

# SC Pregnancy Accommodations Act

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# What is the Division of State HR?

- ▶ DSHR supports state agencies concerning human resources issues through consultation and oversight, professional development, and alternative dispute resolution.
- ▶ Examples of services provided to state agencies include:
  - ▶ Anticipate and plan for workforce needs now and in the future;
  - ▶ Recruit, develop, and retain the most talented employees to meet your mission;
  - ▶ Develop sound HR policies and procedures, and effectively interpret controlling laws, regulations, and policies;
  - ▶ Evaluate the effectiveness of your organizational structure and processes to maximize productivity; and
  - ▶ Mediate workplace matters.

# Overview of Relevant Laws

- ▶ Pregnancy Discrimination Act
- ▶ Title VII of the Civil Rights Act of 1964
- ▶ Family and Medical Leave Act
- ▶ Americans with Disabilities Act
- ▶ And... SC Pregnancy Accommodations Act

# Discrimination Forbidden

- ▶ The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.
- ▶ EEOC Guidance: “An employer cannot refuse to hire a woman because of her pregnancy related condition as long as she is able to perform the major functions of her job. An employer cannot refuse to hire her because of its prejudices against pregnant workers or because of the prejudices of co-workers, clients, or customers. The PDA also forbids discrimination based on pregnancy when it comes to any other aspect of employment, including pay, job assignments, promotions, layoffs, training, fringe benefits, firing, and any other term or condition of employment.”

# Hypothetical

- ▶ Susan is a Charge Nurse in the ER. She and her husband have been trying to conceive for the last several years and you have heard that she has had two miscarriages. She announced that she was expecting a baby due in June. The Women's Health Center is currently short-staffed, so Susan's supervisor transfers her to Health Center so she doesn't have to work on her feet as much and will not have to lift patients.
- ▶ Any problems?
- ▶ Other examples (story time)

# Reasonable Accommodations under PDA

- ▶ Pre-2014: Narrow view of accommodations
- ▶ EEOC Guidance 2014
- ▶ Young v. UPS (S.Ct. 2015)
  - ▶ Supreme Court held that a pregnant employee can establish a *prima facie* case of disparate treatment by showing
    - ▶ (1) she belongs to a protected class;
    - ▶ (2) she sought an accommodation;
    - ▶ (3) the employer did not accommodate her; and
    - ▶ (4) the employer accommodated others "similar in their ability or inability to work."

# SC Pregnancy Accommodations Act

- ▶ Signed by Governor McMaster on May 17, 2018
- ▶ “It is the intent of the General Assembly by this act to combat pregnancy discrimination, promote public health, and ensure full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related medical conditions. Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job. Many pregnant women are single mothers or the primary breadwinners for their families; if they lose their jobs then the whole family will suffer. This is not an outcome that families can afford in today's difficult economy.”

# SC PDA & Discrimination

- ▶ “The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation, and women affected by pregnancy, childbirth, or related medical conditions must be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in item (3) of subsection (h) of Section 1-13-80 must be interpreted to permit otherwise.”

# Examples of Reasonable Accommodations

- ▶ Making existing facilities accessible (not required to construct a permanent, dedicated space for expressing milk)
- ▶ More frequent or longer break periods
- ▶ More frequent bathroom breaks
- ▶ A private place, other than a bathroom stall, for expressing milk
- ▶ Modifying the food or drink policy

# Examples of Reasonable Accommodations

- ▶ Providing seating or allowing more frequent sitting
- ▶ Providing assistance with manual labor and limits on lifting
- ▶ Temporarily transferring the employee to a less strenuous or hazardous job (if qualified)
- ▶ Job restructuring or light duty (if available)
- ▶ Acquiring or modifying equipment or devices necessarily for performing essential job functions
- ▶ Modifying work schedules

# Employer is Not Required to... unless...

- ▶ An employer is not required to do the following unless it does or would do so for other employees or classes of employees that need a reasonable accommodation:
  - ▶ Hire a new employee the employer would not have otherwise hired
  - ▶ Discharge an employee, transfer an employee with more seniority or promote an employee who is not qualified
  - ▶ Create a new position, including a light duty position for the employee, unless a light duty position would be provided for another equivalent employee
  - ▶ Compensate an employee for more frequent or longer break periods unless employee uses a break period which would otherwise be compensated

# Unlawful Employment Practices

- ▶ To fail to make an accommodation unless the accommodation would impose an undue hardship on the operation of the business;
- ▶ Deny employment opportunities if the denial is based on the need of the employer to make reasonable accommodations;
- ▶ Require an applicant to accept an accommodation she chooses not to accept IF she does not have a known limitation related to pregnancy or it is unnecessary to perform the essential job duties;
- ▶ Require an employee to take leave under any leave law or policy if another reasonable accommodation can be provided;
- ▶ Take an adverse action against an employee for requesting or using a reasonable accommodation

# Requirements

- ▶ Written Notice to new and existing employees by Sept. 14, 2018
- ▶ Conspicuously posted notice at employer's place of business

# Questions