

Gavel to Gavel: Preventing pregnancy, maternity, paternity discrimination in workplace

By: Ellen Adams and Paula Williams



The Equal Employment Opportunity Commission continues to prioritize “accommodating pregnancy-related limitations under the Americans with Disability Act Amendments Act and the Pregnancy Discrimination Act,” according to its Strategic Enforcement Plan for 2017-2021.

This means employers must be diligent in taking steps to adequately educate their leaders about the legal obligations under the ADA, PDA and Family Medical Leave Act in managing expectant and new parents to avoid claims of discrimination, harassment and interference with FMLA rights.

The intersection between these laws can quickly become complicated. For example, pregnancy alone is not a disability under the ADA, but certain pregnancy-related medical conditions may constitute an ADA disability. Further, an employer may have a duty to accommodate a pregnancy-related restriction under the PDA. Plus, an employer must consider its potential obligations to a pregnant employee or to the spouse of a pregnant employee under the FMLA.

Employers can be vulnerable to a pregnancy, maternity or paternity discrimination claim if they do not ensure the workplace and its policies are compliant with the law. Yet, by taking three straightforward steps, businesses can help ensure their actions align with applicable laws.

First, employers should review and update their leave, accommodation, discrimination and retaliation policies. They should ensure that policies are compliant with the latest amendments to ADA, PDA, FMLA, and any applicable state laws. They should also make sure all employees, including temporary employees in certain circumstances, have received the policies.

Second, employers should regularly train all employees on these policies and implement internal procedures to ensure policies are followed. This is critical training for all staff members, not just managers and supervisors. It is also important to train leaders to look across and carefully evaluate multiple complex issues to determine whether requests for accommodation or leave should be granted.

Finally, businesses should consider consulting with legal counsel who can audit their policies and prevention practices and assist them with training. Legal counsel experienced in fair employment practices can quickly troubleshoot any gaps in policy and training that employers need to address.

Carefully vetted policies and procedures, coupled with regular training, can help any business minimize its risks of costly employment claims.

Ellen Adams and Paula Williams are attorneys with GableGotwals who focus their practices on defending employers against claims of discrimination, harassment, retaliation, wrongful termination and alleged wage-and-hour violations.