EEOC ISSUES NEW GUIDANCE ON PREGNANCY DISCRIMINATION

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On Monday July 14, 2014, the Equal Employment Opportunity Commission ("EEOC") issued new enforcement guidance on pregnancy discrimination. The guidance was issued by the EEOC on a 3-2 vote.

This guidance updates and replaces the Commission's 1983 guidance. The guidance focuses on one of the priorities outlined in the EEOC's Strategic Enforcement Plan—addressing the interaction between the Pregnancy Discrimination Act ("PDA") and the Americans with Disabilities Act ("ADA"), as amended in 2008. The biggest change in the guidance is an interpretation of the PDA that would require employers to provide reasonable accommodation to employees who have work restrictions because of pregnancy even if the employee does not qualify as disabled or is not regarded as disabled under the ADA.

The issue of accommodation under the PDA is the subject of a case currently before the U.S. Supreme Court, *Young v. UPS*, brought by a pregnant UPS worker who was denied light duty work and let go.

The guidelines have some new provisions:

- Routine pregnancy-related conditions that did not previously rise to the level of disability, such as back pain, increased water intake and lifting restrictions, can now be considered disabilities covered by the Americans with Disabilities Act, which entitles workers to accommodations at work.
- Lactation is now considered a medical condition.
- Employers can no longer deny reasonable accommodations to pregnant workers who are unable to lift heavy objects or need more bathroom breaks.

The guidelines also affirm some preexisting law:

- Medical conditions related to pregnancy that are otherwise considered disabilities, such as gestational diabetes and preeclampsia, must be reasonably accommodated.
- Employers are still prohibited from demoting or firing employees when they announce their pregnancies, intent to become pregnant or pregnancy-related medical conditions.
- Equal access to benefits including light duty, leave, health care, and various other benefits. The EEOC included a statement that "Employers can violate Title VII by providing health insurance that excludes coverage of prescription contraceptives, whether the contraceptives are prescribed for birth control or for medical purposes." This provision may need to be clarified in light of the Supreme Court's decision in the *Hobby Lobby* case.

In addition, the EEOC is calling for equal parental leaves for both mothers and fathers for bonding, although the guidelines suggest giving mothers additional "child birth" leave to recover physically. (At present, both mothers and fathers qualify for unpaid leave under the Family and Medical Leave Act if they have worked full time for at least one year for a large company, but fathers tend to have little if any paid parental leave compared to mothers, which the EEOC says is discriminatory.)

The EEOC has issued a fact sheet for small businesses, as well as a Q-and-A page in conjunction with the guidelines. The links are:

http://www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm

http://www.eeoc.gov/laws/guidance/pregnancy_qa.cfm

The EEOC guidelines mark a growing trend toward protections for pregnant workers, as seen in recent state and local legislation. The impact for employers at this point, however, is unknown until the Supreme Court hears *Young v. UPS* during the 2014–2015 term.

Nonetheless, employers should consider whether revising and updating their pregnancy accommodation policies to comply with the EEOC guidance is a best business practice apropos of the newly issued guidance.

For further information, please contact any of the listed Roetzel attorneys.