



Weekly Wright Report (12/11/17)

EMPLOYMENT LAW

The Pregnancy Discrimination Act Covers More than Just Pregnancy

In September 2017, the U.S. Court of Appeals for the Eleventh Circuit determined that different treatment based on an employee's breastfeeding is prohibited by the Pregnancy Discrimination Act ("PDA"). In *Hicks v. City of Tuscaloosa*, No. 16-13003, the plaintiff worked for a police department. Eight days after she returned from job-protected pregnancy leave, she was reassigned from the narcotics task force to the patrol division. Along with a reduction in pay and different job duties, the plaintiff's new position as a patrol officer required that she wear a ballistic vest all day, which was not required in her prior position in the narcotics task force. She was given no choice in her job assignment and told she could not return to the same or similar position held prior to giving birth.

In siding with the employee, the court held that accommodations under the PDA could be extended to women returning from maternity leave for pregnancy related conditions, barring discrimination not only on the basis of pregnancy, but also on the basis of pregnancy-related physiological conditions such as breastfeeding. The employee had also shown that the police department had provided alternative duties to employees with temporary injuries, and failed to provide her with alternative duties, which constituted pregnancy discrimination. Ask Laura LRubenstein@wcsllaw.com

EEOC Issues "Promising Practices for Preventing Harassment"

On November 22, 2017, the Equal Employment Opportunity Commission ("EEOC") published informal guidance on its website about workplace harassment, entitled "Promising Practices for Preventing Harassment." While this publication does not have the force of formal regulations or rules, the EEOC makes a number of suggestions for harassment prevention that employers may consider adopting as best practices.

For example, the EEOC encourages employers to adopt policies and procedures that:

- Provide multiple avenues for making complaints.
- Periodically evaluate the effectiveness of the organization's strategies to prevent and address harassment, including reviewing and discussing preventative measures, complaint data, and corrective action with appropriate personnel.

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- Ensure that concerns or complaints regarding the policy, complaint system, and/or training are addressed appropriately.
- Direct staff to periodically, and in different ways, test the complaint system to determine if complaints are received and addressed promptly and appropriately.
- Conduct anonymous employee surveys on a regular basis to assess whether harassment is occurring, or is perceived to be tolerated.

The EEOC also suggests harassment policies that:

- Describe processes for employees to informally share or obtain information about harassment without filing a complaint.
- Include a statement that employees are encouraged to report conduct that they believe may be harassment.
- State that the employer will provide a prompt, impartial, and thorough investigation.
- Respond to complaints by employees and by other individuals on their behalf.
- Include processes to ensure that alleged harassers are not prematurely presumed guilty or prematurely disciplined for harassment.

The EEOC encourages employers to appropriately document every complaint, from initial intake to investigation to resolution, use guidelines to weigh the credibility of all relevant parties, and prepare a written report documenting the investigation, findings, recommendations, and disciplinary action imposed (if any) and corrective and preventative action taken (if any).

As for training, the EEOC suggests:

- Because supervisors and managers have additional responsibilities, they may benefit from additional training.
- Employers may find it helpful to include non-managerial and non-supervisory employees who exercise authority, such as team leaders.
- Employers may consider and implement new forms of training, such as workplace civility, respectful workplace, or bystander intervention training.

Wright, Constable & Skeen works with clients to review policies and ensure that training programs are tailored to your dynamic workforce needs. Call (410) 659-1300 or email any of our employment attorneys for more information:

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