New Jersey Appellate Division Finds Employer's Pregnancy Leave Policy Discriminatory and Warns Against Just Equal Treatment

Client Advisories

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Last month, the New Jersey Appellate Division published its first opinion interpreting the New Jersey Pregnant Workers Fairness Act, a statute which amended the NJ Law Against Discrimination to include prohibitions against pregnancy discrimination. The Court in *Delanoy v. Township of Ocean, et al.*, held that an employer's policy designed to address work accommodations and leave during pregnancy was facially discriminatory. Although the law does not require employers to maintain a formal policy related to pregnancy-based accommodations, the Court's decision serves as a warning for employers who do and also outlined several obligations that the law does impose on employers. Most importantly, the Court held that, absent an undue hardship, employers must provide reasonable accommodations to pregnant employees, and refrain from penalizing such employees because of their pregnant status.

Plaintiff was pregnant while working as a patrol officer with the Ocean Township Police Department. At her doctor's recommendation, she asked her supervisors to be transferred to a less strenuous position during her pregnancy. The police department maintained a written policy, which allowed pregnant officers to work a light-duty maternity assignment. In accordance with the policy, Plaintiff was assigned to a non-patrol duty position. The department maintained a similar policy for non-pregnant officers, who for reasons other than pregnancy, also required working a light-duty assignment. While both of these policies required officers to deplete all of their accumulated paid leave before working their new assignment, only the policy for non-pregnant officers provided for an option to waive this requirement. Officers on a light-duty assignment could ask the Police Chief to waive the requirement that they use their paid leave prior to their new assignment, whereas pregnant officers could not.

Plaintiff filed a lawsuit claiming that the policy was a violation of the NJ Pregnant Workers Fairness Act. At trial, the department prevailed, but this decision was appealed, the Appellate Division reversed the lower court and

held in favor of the Plaintiff. In reaching this decision, the Court relied on the statutory history of the law and case precedent. The Court discussed the 2015 United States Supreme Court decision, *Young v. United Parcel Service, Inc.* The Court noted that *Young* made clear that employers must treat pregnant employees in an equal manner to non-pregnant employees who have similar physical limitations. The Court then considered the objectives of the NJ Pregnant Workers Fairness Act, which went further than requiring equal treatment and imposed requirements on employers to reasonably accommodate their pregnant employees.

The Court, examining the language of the statute, outlined four important components of the law: (1) a prohibition against unequal treatment of pregnant women; (2) a requirement for employers to provide pregnant employees with reasonable accommodations; (3) a prohibition against imposing a penalty against a pregnant worker for requesting or receiving an accommodation, and (4) an undue hardship exception to the reasonable accommodation provision.

The Court found the policy violated the equal treatment mandate. While the policies allowed for some non-pregnant officers to obtain a waiver of the requirement to deplete their leave, pregnant officers could not. Next, the Court considered whether the department had a duty to accommodate Plaintiff-and found that they did. The department argued that they were not required to provide a reasonable accommodation because when Plaintiff requested a less strenuous assignment, she acknowledged that she could not perform the essential functions of a police officer during the latter phase of her pregnancy. The Court found the argument unpersuasive and emphasized that, in analyzing their duty to accommodate, employers must consider an important distinction between an accommodation that is temporary in nature, such as when an employee is pregnant, from an accommodation that is permanent and prevents an employee from ever being able to perform their job functions. The Court acknowledged that a temporary transfer to a different assignment is one accommodation, among many others, that the law recognizes for pregnant employees.

The Court found that the department's maternity policy does in fact operate as an accommodation for pregnant officers. However, the Appellate Division remanded the case, finding that there were genuine issues of material fact as to whether the policy was a reasonable accommodation, whether the loss-of-leave condition constituted an impermissible penalty and whether the employer faced an undue hardship. Although the Court did not ultimately decide all of these accommodation issues, the Court warned that even if the department's policies were identical, this does not mean that the employer has satisfied all of its duties under the law, emphasizing that compliance with the statute extends beyond mere equivalency.

Like many situations, the case reminds employers that while they have obligations under the law, the nature of those obligations are highly fact-intensive and depend on the situation at hand. As such, employers are left without definitive guidelines as to when an accommodation is required, whether an accommodation is reasonable and what constitutes a penalty under the law. However, one thing that remains clear is that pregnant employees are entitled to reasonable accommodations, and while equal treatment is required, it may not be enough to protect employers from liability for violations of the statute. Employers who have pregnant employees should evaluate their policies for equal treatment, and keep in mind that further accommodations may be required.

If you have questions about this important decision and your obligations under the law, please contact any member of Archer & Greiner's **Labor Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, or in Hackensack, N.J., at (201) 342-6000.

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