The Pregnancy Discrimination Act (“PDA”) prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions. In essence, the PDA requires that employers treat women affected by pregnancy or related medical conditions the same as similarly situated non-pregnant applicants or employees for all employment-related purposes, including hiring, firing, promotion, and benefits. The PDA protects not just those women who are currently pregnant, but also prohibits discrimination on the basis of a past pregnancy or a potential or intended pregnancy.

The Equal Employment Opportunity Commission recently addressed how the PDA impacts employee benefits affecting pregnant women, including health insurance and retirement plans. According to the EEOC, employers must provide the same level of coverage to female employees and their dependents as they provide to male employees and their dependents. Employers who sponsor health insurance coverage must include coverage for pregnancy, childbirth, and related medical conditions. If the employer’s plan covers pre-existing conditions (as all health plans were required to do as of January 1, 2014 under the Patient Protection and Affordable Care Act), then it must cover the costs of an employee’s pre-existing pregnancy. In addition, the plan should apply the same terms and conditions for pregnancy-related costs as for medical costs unrelated to pregnancy. Importantly, employer-sponsored health insurance plans may not impose limits applicable only to pregnancy-related services. Nor may such health plans impose a higher deductible for pregnancy-related medical expenses.

In addition, the EEOC has taken the position that the PDA also prohibits discrimination related to a woman’s use of contraceptives. In other words, an employer may violate the PDA if an employer offers health insurance coverage that excludes prescription contraceptives regardless of whether the contraceptives are used for birth control or medical reasons. In order to comply with the PDA, a health insurance plan must cover prescription contraceptives to the same extent as any other prescription drugs, devices, or services used to prevent medical conditions other than pregnancy. For example, if an employer’s insurance plan covers preventative care for other medical conditions (such as drugs to prevent high blood pressure), then prescription contraceptives must also be covered. Please note, however, that the EEOC’s Guidance does not address whether closely held for-profit employers with religious objections to contraceptives may be exempt from the PDA’s requirements concerning contraceptives.

The EEOC’s guidance also confirms that employers cannot impose greater restrictions on pregnancy-related medical leave than on other medical leave, nor may an employer force an employee who is otherwise able to perform her job to take leave because she has been pregnant. When employees do take pregnancy-related medical leave, employers must allow them to continue to accrue seniority in the same way as employees on medical leave for other reasons.

In light of this new guidance, employers should reevaluate their practices and policies related to pregnancy and pregnancy-related issues, in particular their benefits policies, and more carefully consider employment decisions involving pregnancy in the workplace.

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