

August 2014

EEOC Issues New Guidance on Pregnancy Discrimination

On July 14, 2014, the Equal Employment Opportunity Commission (EEOC) issued its [Enforcement Guidance: Pregnancy Discrimination and Related Issues](#) (Guidance), providing its interpretation of the Pregnancy Discrimination Act (PDA) and the obligations of employers with pregnant employees. It also issued a [question and answer document](#) about the Guidance and a [Fact Sheet for Small Businesses](#) that, along with the Guidance, are available on the EEOC's website. The EEOC issued the Guidance in response to the rising number of pregnancy discrimination complaints and a significant split of authority among federal appellate and district courts over the scope of the PDA. Indeed, the EEOC itself is divided on the issue: The Guidance was issued over the vocal dissent of two EEOC commissioners, both of whom issued public statements, which can be found [here](#).

The Guidance advances a number of controversial positions that could greatly expand the protections afforded to pregnant employees, previously pregnant employees, and employees who have the potential to become pregnant and/or the intent to become pregnant. Much of the controversy stems from the EEOC's contention that employers may be required to modify job requirements for pregnant and lactating employees, regardless of whether an employee has health and/or pregnancy complications or whether an employee is disabled under the Americans with Disabilities Act (ADA) or state law.

As it stands, the timing of the EEOC's Guidance is particularly provocative, as some of the critical issues it addresses are scheduled to be reviewed by the U.S. Supreme Court in *Young v. United Parcel Services, Inc.*, 707 F.3d 437 (4th Cir. 2013), *cert. granted*, 86 USLW 3602 (U.S. July 1, 2014) (No. 12-1226), during its 2014–2015 term. The Supreme Court will review “whether and in what circumstances, an employer that provides work accommodations to nonpregnant employees with work limitations must provide work accommodations to pregnant employees who are ‘similar in their ability or inability to work.’”

The EEOC's Guidance does not have the force and effect of a law or regulation, and, ultimately, the courts will decide what the PDA requires. Both dissenting commissioners noted that issuing guidance at this juncture, which, potentially, soon could be in direct conflict with case law and therefore be invalid, appears shortsighted.

Notwithstanding the Supreme Court's pending review of these issues, however, employers may want to consider reviewing and updating their accommodation policies in light of the EEOC's Guidance. At a minimum, employers should be aware of the positions taken by the EEOC, the signal from the agency that it will carefully scrutinize pregnancy-related discrimination claims, and its willingness to litigate such claims. Read more about the Guidance [here](#).

For more information or if you have questions about how the issues raised in this alert affect your policies and practices, please contact one of the following attorneys in the firm's [Labor and Employment Group](#).

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