

Insights, News & Events

OH BABY! PATTERN OF COVID-19 PREGNANCY DISCRIMINATION LITIGATION BEGINNING TO GROW

Insights
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As businesses try to return to a new normal, employers should be aware that a number of COVID-19 lawsuits related to pregnancy discrimination have already begun. What do employers need to know in order to avoid being on the receiving end of such a claim?

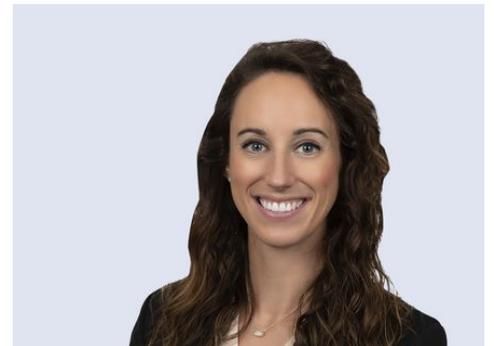
AN EMERGING TREND: LAWSUITS BY PREGNANT EMPLOYEES

COVID-19 presents a specific, elevated immune and respiratory risk to mother and child, and recent lawsuits filed across the country are showing a trend of litigation filed by pregnant employees. For example, a lawsuit recently filed in California state court alleges that an employer failed to reasonably accommodate a pregnant employee during the COVID-19 quarantine. In that case, the employee alleged that she was terminated shortly after requesting accommodation due to the high-risk factors of exposure to COVID-19 as a pregnant woman.

A recent case filed in New Jersey also claims a pregnant employee was terminated after she declined to work a shift that would require her to work directly with COVID-19 patients. Her employers were aware of her pregnancy and had a note from the doctor explaining how she should be allowed to refrain from treating COVID-19 patients.

Also in New Jersey, an employer allegedly terminated a pregnant employee prior to her FMLA eligibility date to avoid accommodating her until that date. In yet another New Jersey case, a pregnant employee requested to be

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furloughed due to how many fellow employees were COVID-19 positive. She was denied the request, her position was changed, and was soon terminated. In June, a Texas lawsuit alleged that a pregnant employee was terminated after being furloughed when almost all other employees returned to their position.

In all of these cases, the plaintiff allegedly requested accommodations or a furlough due to a heightened risk of COVID-19 related complications due to their pregnancy. Also, in all cases, the employees claim that they were eventually terminated after they requested options for leave.

As employers who have been through workplace litigation know, the fact that an allegation occurs does not necessarily mean that any laws were actually broken, or that the allegations are true. But the fact that cases with similar claims are being filed left and right in such a small window of time does show employers they should be prepared against risks for pregnancy discrimination claims in their workplace.

WHAT SHOULD EMPLOYERS DO TO AVOID SIMILAR CLAIMS

For many reasons, you should be diligent in quickly responding to employees requesting time off due to a COVID-19 related issue, or otherwise requesting an accommodation due to COVID-19 or another underlying health condition, such as pregnancy.

For example, while employees are beginning to physically return to the workplace, requests to work from home should be treated as a possible request for a reasonable accommodation. All managers should know to direct such requests to the appropriate person in their company and avoid any shorthanded comments that may instigate a claim of discrimination. Having an individual within each business to whom requests can be directed can make sure they are responded to in a timely, and consistent, manner.

You should also document any and all discussions regarding requests for leave or other accommodations. A paper trail can show that such requests were responded to and it can be extremely helpful in defending claims where the employee may allege that their requests were ignored or avoided. Also, you should document the reasoning behind any decisions to terminate.

Remember, just because an employee asks about FMLA does not mean that you cannot legitimately terminate them for another reason or include them in a furlough, so long as the employment decision is unrelated to the request for leave. However, be aware that your own capability to explain why the employee was terminated is crucial. Once a charge of discrimination is filed, you as the employer are obligated to respond with a legitimate, non-discriminatory reasons for your employment decisions. Maintaining clear and detailed paperwork prior to a termination will at least put you in the best position to defend your decision if such a claim rises after the employee is terminated.

THESE LAWSUITS ARE LIKELY A SIGN THERE ARE MORE TO COME

Employers should be aware of the lawsuits that may be coming in the states where you are operating. The plaintiffs' bar will take advantage of this opportunity and will file similar lawsuits. For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). Our [COVID-19 Employment Litigation and Class & Collective Actions section](#) also has a listing of our litigation-related alerts and team members handling these types of cases.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney. You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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