

Published by the  
Glatfelter Insurance Group  
York, Pennsylvania

# Employment Practices UPDATE

## Pregnancy Accommodations and Discrimination Prevention



Similarly, individual state laws also prohibit adverse actions based on pregnancy-related conditions.

Examples of pregnancy discrimination include:

- ▶ refusing to hire or select an employee or volunteer for membership based on pregnancy or the possibility of future pregnancy;
- ▶ terminating or demoting a pregnant member;
- ▶ disparately applying leave laws or policies to pregnant employees; and
- ▶ denying the same or similar job or position to a member when she returns from pregnancy-related leave.

Pregnancy discrimination is a form of sex discrimination. What does this mean for your ESO?

**Hiring** - As long as a pregnant woman can perform the essential functions of the job, your ESO cannot refuse to hire the woman because of her pregnancy-related condition, because of prejudices against pregnant workers, or the prejudices of co-workers, clients, or customers. You are not required to hire pregnant women or show preferential treatment, but instead must treat them the same way as other applicants with temporary disabilities.

Avoid discussing an applicant's pregnancy or potential for pregnancy during the interview or selection process, even if her condition is divulged or may be apparent. Instead, focus on job requirements and the candidate's ability to satisfy them.

**On the Job** - It is important to note pregnant members must be permitted to work as long as they are able to perform their jobs. The member is responsible, with the advice from her healthcare provider (physician), to

*Continued*

**A**s a leader of an Emergency Services Organization (ESO), your good intentions and concern for the well being of a pregnant employee or volunteer (member) may actually cross the line of unlawful discrimination. This article provides tips to fairly administer your ESO's pregnancy discrimination prevention policy and accommodation procedures.

The Pregnancy Discrimination Act (PDA) is a federal law prohibiting employment discrimination on the basis of pregnancy, childbirth, or related medical conditions for organizations with more than 15 employees. The PDA requires ESOs to treat pregnant workers the same as other workers who have temporary medical limitations or disabilities.

We welcome comments, suggestions and questions from our readers.

Write to:  
Editor  
Employment Practices Update  
P.O. Box 2726  
York, PA 17405  
epupdate.opinion@vfis.com



## PREGNANCY ACCOMMODATIONS AND DISCRIMINATION PREVENTION

(Continued)

determine how long she will be able to safely continue in her normal assigned position, performing the essential functions of the job.

If a member is temporarily unable to perform her job due to pregnancy, the ESO must treat her the same as any other temporarily disabled member. Examples include providing modified tasks, alternative assignments, disability leave, or leave without pay.

**Accommodations** - Don't jump to conclusions that a member cannot perform the essential functions of the job because she is pregnant. Create an accommodation request policy offering multiple avenues of internal reporting. Your ESO should determine the feasibility of all requested accommodations, considering various factors, including, but not limited to the nature and cost of the accommodation, overall financial resources, and the accommodation's impact on the ESO's operations, including its impact on the ability of other members to perform their duties.

Follow the ESO's policy and past practices that may allow a member with a temporary disability or medical condition to transfer to a position that better accommodates the condition or to work part-time. Generally, however, your ESO will not be required to create a modified duty position vacancy where one does not exist in order to accommodate an individual who cannot fulfill the essential functions of her position.

**Maintaining Comprehensive Job Descriptions** - What does the job require? Do your job descriptions define the essential mental and physical requirements of the positions? For example, how much weight must the member be able to lift, push or pull? What other physical requirements exist?

Putting job requirements in writing will go a long way to assist your ESO and your member's physician in determining whether a pregnant member can safely continue working. A physician should determine which, if any, of the duties the pregnant member cannot perform, and at what point performance and safety is compromised. Only with professional guidance should the ESO make changes, such as restricting or limiting a member's job due to pregnancy.

*Don't jump to conclusions that a member cannot perform the essential functions of the job because she is pregnant.*

**On Leave** - An ESO should not single out pregnancy-related conditions for special procedures to determine a member's ability to work. The ESO should use the same procedures used to screen other members' ability to work.

Other relevant leave issues to consider:

- ▶ When a member may have been required by her physician to take time off due to complications early in the pregnancy, the ESO should not require a member to remain on leave until the baby's birth if that member has been medically released back to duty.
- ▶ An ESO should not pre-determine a date at which time the pregnant member is automatically deemed unfit for duty. Allow the member's physician to make the determination of when leave is necessary and provide an updated job description and any other information to make an accurate assessment. The medical professional should understand the rigors of duty.
- ▶ If an ESO provides benefits to workers on leave, the same benefits should be provided to those on leave for pregnancy-related conditions.

**Return-to-Work** - Remaining consistent in its personnel practices, an ESO has the right to require return-to-work certification from a physician following any temporary disability leave. Once again, the essential physical and mental requirements set forth in a job description should be the guide. If the ESO questions the member's certification, such that you reasonably believe the member may not be able to return to work and presents an imminent threat of harm to herself or others, you are entitled to get a certification from an ESO-appointed doctor.

The ESO should not establish a set rule prohibiting a member from returning to work for a predetermined length of time after childbirth. Each return-to-work situation should be assessed on a case-by-case basis while remaining consistent with past practices for other temporarily disabled members.

### **Family and Medical Leave** -

Pregnancy-related leave is covered by the PDA, Family and Medical Leave Act (FMLA), and in limited circumstances, the Americans with Disabilities Act (ADA). Consult with your labor and employment attorney to determine whether your ESO is required to abide by these federal statutes or similar state leave laws.

**Policy and Training** - Implement clear and comprehensive policies and procedures addressing pregnancy discrimination and accommodations. Train all personnel, particularly supervisors, on relevant laws and rules. The goal is to treat all members equitably and understand the ESO's obligations when making pregnancy-related personnel decisions.

*Michael McCall, J.D., provides personnel litigation avoidance training and consultation to emergency services organizations nationwide.*

### Employment Practices UPDATE

Photocopying or transferring this document is a violation of federal copyright law and is prohibited without the express written consent of VFIS. VFIS does not offer legal advice. Readers should seek the advice of an employment attorney regarding any legal questions.