julie Proscia on August 19, 2022

On August 16, 2022, the 7th Circuit Court of Appeals rejected the Equal Employment Opportunity Commission's (EEOC) attempt to increase the level of scrutiny given to sex discrimination cases under the Pregnancy Discrimination Act and the Civil Rights Act of 1964. With this ruling the Appellate Court affirmed a summary judgment award given to a large retail chain by a District Court in Wisconsin.

In 2014, a retail distribution center in Menomonie, Wisconsin, implemented an accommodation policy, Temporary Alternative Duty, or TAD for short, that offered temporary light duty accommodations to employees that were injured on the job. Under TAD the company did not offer any light duty accommodations to pregnant employees or employees who were injured outside of work. The EEOC filed a lawsuit alleging that the TAD policy violated the Pregnancy Discrimination Act by not allowing light duty accommodations for pregnant employees. The company defended its policy by arguing that TAD was not discriminatory in nature but rooted in a neutral rationale. They specifically argued that TAD was designed to implement a worker's compensation program that benefited employees while limiting the company's "legal exposure" and costs of hiring people to replace injured workers, and was compliant with a state workers' compensation scheme.

The District Court rejected the EEOC's argument and affirmed the company's basis as a neutral reason for providing benefits to employees injured on the job while excluding pregnant employees. The EEOC appealed the decision. In its appeal the EEOC was trying to argue that the District Court should have utilized a more stringent review of the policy and not accepted the neutral rationale without also requiring the company to provide a reason why it excluded pregnant employees from the TAD policy. This review would have imposed an additional step than is required in the analysis of other types of discrimination cases. The Appellate Court rejected this argument and found that pregnancy discrimination under the Pregnancy Discrimination Act was not entitled to heightened scrutiny or a "most favored nation status" amongst other types of discrimination.

In upholding the lower court's decision the Appellate Court not only affirmed a longstanding structure for review but pragmatically for businesses it affirmed that policies can be successfully defended if there is a neutral underpinning that can be articulated. This is a lesson that can be applied for all HR policies. However, be cautious as it is not a carte blanche to automatically exclude pregnancy accommodations without a review of the individual request, as the requirements for accommodations vary from state to state and also vary when analysis of the ADA is thrown into the mix. The takeaway? Ensure your leave and other HR policies are developed with a neutral reasoned rationale in order to avoid, or defend, an allegation of discrimination.

Light Duty
Program
Excluding
Pregnant
Workers
Given the
OK by the
7th Circuit