

# EAST COAST



## RISK MANAGEMENT

### **Singling Out Pregnant Women Can Lead to Baby Blues for Employers**

For those that regularly read our blog, I'm sure you are more than familiar by now with the legal principle of discrimination under Title VII. If you're a new reader, here's a quick overview of the law. Title VII of the Civil Rights Act is a federal law which makes it illegal for employers to discriminate based upon race, color, national origin, religion and sex in the workplace. Even if you are familiar with Title VII, most employers are not familiar with its protections for pregnant women.



Weight Watchers recently learned a hard lesson about pregnancy discrimination when it agreed to pay \$47,000 after it refused to hire an applicant as a group leader because she was pregnant. The applicant was a lifetime member of Weight Watchers who had successfully maintained her weight goals and applied to work there. When Weight Watchers learned she was pregnant, they refused to hire her stating her "pregnancy related weight" put her over their goal weight requirements.

Merry Maids, a home cleaning franchise, faced similar legal troubles this year when they fired a pregnant worker because she suffered from pregnancy related issues, rather than reasonably accommodating her condition. Walmart is also being sued in a class action lawsuit right now for failing to reasonably accommodate pregnant women's pregnancy-related conditions and instead forcing them to take a leave of absence or firing them.

The Pregnancy Discrimination Act amended Title VII and made discrimination based on pregnancy, childbirth, or related medical conditions unlawful. In other words, women who are pregnant or have pregnancy-related medical conditions must be treated the same as other applicants and employees. Employers bound by Title VII are those who have 15 employees or more. For those employers to whom Title VII applies, here are some rules to follow so as not to run afoul of its application to pregnant women:

- Employers cannot refuse to hire a pregnant woman because of her pregnancy or a pregnancy-related condition.
- Employers cannot ask questions during the interview phase that they would not ask of applicants who are not pregnant or may become pregnant.
- Employers cannot require employees to give notice of their pregnancy, except in very rare circumstances.
- Employers cannot prevent pregnant women from continuing to work if she wants to and she is physically capable.

- Employers have to reasonably accommodate women in the workplace with regard to pregnancy-related conditions including lactation.
- Employers must hold a job open for pregnancy-related absences the same length of time the employer holds jobs open for sick or disability leave (if covered by FMLA, that must be at least 12 weeks).
- Employers must provide health insurance coverage for pregnancy-related conditions on the same basis and for the same cost as for other medical conditions.
- Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

So what's the take away from all of this? Employers cannot treat pregnant women differently than any other worker, including those who are injured or on sick or disability leave. Any employer who fails to provide equal treatment and equal benefits to those who are expecting can expect their own baby blues in the form of a discrimination lawsuit.

***-by Renee Mielnicki, Esq.***