

Pregnancy discrimination: Make sure managers know the laws



Employers can sometimes run into very large legal fees if they assume managers know federal anti-discrimination laws. The only way to be sure is to provide training on how to comply with the law.

Advice: Never discount the possibility that some of your supervisors may be completely clueless about the legal trouble they might cause.

Case in point: Consider the recent case of a North Dakota restaurant. A waitress told the restaurant's manager that she was pregnant. Shortly thereafter, she was fired.

To make matters worse, the manager was perfectly honest about what happened. He told one and all that he had fired the waitress because of her pregnancy.

Guess what! She filed an EEOC complaint.

The Pregnancy Discrimination Act is not particularly complicated. It equates pregnancy discrimination with sex discrimination, and forbids treating pregnant workers any differently than other similarly situated employees. For example, if workers returning from workers' compensation injuries are entitled to light-duty positions, then pregnant workers or workers who return from maternity leave with medical restrictions are also entitled to be assigned to light-duty jobs.

And it does prohibit firing employees just because they become pregnant.

For some reason, the North Dakota restaurant refused to settle during the EEOC's conciliation process. Perhaps the owners thought the EEOC was bluffing. Perhaps they were merely being loyal to their tragically honest, poorly trained manager.

Either way, this decision is likely to wind up costing tens of thousands of dollars in legal fees. The employer will now either go to trial and try to explain away the manager's words, or it will ultimately decide to settle after all.

A prudent decision to settle earlier could have cut those losses. Even cheaper would have been to train its manager how to comply with the Pregnancy Discrimination Act.

So what's the best response when an employee announces she's pregnant?

Congratulations! Any further comments usher in the risk of litigation.

Recent case: When Tanya was hired as a clinical specialist for a medical device manufacturer, she quickly earned praise for her salesmanship. During her training period, she helped her team achieve sales well above their established goals. She also had a good working relationship with her supervisor.

But Tanya claims all that changed after she announced that she was pregnant and that her doctor had placed medical restrictions on her. For example, although her direct supervisor had urged her to seek out a promotion, shortly after the announcement, she learned that the position allegedly was not going to be filled and she didn't need to go to an interview. In fact, she later learned, the position remained open.

Tanya then heard that a supervisor had said Tanya probably wouldn't return after giving birth. She also complained to HR that a supervisor told her more than once that "having a child while working at could be career ending." Tanya went on maternity leave and returned to renewed complaints about her performance. Three months later, the company fired her.

Tanya sued, alleging pregnancy discrimination. She argued that her pregnancy announcement started a downward spiral in which her employer targeted her for termination on account of pregnancy. The employer argued it terminated her for legitimate performance-related reasons.

The court ruled Tanya had enough evidence to argue that pregnancy was a motivating factor in her discharge, including the comments about children being career ending and speculation that she might not return to work after giving birth. It said a jury should decide what happened. (*Campbell v. St. Jude Medical*, DC MN, 2018)