

Properly Accommodating Pregnant Employees in Hazardous Workplaces

Labor & Employment Law Update

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The settlement of a recent pregnancy discrimination lawsuit brought by the Equal Employment Opportunity Commission (EEOC) against RTG Furniture Corp., provides a valuable reminder to employers that even well-intentioned limitations placed on pregnant employees are likely to violate Title VII and, where applicable, state laws that prohibit pregnancy discrimination.

According to the EEOC's allegations in the lawsuit, within days of being hired, a new employee informed RTG that she was pregnant, but that she had no work restrictions and could perform all aspects of the job. The job required the employee to use certain chemicals to repair furniture. The same day the employee disclosed her pregnancy, RTG management allegedly met with her and confirmed that she was pregnant. During that same meeting, a manager allegedly showed the employee the can of a chemical used in the workplace, and discussed the warning written on the can, which essentially stated that the contents could pose a danger to pregnant women and their unborn children. At the conclusion of that discussion, RTG allegedly terminated the new employee.

Now, it is important to remember that allegations in an EEOC lawsuit are, of course, not necessarily true—and the fact that the case settled, likewise, does not mean the EEOC's allegations are the truth. Nevertheless, this case provides the useful instruction that employers generally cannot terminate pregnant employees or refuse to hire pregnant applicants, even if the job involves exposure to hazards that are particularly dangerous with respect to pregnancy.

This case also provides the opportunity to discuss the proper approach for employers concerned about exposing pregnant employees to potentially hazardous workplace conditions. Step one, of course, is: don't terminate employees just because they are pregnant. Instead, employers concerned about exposing pregnant employees to harmful workplace conditions should have policies in place—in employee handbooks, for example—that inform employees, upon hire or even earlier, of the potential risks of the job. And if those risks are greater for pregnant employees, the policies should make clear that pregnant employees should feel free to request accommodations or otherwise bring any questions or concerns to human resources or other appropriate members of management. Additionally, when an employee informs the company that she is

pregnant, the company should take that opportunity to reiterate, in writing, the particular risks of the work environment, and remind the employee of her right to request a pregnancy-related accommodation.

If a pregnant employee wishes to continue doing her job, despite knowing and assuming whatever risks there may be, employers generally do not have the right to take any action that would adversely affect the employee's job. Moreover, it is especially important for employers to recognize that in addition to federal law protections, there may also be state and local laws that provide additional protections or accommodation requirements for pregnant employees and applicants.

Bearing all of that in mind, employers concerned about exposing pregnant employees to workplace hazards or their obligations to accommodate a pregnant employee should consult with experienced labor and employment counsel to evaluate the hazards in the workplace, and ensure that all policies and notices to pregnant employees are drafted appropriately, and communicated properly.

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