

Pregnancy discrimination complaints on the rise nationwide

While employment figures fell last year, new data from the Equal Opportunity Commission shows employee complaints are on the rise, especially in the area of pregnancy-based discrimination.

In March, the EEOC said it received 6,285 charges of pregnancy-based discrimination in 2008, up 12.5 percent from 2007. Even more eye opening, the EEOC recovered \$12.2 million for those charging parties, not including money obtained through litigation.

Texas business owners may also be keen to know that more than 20 percent of all pregnancy bias claims come from Texas, New York and California, according to the National Partnership for Women and Families.

What you need to know

First, pregnancy discrimination is different from sex discrimination.

In discrimination cases, the person claiming discrimination is compared to the rest of the population. For example, women were not treated the same as men. In pregnancy discrimination, the claim is usually that a pregnant employee wasn't treated the same way as nonpregnant employees. So how can you ensure that pregnant and nonpregnant employees are treated alike? Consider attendance, accommodations and termination.

Regarding attendance, a pregnant employee needs time off for medical appointments and pregnancy-related illness. How much leave do you have to provide? As much as you would provide nonpregnant employees who need leave for health reasons. Depending on your policies and whether your company is governed by the Family and Medical Leave Act, that may mean sick leave, vacation leave, FMLA leave or leave without pay.

An employer is required to provide reasonable accommodations. A pregnant employee can no longer work a full day or perform the lifting and standing duties of her job. The standard of reasonable ac-

commodations may include allowing her to work flex time, temporarily delegating some of her duties to another employee, or giving her another job if one is available. Although an employer is not required to create another job for the employee, an employer should not deny a pregnant employee accommodations that it has provided to nonpregnant employees.

Termination can be tricky and misunderstood. It is not illegal to fire a pregnant woman or a woman on maternity leave, but you'd better have a business case. If a firing appears based on pregnancy, you may be subject to a lawsuit. Before terminating, ask yourself the following:

- Have you provided the employee the same amount of leave you provided to nonpregnant employees who needed leave for



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health reasons?

- Have you provided the employee the same level of accommodations you provided to nonpregnant employees who need accommodation for health reasons?

- Have you provided the same level of pay, benefits and advancement opportunities to pregnant and nonpregnant employees?

- Have you applied the company's performance standards equally to pregnant and nonpregnant employees?

- Can you prove that the decision to terminate was based on business reasons and that nonpregnant employees suffered the

same fate?

This April the EEOC reported that economic hard times may tempt companies into less than legal or equitable decisions. So it issued new guidelines on best practices for workers with caregiving duties, including those who are about to become caregivers — pregnant women.

Some of the largest companies in the U.S. have learned that flexible workplace policies for all caregivers, including those about to become them, help reduce complaints of unlawful discrimination. You're never too small to adopt a few best practices that improve employee satisfaction.

EMILY FROST practices labor and employment law at McGinnis, Lochridge & Kilgore LLP in Austin.

GAPS IN YOUR I-9 COMPLIANCE CAN MEAN GAPS IN YOUR WORKFORCE

