

Planning to fire expectant mom? Prove problems predated pregnancy

Ordinarily, if an employer can show it decided to terminate an employee before she announced her pregnancy, a pregnancy discrimination lawsuit won't succeed. That's true even if the employee didn't know she was facing discharge.

But employers that try to make a better case for termination by whipping up a new performance appraisal that emphasizes poor performance can wind up handing the employee an easy lawsuit victory.

Recent case: Elvimar had poor attendance and her supervisor had already requested permission to fire her based on attendance. However, no one had yet told Elvimar.

Then she informed her boss that she was pregnant. Shortly after, Elvimar received a negative performance review that questioned more than just attendance. Elvimar protested but was fired anyway.

She sued, alleging pregnancy discrimination.

The employer argued that it had already decided to terminate Elvimar for poor attendance before she announced her pregnancy; therefore it couldn't have fired her for being pregnant.

The court said a jury should decide, noting that the sudden poor performance review that focused on more than attendance issues was suspicious. The review raised concerns never voiced before Elvimar announced her pregnancy. The court said a jury might conclude the employer was trying to build a better case for termination as a pretext for pregnancy discrimination. (*Colon, et al., v. FIT*, No. 12-CV-7405, 2nd Cir., 2013)

Final note: Stick with the original termination reasons if the decision has already been made.