Dealing With The Employee’s Ever-Evolving Right to Be Absent

By: Robert E. Bettac, Esq.
Granting Leave is Like Making Alphabet Soup

- FMLA – The Family & Medical Leave Act
- ADA – The Americans with Disabilities Act, as amended
- PDA – The Pregnancy Discrimination Act amendments to Title VII
- “SWCA” – State Workers’ Compensation Acts
FMLA - Who is a an “Eligible” Employee?

- Employed at least 12 months (need not be consecutive) and

- Worked at least 1250 hours during the 12-month period immediately before the start of leave
Who is a Covered Employer?

Covered “Employers” are those who have:

- 50 or more employees during each of 20 or more workweeks in the current or preceding calendar year (29 CFR § 825.104)
- Within a 75 mile-radius of the employee’s worksite (29 CFR § 825.110)

Note: Separate entities may be deemed a “single,” “integrated,” or “joint” employer if operated as one
FMLA – When do “Eligible” Employees Become Eligible?

- For employee’s own “serious health condition”
- For birth of a child, or adoption and foster care
- For care of spouse, child, or parent with a “serious health condition”
What is a “Serious Health Condition”? 

Essentially, incapacity or time away from work for treatment by a health care provider, including:

- Incapacity more than 3 days requiring medical treatment
- Pregnancy-related conditions
- Chronic condition where medical treatment required
- Permanent condition
Examples of FMLA-Covered Serious Health Conditions

- Asthma
- Diabetes
- Epilepsy
- Heart attacks/strokes
- Most types of cancer
- Pregnancy-related incapacity or pre-natal care
- Migraine headaches
- Back conditions requiring extensive therapy or surgery
Normally NOT Serious

- Common cold
- Flu
- Earaches
- Non-migraine headaches
- Upset stomach
- Routine dental problems
How Much Leave?

- Up to 12 weeks per year

- Year is measured from start of first FMLA leave

- Spouses working for the same employer limited to 12 weeks for both unless due to own serious health condition
Intermittent and Reduced Schedule Leave

- Must grant such leave when medically necessary (29 C.F.R. § 825.204(a))
- “Medically necessary” = the need for leave is best accommodated by intermittent leave or reduced work schedule
- If leave schedule foreseeable, may require temporary transfer to other position for which employee is qualified
Controlling Intermittent/Reduced Schedule Leave

- Employer may require minimum 1 hour blocks

- Not required to grant intermittent/reduced schedule for birth or adoption
Medical Certification in a Nutshell

- May require medical certification prior to designating leave as FMLA
- Form must be given to employee within 5 days of notice
- Certification due within 15 days of employee’s receipt of form
- May request a second and, if needed, third opinion (third is then binding on both parties)
  - Employer must pay for second, third opinions
Dealing with the Docs

- May contact employee’s health care provider, but
- Need employee’s permission (medical privacy release)
- Must limit discussion to things relevant to FMLA leave
- Easier (and safer) to require resubmission of certification instead
FMLA Notice Requirements for Employer

General Notice

- FMLA poster & policy requirements
- Covered employer must post notice, even if no eligible employees
- Must distribute policy in Employee Handbook
- Posting may be by hard copy, electronically or combination
FMLA Notice Requirements for Employer

When employee requests FMLA leave . . .

- Must notify employee of eligibility within 5 business days after medical certification
- If found ineligible, must state specific reason
- Eligibility notice may be oral or written
- Must inform employee if substitution of paid leave is required
During the Leave . . .

- No loss of accrued benefits (but accrual during leave not required)

- Group health plan coverage to be maintained

- May require employee to report medical status periodically & intention to return to work

- May require recertifications, generally every 30 days
Returning From Leave

- May require returning employee to provide “fitness for duty” certification

- Employee entitled to return to same or equivalent position
  - Equivalent position must be “virtually identical”

- Generally, may recover unpaid group health premiums
FMLA Active Duty Leave

Eligible employees can take 12 weeks for “qualifying exigency”

- For parent, spouse, son/daughter
- Who are “covered servicemembers” on or called to active duty

Requires reasonable and practical notice (normally 30 days)

May require certification of need
Qualifying Exigency: 8 Reasons

1. Short notice deployment (may use up to 7 days)
2. Official ceremonies and info briefings
3. Childcare/school activities
4. Financial/legal arrangements
Qualifying Exigency: 8 Reasons

5. Non-medical counseling for self or kids

6. R & R with servicemember home on leave (up to 15 days)

7. Post-deployment activities (attend ceremonies or deal with servicemember’s death)

8. Any other reason with Company/employee agreement
FMLA/Caregiver Leave

Eligible employees get up to 26 weeks during 12-month period

- Spouses at same company get combined total of 26 weeks

Covers employees whose parent, spouse, son/daughter or next of kin is “covered servicemember”

- Who sustains “serious injury or illness” while on active duty
Leave as Reasonable Accommodation under the ADA

According to the EEOC:

- Granting a leave of absence may be a required accommodation if other reasonable accommodation is not feasible

- Maximum leave policies do not satisfy the ADA – but that doesn’t mean you can’t have one

- But you must consider granting exceptions for disabilities
STEP 1
Re-examine Your Leave Policies

Make sure they cover FMLA, ADA, Workers’ Compensation and pregnancy

Re-evaluate the outer limit placed on leaves

- A shorter maximum allowable leave will allow you to grant accommodative leave beyond the limit without creating an undue hardship
STEP 2–Implementation (non-FMLA)

Grant leave in shorter increments

When communicating with employee or medical provider, always focus on whether leave is likely to be indefinite.

Ask for “reasonable medical certainty” that additional leave will enable employee to return and perform essential job functions.

- Ask whether the accommodative leave will lead to a “light duty” release versus employee being able to perform essential functions.
Pregnancy Discrimination Amendments – Must Leave Be Granted?

A normal pregnancy not a disability under the ADA unless complications substantially limit a major life activity.

Incapacity due to pregnancy is “serious health condition” under FMLA.

EEOC says treat limitations due to pregnancy the same as a disability.

- But the courts apply a different standard.
Workers’ Compensation Leave

Most states prohibit retaliating against workers’ compensation claimants

- Denial of leave may amount to unlawful retaliation

- Employer should create light-duty assignments so injured worker can remain on duty

- If light duty won’t work, follow FMLA/ADA rules
Resolve to Be Pro-Active

Employers who wish to control employees’ prolonged absences must actively manage the leave process

DOCUMENT! DOCUMENT! DOCUMENT!
Hypotheticals
Case 1 – Transfer Request

- Karen has worked for years in high-stress position
- Job has long hours, but Karen has always thrived in that environment
- Last month, Karen announced she was pregnant with her first child
- Karen gives birth to a healthy baby girl
Case 1- Transfer Request

- Takes 12 weeks of maternity leave under FMLA

- While out, has epiphany – life’s too short to be stressed all the time

- She tells HR that upon returning, she wants something less stressful
Question 1

Is the Company required to put Karen in an alternative position?
Question 2

What if Karen refuses to return to her old position?
Case 2 – Suspicious Demotion

- Jen did a great job as an employee, so she was promoted to Manager

- Didn’t do quite so well – failed to live up to boss’s expectations

- Decision reached to demote her – let her keep salary and benefits, but no managerial authority
Case 2 – Suspicious Demotion

- Before she gets demoted, gets hit by a bus while jogging
- Jen will be out for 6 weeks, but should fully recover – able to do everything she could before
- Boss: Let’s demote her while she’s out on leave
- Justification? It was going to happen anyway!
Question 1

Would demotion while on leave violate the FMLA?
Question 2

Boss to Jen: We will take away your managerial authority

Jen to Boss: Then I quit!

Still a violation of the FMLA?
Case 3 – Chronic Lateness

- Ed’s son diagnosed with cancer

- Requires numerous hospital treatments and emergency care

- Ed has produced a doctor’s note: Ed’s presence at the procedures will help the boy

- Ed sometimes late for work due to emergency hospital visits
Case 3 – Chronic Lateness

- Company has “30-minute call ahead” rule
- Sometimes, Ed failed to call ahead during emergency hospital visits
- One more infraction and Ed will be fired
- Most (but not all) prior tardiness was due to doctor-approved absences
- Supervisor: Terminate him after next unexpected absence
Question 1

Would termination be proper for Ed’s failure to call ahead?
Case 4 – Extended Weekend

- Anne has worked for the company for 3 years

- Recently, Anne has developed migraine headaches

- Anne’s doctor indicated she needs intermittent leave for 2-3 days per month due to migraine headaches
Case 4 – Extended Weekend

- For the first 2 months, Anne missed various days throughout the month due to migraines
- BUT for the last 2 months, Anne has started missing only Fridays or Mondays
- Company suspects Anne taking unfair advantage
Question 1

What can company do to resolve its suspicions?
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By: Robert E. Bettac, Esq.
New Issues Regarding FLSA White-Collar Exemptions and The Pregnancy Discrimination Act
By: Mark A. McNitzky, Esq.
Wage & Hour Issues

- Potential Changes to White Collar Exemptions – Overtime Eligibility Expansion
- Compensable Time Under FLSA
  - On-call Time
  - Travel Time
  - Training Time
  - Meals/Rest Periods
  - Unpaid Interns and Volunteers
- Overtime Calculation
- Deductions from Salary of Exempt Employees
Potential Changes to White Collar Exemptions - Overtime Eligibility Expansion

- President Obama directs Department of Labor to update overtime regulations
  - Memorandum to DOL on March 13, 2014
  - Suggestion that in modern economy because of outdated regulations millions of Americans lack protections of overtime and even the right to minimum wage

- FLSA specifically authorizes Department of Labor to implement regulations regarding white collar exemptions, whereas only Congress can change the minimum wage.

- Types of white collar exemptions: Executive, Administrative, Outside Sales, Professional, Computer Employees
Overtime Eligibility Expansion
(Cont.’d)

Notable proposed changes:

1) **Salary Basis Test**: Increase of weekly minimum salary to satisfy executive and administrative exemptions from $455 per week to $800? $1,000, $1000+? (currently $23,660.00 per year)

2) **Executive Exemption**: Changes in qualification for executive exemption to increase supervision requirement to four to ten employees (currently two or more)

3) **Primary Duties Test**: Modifying/eliminating “Primary Duty” Standard and Adopting Strict “division of labor” test for executive, administrative and professional exemptions
   - Must spend at least 50% of time performing “executive, administrative or professional duties”
Overtime Eligibility Expansion (Cont.’d)

**Employer reaction - Don’t panic**

1) Last changes took over two years to implement
   - Proposed rule delayed from Nov. ’14 to first quarter of ’15
2) Expanded duties requirement – Impact primarily aimed at white collar exemptions
3) Review/revise employee handbooks/policies
4) Review/change job functions of “grey area” employees
5) Review and evaluate current workforce composition, classification, and time/task-keeping procedures
Compensable Time Under the FLSA

- On Call Time
- Travel Time
- Training Time
- Meals and Rest Periods
- Interns and Volunteers
On-call Time/Hours of Work

- On-call time
  - Is the wait predominantly benefiting the employer?
  - Can the employee generally use the time freely as they see fit?
    - Frequency and duration of interruptions
    - Disciplinary actions
    - Physical restrictions
    - Required response time
    - Frequency of call
  - Pagers, cell phones, alcohol requirements, etc.
    - Do not necessarily restrict use of time
  - Busk v. Integrity Staffing (2014)
    - A compensable activity must be an activity which is “integral and indispensable” to the principal activities the employee is employed to perform. Warehouse employees are not employed to be security screened; they are employed to handle the inventory within the warehouse.
Travel and the Work Day

- Pay only for time employee begins and ends principal duties
- Travel to work from home not compensable
- Travel to home after work not compensable
- Job-site to job-site travel is compensable
- Travel to employer’s premises after work is compensable
Out of Town Trips – Overnight vs. One Day

- Travel time is compensable work time if it occurs during the employee’s regular working hours.
- Travel away from home and “after hours” is not compensable unless work is performed.
- Completing paperwork, driving a truck, riding as assistant is compensable.
- Travel to and from local terminal and home is not compensable.
- All other travel time, except meal periods of 30 minutes or more, is compensable.
Training Time – Compensable Unless

- Attendance outside regular working hours
- Attendance is voluntary
- Not directly related to employee's current job
- No productive work performed
- Exempt Employees: must be performing exempt work even during initial training to be exempt
Meals/Rest Periods - General Rule

- Rest Periods of 5 – 20 minutes are considered “hours worked” and employees are entitled to be paid during both periods.

- The FLSA does not require a specific number of rest periods or regulate their duration.

- Meals/Rest Periods Must Be:
  - Over 20 - 30 Minutes
  - Not Interrupted by Work
  - Meals — Completely Relieved
Unpaid Interns and Volunteers: “Suffered or Permitted” to Work?

- FLSA defines “employment” very broadly.
- However, the U.S. Supreme Court has made it clear that the FLSA was not intended “to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another.”
- Under the FLSA, employees may not “volunteer” services to for-profit private sector employers.
- Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable or similar non-profit organizations that receive their service.
Unpaid Student Interns – The Employment Relationship Test

- **All** six elements must be met:
  - Training similar to vocational school or academic training
  - Training benefits the student
  - Trainees do not displace employees and work under close supervision
  - Employer derives no immediate advantage, and operations may be impeded
  - No promise of a job
  - Mutual understanding that internship is unpaid
Overtime Must Be Calculated On A Workweek Basis

The FLSA prohibits an employer from carrying over or averaging hours worked during multiple workweeks that fall within the same pay period. For example, if an employee is paid every 2 weeks and works 44 hours in week 1 and 36 hours in week 2, the employee must receive overtime pay for the 4 hours of overtime worked in week 1.
Calculation of Overtime

- General rule for hourly employees:
  - Employees who work more than 40 hours in a workweek
  - Must receive at least one and one-half their regular rate of pay for the overtime hours

- Overtime Rate = Regular Rate of pay \times 1.5
Regular Rate of Pay

- Includes:
  - Non-discretionary bonuses
  - Production bonuses
  - Shift differentials
  - All compensation unless specifically excluded by statute

- Does not include:
  - Discretionary bonuses
  - Premium pay for overtime work
  - Premium pay for Saturdays, Sundays, and holidays
Exclusions From Regular Rate Examples:

- Gifts

- Idle time payment for absences resulting from vacations, holiday, illness, jury duty

- Expense reimbursement

- Discretionary bonus
  - not discretionary if employee expects it
  - not discretionary if it is based on the quality or quantity

- Extra compensation paid at a “premium rate” for certain hours worked by an employee because such hours are hours worked in excess of eight in a day, or in excess of 40 hours in the week, or in excess of the employee’s normal working hours or regular working hours

- Extra compensation provided by a “premium rate” for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek.
Calculation of Overtime – FWW Method

- **Fluctuating work week method** available for salaried, non-exempt employees (not hourly employees) where:
  - Employee’s hours fluctuate from week to week
  - Employee receives a fixed salary regardless of the number of hours worked
  - Salary is sufficient to provide compensation at a rate not less than minimum wage
  - Clear mutual understanding that salary is the same regardless of hours worked
  - Employee receives the fifty percent overtime premium (1.2 regular rate) instead of time-and-a-half
The Salary Basis Requirement

- Threshold is $455 a week
- $23,660 annually
- Biweekly—$910
- Semi-monthly—$985.83
- Monthly—$1,971.67
Permissible Deductions From Salary

- Personal **full**-day absences for reasons other than sickness or disability.

- Full-day absence for sickness or disability may be "docked" under a **bona fide** plan that compensates for a loss of salary.
  - Do not have to compensate for all salary loss; and
  - May deduct for absences after employee has exhausted benefits.
Disciplinary suspensions for infraction of major safety rules—

- Rules that relate to prevention of serious danger in the workplace.

- The "full-day" rule does not apply—may dock for partial-day suspensions.
Permissible Deductions
Continued—

**New:** Deduction for disciplinary suspension for violation of workplace conduct rules

– Must be imposed pursuant to a written policy.

– Will be construed narrowly to serious misconduct—sexual harassment, workplace violence, possession or under influence of drugs or alcohol.

– The "*full* day" rule *does* apply.
Permissible Deductions Continued—

- FMLA leave deductions for partial-day absences are permitted.

- Deduction must be proportionate to the employee's normal workweek.

- Five hours of unpaid FMLA leave in a 50-hour workweek—may deduct only 10 percent of employee's salary.
Pregnancy Discrimination Act

- Overview of Pregnancy Discrimination Act
- Overview of EEOC’s Guidance on Pregnancy Discrimination and related issues
- Young v. United Parcel Services, Inc.
- Impact on Employers of EEOC Guidance and Young decision
Pregnancy Discrimination Act

- Includes pregnancy, childbirth or related medical conditions and women affected by pregnancy, childbirth or related medical conditions must be treated the same for all employment related purposes ... as other persons not so affected but similar in their ability or inability to work.

- This protection extends to childbearing capacity or intent to become pregnant (e.g., fertility treatment).
Pregnancy Discrimination Act

- An employer can still require that a pregnant worker perform the duties of her job
- However, an employer may not act on assumptions or stereotypes about a pregnant worker’s abilities or best interests
- PDA covers employers with 15+ employees
Pregnancy Discrimination Act

Prohibits discrimination based on:

- Current Pregnancy
- Past Pregnancy
- Potential or Intended Pregnancy
- Medical Conditions Related to Pregnancy or Childbirth
New EEOC Guidance

- First comprehensive update on pregnancy discrimination since 1983
- Available at: http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm
- Issued in July 2014 in direct response to SCOTUS granting cert in *Young v. United Parcel Service, Inc.*
- EEOC changes their position that PDA does not require accommodation
New EEOC Guidance

- Pregnancy is not an impairment and therefore cannot be a disability (federal courts and the EEOC agree on this point)
  - See, e.g., Richards v. City of Topeka, 173 F.3d 1247 (10th Cir. 1999) (“[N]umerous district courts have concluded that a normal pregnancy without complications is not a disability . . . .”)

- Conditions or impairments resulting from pregnancy, even though they are temporary, may qualify as a disability if they substantially limit a major life activity
New EEOC Guidance

- Impairments:
  - Swelling
  - Lactation
  - Nausea resulting in dehydration
  - Postpartum Depression
  - Sciatica (limits musculoskeletal function)
  - Gestational diabetes (limits endocrine function)
  - Preeclampsia (limits cardiovascular function)
  - Carpal tunnel (ability to lift)
  - Pelvic inflammation (ability to walk)

- EEOC’s Strategic Enforcement Plan prioritizes “accommodating pregnancy-related limitations”
New EEOC Guidance

- Pregnancy and temporary disability
  - If a woman is temporarily unable to perform her job due to pregnancy or a pregnancy-related condition, her employer must treat her the same as another temporarily disabled employee.
  - Pregnancy-related impairments may also be disabilities under the ADA and may require reasonable accommodation.
New EEOC Guidance

- Pregnancy and Leaves of Absence
  - Employer may not compel leave because of pregnancy
  - But, employer must allow leave for women with limitations resulting from pregnancy on the same terms as to others similar in ability or inability to work
  - Additional leave beyond that provided for other employees may be appropriate as a reasonable accommodation for a pregnancy-related condition that qualifies as a disability
New EEOC Guidance

- Pregnancy and Light-Duty Accommodation
  - Employer may apply same restrictions to pregnant and non-pregnant workers (e.g., not providing light duty at all or limiting the number of positions available)
  - PDA requires employer to provide light duty for pregnant employee if it does so for employees “similar in their ability or inability to work”
  - Employer may not deny light duty to a pregnant employee on the basis that the light-duty policy is limited to on-the-job injuries (compare Young case)
Young v. United Parcel Services, Inc.

- Young, a driver for UPS, became pregnant and requested a light-duty position after her doctor imposed a lifting restriction.
- Young could only lift 20 pounds; UPS drivers must be able to lift 70 pounds.
- Policy provided temporary light-duty positions only for employees due to on-the-job injuries, ADA disabilities, and loss of DOT certification.
- UPS denied the light-duty request, placed her on unpaid leave for the remainder of her pregnancy, and Young sued.
Young v. United Parcel Service, Inc.

- Fourth Circuit affirmed summary judgment for employer, holding that the PDA requires only that light-duty policy be “pregnancy-blind”
  - Young did not qualify for light duty under UPS policy
  - A pregnant worker with a temporary lifting restriction is not “similar in ability or inability to work” to workers with a disability, on-the-job injury, or lost DOT certification
- The Court explained that Young’s argument would result in pregnant workers receiving preferential treatment, a position inconsistent with the intent and text of the PDA
Young v. United Parcel Service, Inc.

- Young appealed, and SCOTUS granted certiorari in July 2014
- **Question Presented:** “Whether, and in what circumstances, an employer that provides work accommodations to non-pregnant employees with work limitations must provide work accommodations to pregnant employees who are ‘similar in their ability or inability to work’”
- Argued December 3, 2014
- Decision issued on March 25, 2015
- Fast decision
Young v. United Parcel Service, Inc.

- The Court vacated the Fourth Circuit's summary judgment affirmance and remanded the action to the district court for a determination as to whether Young could show that UPS's "reasons for having treated Young less favorably than it treated" non-pregnant employees were pretextual.

- For the first time, the Court applied the *McDonnell Douglas* burden-shifting analysis to a PDA claim and held that a plaintiff can rebut an employer's legitimate nondiscriminatory reason for the adverse employment decision if the employee shows the failure to accommodate created a "significant burden" to pregnant employees.

- The Court focused on the second clause in the PDA, which provides that pregnant employees shall be treated "as other persons" not affected by pregnancy "but similar in their ability or inability to work."
Young v. United Parcel Service, Inc.

To establish a *prima facie* case, the employee would need to show "she belongs to the protected class [i.e., that she was affected by pregnancy, childbirth, or related medical conditions], that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others 'similar in their ability or inability to work.'"

Upon making this showing the burden shifts to the employer to present a legitimate nondiscriminatory reason for denying the accommodation.

The employee can then overcome the employer's showing if she demonstrates "the employer's policies impose a significant burden on pregnant workers," and the reasons for the difference in treatment are "not sufficiently strong to justify the burden."

How will the district court rule on remand?
Impact of *Young* and EEOC Guidance

- Employers taking action against pregnant employees are possible target of EEOC since issuance of guidance.
- Employers' ability to use the business judgment rule to support legitimate nondiscriminatory reasons for failing to provide accommodations for pregnant employees can effectively be overcome by a showing that the policy imposes a "significant burden" on pregnant employees.
- Pregnant employees no longer need to show pretext or any discriminatory motivation to overcome summary judgment, but instead only need to set forth facts to suggest that the policy creates a "significant burden."
- Employers’ obligations under the PDA remain unclear. The decision does not offer guidance on how employers should interpret the clause "other persons" who are "similar in their ability or inability to work."
Impact of Young and EEOC Guidance

- Even a neutral reason for refusing to accommodate a pregnant woman could be deemed pretextual if "the employer's policies impose a significant burden on pregnant workers" and the employer's reasons "are not sufficiently strong to justify the burden." See Young light duty policy.

- The Court's treatment of the July 2014 EEOC guidance is helpful for employers.
  - Rejects EEOC's position that employers may not rely on policies that make a distinction as to the "source of the employee's limitations" in determining the accommodation to afford a pregnant worker but can only evaluate the request in light of whether the accommodation would constitute an "undue hardship" to the employer.
  - Employers have a good basis to argue the guidance is entitled to no deference on a going-forward basis.
Impact of Young and EEOC Guidance

- Pregnancy as Disability/Reasonable Accommodation?
- Part of EEOC drive to expand definition of disability to include temporary impairments
- Dual aspects of Young and EEOC Guidance
  - Renewed focus on application of current policies to pregnant employees
    - Light Duty
    - Access to Light Duty
    - Modified Duty
    - Leave Rules
    - Other Rules
Impact of Young and EEOC Guidance

- EEOC contends pregnancy on its own should be treated as a disability but guidance will likely need to be changed.
- Supreme Court didn't offer a definitive answer to the question of whether and when employers had to accommodate pregnant employees under the PDA.
  - Do not have to accommodate pregnancy itself under Young, but it can be risky if employee can show significant burden.
  - Pregnancy impairments must likely be accommodated under ADAAA.
  - Duty to accommodate pregnancy-related lifting restrictions?
  - In light of Young, UPS is making temporary light-duty available to pregnant workers with medically-certified restrictions.
Impact of *Young* and EEOC Guidance

- **Immediate Tasks**
  - Review policies to ensure no built-in pregnancy distinctions
    - Use of leave time
    - Ability to access light duty
    - Any differentiation in a work rule or benefit between pregnancy and non-pregnancy related condition
    - These are risky if differentiate between pregnant and other employees
Impact of *Young* and EEOC Guidance

- **Immediate Tasks (Cont.)**
  - Training of managers on how to respond to pregnancy announcement and job request
  -Sharpen reasonable accommodation process skills – request regarding pregnancy itself (PDA) or pregnancy impairment (ADAAA)?
  - ADAAA – perform essential functions of job position with reasonable accommodation
  - PDA – treat pregnant employees at least as well as employees not so affected but similar in their ability or inability to work
    - Meet to obtain medical
    - Discuss possible accommodation and restrictions
    - Obtain requested reasonable accommodation from individual in writing
    - Select reasonable accommodation with time limit on it
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By: Mark A. McNitzky, Esq.