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Baby Got Back...To Work!

**An Employer's Guide to
Accommodating Pregnancy
and Family Leave**



Introduction



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**Discrimination on the
Basis of Sex**

- Federal Laws
 - Title VII of the Civil Rights Act of 1964
 - Pregnancy Discrimination Act of 1978
- State Laws
 - Nebraska Fair Employment Practice Act
- 15 or more employees

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Examples of Discrimination

- Firing an employee who announces she is pregnant
- Demoting an employee or passing her over for a promotion because of pregnancy
- Making harassing comments
- Stricter enforcement of workplace rules

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Common, Inadvertent Mistakes

- In the job interview
 - “Do you plan on having kids?”
- Sexist assumptions or stereotypes
 - Job duties
 - Assumed caregiver role
 - Assumed lazy or lacking dedication

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Hope maternity leave is great but not so great that you decide not to come back to us.



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user card

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What about Abortion?

- Is abortion a “related medical condition” under the PDA?
- *Ducharme v. Crescent City Déjà Vu, L.L.C.* (E.D. La. 2019)

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Pregnancy Accommodations

- Are pregnant employees entitled to special treatment?
- The PDA does *not* require accommodations for all pregnant employees.
- Light duty assignment or other job modifications?

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Pregnancy Accommodations (continued)

- *Young v. UPS (SCOTUS 2015)*
 - “significant burden” on the pregnant employee
 - “sufficiently strong” reason for different treatment

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Pregnancy Accommodations (continued)

- What about the Americans with Disabilities Act ("ADA")?
 - Pregnancy is not, by itself, a disability
 - Pregnancy can, however, lead to disabling medical conditions
 - Expansive definitions following amendments in 2008

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Accommodation Examples

- Additional Breaks
- Opportunities to sit, or more ergonomic seating
- Reduced hours
- Lifting restrictions
- Leaves of Absense

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Job Accommodations under State Law

- Remember that state laws often provide more protections than Federal law
- E.g., the Nebraska Fair Employment Practice Act
 - "known physical limitations"
 - Broader definition of what is "reasonable"

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Pregnancy-Related Medical Leave

- Leave of absence might be a “reasonable accommodation” under the ADA
- Family Medical Leave Act (“FMLA”)
- Employer Leave Policies

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Parental Leave

- It is imperative that employers are familiar with both state and federal requirements
- Federal: FMLA
- State: possible paid-leave requirements

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Parental Leave under the FMLA

- Eligible employees get up to 12 weeks of unpaid leave
- Applies to mothers and fathers
- Covers adoption/foster placement
- Leave may be intermittent by agreement
- Beware of “leave stacking” laws

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Paid Parental Leave Laws

- Federal law only provides paid leave to certain federal employees
- Paid leave laws in 8+ jurisdictions, and more proposed every day!
- Multi-state employers must be watchful

Caution: Paternity Leave



Lactation Accommodation



Getty Images

Lactation Accommodations

- FLSA (as amended by the Affordable Care Act) and State law
- Reasonable Break Time
- Location
 - Not a bathroom
 - Free from intrusion and shielded from view
 - Temporary/as-needed

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Questions?
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