

# CHICAGO LAWYER®

## GUEST COLUMN

**A**fter I gave birth to my son, I intended to return to work, but I also planned to breastfeed for the first year of his life. I am an experienced employment lawyer and knew my rights associated with these decisions. Unfortunately, many employees and employers do not understand their rights and/or obligations and denying certain rights to pregnant employees could expose your company to liability.

Pregnancy remains a stigma in the workplace. Many employers still view pregnancy as an interruption to their operations. They may believe that women who become pregnant will not want to return to work or will not be focused enough on work if they return. This outdated mindset disappointingly remains a visible deterrent to many women in the workplace. It is also a contributing factor as to why women may not be promoted as often as their male counterparts.

As the presence of women in corporate America continues to grow, so should your knowledge regarding associated legal rights of your female workforce. This article focuses on some of these key points.

### **PREGNANCY DISCRIMINATION ACT**

The Pregnancy Discrimination Act (PDA) applies to employers with 15 or more employees. The PDA mandates that women who are pregnant must be treated in the same manner as other applicants or employees who are similar in their ability or inability to work. An employer cannot refuse to hire a woman because she is pregnant, intends to become pregnant or because of a pregnancy-related condition as long as the applicant is able to perform the major functions of the job. The PDA also prohibits discrimination based on pregnancy related to any other term or condition of employment.

### **FMLA/MATERNITY LEAVE**

There is no federally-mandated paid leave available to pregnant workers. The Family and Medical Leave Act (FMLA) provides 12 weeks of unpaid leave to be used for the birth of a new child and for the mother's own serious health condition following the birth of a child. The FMLA applies to employers with at least 50 employees.

When an employee returns from FMLA leave, she must be restored to the same job or to an "equivalent job," meaning it is virtually identical to the original job in terms of pay, benefits and other employment terms and conditions.

If your organization is not covered by the FMLA, you may want to consider providing similar leave to pregnant employees in consideration of the great physical and emotional consequences to giving birth.

### **NURSING UNDER FEDERAL LAW**

Under the Affordable Care Act (ACA), employers covered by the Fair Labor Standards Act are required to provide non-exempt employees a "reasonable" amount of time to pump breastmilk in a private space other than a bathroom until the employee's baby turns one year old.

The space must be completely private and it must be a functional space to express breast milk.

The ACA does not require employers to compensate an employee receiving break time for pumping unless the employer offers paid breaks and an employee uses that time to pump.

Although not mentioned in the ACA, storage of expressed breastmilk is a big concern for nursing mothers. Storage of this "liquid gold" was one of my biggest concerns when I returned to work. I am lucky to have a private office in which I installed a mini-refrigerator for this purpose, but many mothers do not have this opportunity and must store their milk in a shared space. Neither the Centers for Disease Control nor the Occupational Safety and Health Administration classifies human milk as a biohazard, so there are no health concerns associated with storage in a communal workspace.

### **ILLINOIS PREGNANCY ACCOMMODATION LAW**

This law applies to employers in Illinois with one or more employees and covers workers and applicants who are pregnant or who become pregnant.

Employers must make reasonable accommodations for a pregnant employee even if her impairment does not meet the official test to be determined a "disability." Some examples of accommodations include more frequent bathroom breaks, light duty, time off to recover from pregnancy and a private space other than a bathroom for pumping.

Similar to the FMLA, if an employee takes leave, employers must reinstate the employee to her original job or to an equivalent position, unless the employer can demonstrate that doing so would impose an undue hardship.

### **ADA**

Pregnancy alone is not considered a disability for purposes of the Americans with Disabilities Act, but some health conditions resulting from pregnancy may be considered disabilities. An employer may be legally required to provide a reasonable accommodation for a pregnancy-related disability under the same standard as it would for any other disabled employee.

### **FLEX-TIME SCHEDULES**

Flex-time schedules are a popular alternative for new mothers returning to work and are attractive for many reasons, including softening the physical



## **PREGNANCY DISCRIMINATION**

Know your rights in the workplace

By **JESSICA B. JACKLER**

and emotional tolls associated with childbirth. Employers open to this concept may find that employees on flex schedules are just as productive, if not more productive, than employees working traditional schedules.

In my experience, flex schedules also increase morale. As a new mother, I am fortunate to work for an organization that respects my home life and parenting decisions. I am more positive while in the office and even more appreciative that my employer allows me the opportunity to balance my work and family.

Remember, compliance with pregnancy-related state and federal laws is the floor — not the ceiling — when it comes to retaining a strong female workforce. There are many additional ways to go beyond basic legal obligations related to pregnancy, and since approximately half of the workforce may be impacted by pregnancy and childbirth, a progressive approach may benefit your company in the long term. [CL](#)

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