

Court: Nursing mom entitled to light duty

In an important case that could carve out new rights for new mothers, the 11th Circuit Court of Appeals has ruled that employees returning to work after giving birth may be entitled to light-duty work to accommodate the need to express breast milk for their babies.

For now, the ruling only applies to employers in Alabama, Florida and Georgia, states covered by the 11th Circuit. However, decision shows that pregnancy accommodations don't end at birth, but may continue after the mother returns to work.

Recent case: Stephanie was a police officer in Tuscaloosa, Ala., working first as a patrol officer and then as a narcotics task force investigator. She had always received excellent reviews.

She became pregnant and took 12 weeks of FMLA leave to give birth and bond with her baby. On her first day back at work, she overheard someone call her "that bitch" and "that stupid c**t."

Soon, Stephanie was transferred to patrol duty, a demotion from investigating drug crimes.

In addition, on patrol, she had to wear a bulletproof vest. Her doctor wrote a letter asking that she be excused from patrol duty because wearing the vest could cause a breast infection that would interfere with her ability to produce milk.

The police department refused. Stephanie was told she could either not wear the vest and risk being shot or wear one with the chest area cut out, which might be just as dangerous.

Stephanie quit and sued, alleging violations of the FMLA and the Pregnancy Discrimination Act. A jury agreed and awarded her \$374,000 for failure to accommodate breast-feeding.

The 11th Circuit Court of Appeals upheld the award, reasoning that Stephanie had proven retaliation for taking FMLA leave and failure to accommodate her by offering a light-duty desk job while she was breast-feeding. (*Hicks v. Tuscaloosa*, 11th Cir., 2017)

Final note: Don't forget that the Affordable Care Act also provides new mothers with important rights to maintain their breast milk supply while at work.

Employees can take unlimited, unpaid breaks to express milk during working hours. Employers must provide access to a private space (not a restroom) in which mothers can express milk.