# Pregnancy Discrimination Guidance

## *EEOC delivers PDA ahead of Supreme Court's due date*

By Tyler Volm

On July 14, 2014, the Equal Employment Opportunity Commission (EEOC), in a 3-2 split vote, issued a new Enforcement Guidance under the Pregnancy Discrimination Act (PDA) for the first time since 1983. The Guidance elaborates on the fundamental PDA requirement that an employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions, and that women affected by any of these conditions must be treated the same as other persons similar in their ability or inability to work.

The guidance states that the law requires employers to provide reasonable accommodations to pregnant employees if they provide such accommodations to non-pregnant employees who are similar in their ability or inability to work. This would be the case even if the pregnant employee is not disabled or is not regarded as disabled. A reasonable accommodation could include light duty, modified tasks, alternative assignments, leave, or fringe benefits. The EEOC'position on light duty may prove to be controversial. As stated in the guidance, employers must provide light duty to a pregnant worker on similar terms as for injured workers, a position that might mean that employers are no longer permitted to have light duty programs that are restricted to injured workers.

The guidance addresses a number of other topics, including the scope of the Act's coverage (which includes current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or child birth, as well as lactation), and the relationship of other laws such as the ADA, the Family Medical Leave Act, and the Affordable Care Act. It concludes with four pages of recommended best practices. The new enforcement guidance can be found <http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm> here.

The timing of the Guidance will add to the controversy. The U.S. Supreme Court recently agreed to review the Fourth Circuit's decision in Young v. United Parcel Service, Inc., a decision that held that the PDA does not require employers to provide light duty as a pregnancy accommodation. The Guidance says the opposite. A decision on the case is nearly a year away. In the meantime, employers should review the Guidance and check their current policies and practices, updating them where appropriate. Those employers who are concerned about making light duty programs unwieldy can consider whether to create a formal light duty program with limits on the duration of the benefit, the number of light duty jobs available at any given time, and other universally applicable restrictions. L&C

**Tyler Volm's** practice focuses on employment litigation and advice. He works with business owners and managers to ensure compliance with changes in the law, and defends employers against complaints when they arise. With a background in business law, he has a unique perspective on how an employer's business needs naturally blend with employment law.
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