

Never assume pregnancy will affect employees' ability to work

Issue: It's up to pregnant employees to decide if pregnancy or maternity will prevent them from performing their jobs.

Risk: Liability for up to hundreds of thousands of dollars in back pay and damages for wrongful terminations.

Action: Tell managers to discuss leave and availability needs with newly pregnant staff; don't make assumptions.

The Pregnancy Discrimination Act (PDA) says you can't fire a pregnant employee simply because of her condition. Nor can you force her to take leave as long as she's physically able to perform her job.

Now, as the following case shows, you'll also land in trouble if you assume, without asking, that she won't be able to carry the workload.

Recent case: On her first day managing an Old Navy store, Joanna Laxton told her supervisor she was pregnant and due around Thanksgiving. The supervisor said maternity leave during the busy holiday season would be a problem. Soon after, Laxton received two disciplinary warnings and wasn't allowed to correct the behaviors, contrary to a company policy.

She was fired and then sued under PDA, winning a \$200,000 jury award for back pay and front pay, plus \$300,000 in damages. The real reason she was fired, the court said, was that Old Navy wanted to hire and train a new manager in time for the holidays. (*Laxton v. Gap Inc.*, No. 02-40406, 5th Cir., 2003)

Bottom line: Had the manager asked Laxton, prior to knowing about the pregnancy, whether she would be available to work extra hours during the holiday season, he would have been able to later point to that as a legitimate business reason for firing the woman.

Free report: Pregnant Employees, Legal Answers

If the alphabet soup of laws relating to pregnant employees (PDA, FMLA, ADA) confuses you, pick up a copy of our free report, *Pregnant Employees: Answers to Your 20 Toughest Legal Questions*, at www.hrspecialist.net/extra.