

# RISK COMMUNIQUÉ

## ***Pregnancy Discrimination and Accommodations— Management Liability/Employment Practices Risk Management***

*Pregnancy discrimination claims filed with the federal Equal Employment Opportunity (EEOC) jumped 39% from 1992 to 2003. During that time, the nation's birthrate dropped 9%. The surge of pregnancy discrimination complaints is one of the fastest-growing types of employment discrimination charges filed with the EEOC, outpacing the rise in sexual harassment and gender discrimination claims.*

*Emergency Services Organization (ESO) leaders should understand discrimination and accommodation laws involving pregnancy. This Communiqué offers risk management guidelines to fairly administer your ESO's pregnancy discrimination prevention policy and accommodation procedures.*

### ***The Pregnancy Discrimination Act***

The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. This federal law prohibits employment discrimination on the basis of pregnancy, childbirth, or related medical conditions for organizations with more than 15 employees. Pregnancy discrimination is a form of sex discrimination. The PDA requires ESOs treat workers who are pregnant or affected by related conditions the same as other workers who have temporary medical limitations or disabilities. 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.

For members that feel they may be subjected to pregnancy discrimination, your ESO must maintain and advertise its multiple avenues of internal complaint. The ESO must promptly investigate any reports of discrimination, discipline offending parties, and take appropriate measures to prevent future occurrences.

### ***Hiring & Selection***

As long as a pregnant woman can perform the essential functions of the job, an ESO cannot refuse to hire or select the woman because of her pregnancy related condition, because of prejudices against pregnant workers, or the prejudices of coworkers, clients or customers. An ESO is not required to hire or select pregnant women or show preferential treatment, but instead 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.

*This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization's needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.*

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## ***Pregnant Worker Treated As If Temporarily Disabled***

Pregnant ESO members must be permitted to work as long as they are able to perform their jobs. The ESO member is responsible, with the advice from her healthcare provider (physician), to determine how long she will be able to safely continue in her normal assigned position, performing the essential job functions. 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 of the workforce. Examples include providing modified tasks, alternative assignments, disability leave or leave without pay.

## ***Accommodations For Pregnant Workers***

Create an accommodation request procedure offering multiple avenues of internal reporting. Don't jump to conclusions that a member cannot perform the essential functions of the job because she is pregnant. 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. Seriously consider involving the ESO's retained labor and employment attorney to help address accommodations.

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 the position.

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Other relevant leave issues to consider:

- **Rely on Medical Professionals** – 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. The essential physical and mental requirements set forth in a written job description should be the guide. If the ESO questions the member’s medical certification, such that the organization reasonably believes the member may not be able to return to work and presents an imminent threat of harm to herself or others, the ESO is entitled to get a certification from an ESO-appointed doctor. 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 restrict or limit a member’s job due to pregnancy.
- **Reinstatement after early complications** – If a member has been absent from work as a result of a physician documented pregnancy related condition and recovers, the ESO may not require her to remain on leave until after the baby’s birth if that member has been medically released back to duty.
- **Avoid predetermined leave dates** – An ESO may not have a rule which prohibits a member from returning to work for a predetermined length of time after childbirth. Likewise, the ESO should not predetermine 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. 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 ESO’s labor and employment attorney to determine the applicability of these federal laws and other similar state leave laws.
- **Benefits** – If an ESO provides benefits to workers on leave, the same benefits should be provided to those on leave for pregnancy related conditions.
- **Policies and Training** – Implement clear and detailed policies and procedures addressing pregnancy discrimination and accommodations. Train all personnel, particularly supervisors on relevant laws and ESO guidelines.

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