

PREGNANCY DISCRIMINATION IN FLORIDA

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Richard Celler



For a woman, one of the most difficult decisions she will ever make is how and when to become a mother. The days of the stay at home mom are virtually gone, replaced by the two-income households of the 21st century. As such, deciding to have a child also typically impacts a woman's current and future employment decisions. While a woman may choose to factor in her pregnancy when making employment related decisions, the law prohibits an employer from doing so if doing so amounts to discrimination. If you are planning to have a child in the near future, are currently pregnant, or recently gave birth, you should have at

least a basic understanding of the law as it relates to pregnancy discrimination.

WHAT IS PREGNANCY DISCRIMINATION?

Pregnancy discrimination, in one form or another, was once fairly commonplace in the United States. Society as a whole once believed that a woman in such a "delicate" state could not possibly work until well after she had given birth. Fortunately, the myths and misconceptions about pregnancy no longer exist, at least not on a societal level; however, some employers still refuse to treat a pregnant woman the same as they treat other employees. Pregnancy

discrimination is legally defined as treating a female applicant or employee unfavorably because she is pregnant, has recently given birth, or because she has a medical condition related to pregnancy or childbirth.

FEDERAL LAW

At the federal level, the Pregnancy Discrimination Act, or PDA, makes it illegal to discriminate based on pregnancy when it comes to any aspect of employment, including, but not limited to, the following:

- Hiring
- Firing
- Pay
- Job assignments
- Promotions
- Layoffs
- Training
- Fringe benefits (such as leave and health insurance)
- Any other term or condition of employment

In addition, if the pregnancy causes a medical impairment, the Americans with Disabilities Act (ADA) may offer further protection. See section on ADA below.

STATE OF FLORIDA LAW

In the State of Florida the Florida Civil Rights Act, or FCRA, also protects women against illegal discrimination based on pregnancy or pregnancy related conditions. Although the FCRA does not specifically list pregnancy as a protected trait or class, it does prohibit discrimination based on marital status or sex. The Florida Supreme Court in *Delva v. The Continental Group, Inc.*, No. SC12-2315 (April 17, 2014), rules that pregnancy is a “natural condition and primary characteristic unique to the female sex” and is, therefore, protected under the prohibition against discrimination based on sex found in the FCRA.

MATERNITY LEAVE AUTHORIZATION



Federal law prohibits an employer from creating different or additional clearance procedures for taking maternity leave than those required of any other employee for any other medical related leave. For example, if an employer only typically requires a written statement from a family doctor in order to grant medical leave the employer cannot require a pregnant woman to obtain a statement from a specialist.

HOW LONG CAN A PREGNANT WOMAN WORK?



The law requires an employer to allow a pregnant woman to work for as long as she is able to perform her job. In other words, a forced maternity leave is not allowable. In addition, if a pregnant woman was out for a period of time with a pregnancy related medical condition, such as edema or swelling of the extremities, but then recovers from that condition an employer may not force her to remain off work for the remainder of her pregnancy. Furthermore, while the woman is off work for the medical condition her position must be held open for as long as it would be for any other employee who was out on short-term disability.

TEMPORARY OR SHORT-TERM DISABILITY

Pregnancy must be treated the same as any other disability by an employer. For example, an employer may need to offer light duty work, and alternative position, or short-term disability leave with or without pay to a woman who is suffering from a medical condition as a result of the pregnancy. The employer must treat the medical condition in the same manner it would treat any other medical condition and must follow the same procedures followed for other medical conditions that necessitate considerations or leave.

AMERICANS WITH DISABILITIES ACT (ADA)

In the event that a pregnant woman suffers a pregnancy related impairment, such as gestational diabetes, that impairment may qualify as a disability under the Americans with Disabilities Act, or ADA. When that is the case the employer may be required to provide “accommodations” to the woman for the duration of the disability unless doing so would create an “undue hardship” for the employer. Accommodations may include things such as modifications to her workspace or duties.

PREGNANCY HARASSMENT

Harassing a pregnant woman is not just cruel, it can be illegal if it occurs in the workplace. A single crude remark or not-so-funny joke about being pregnant does not usually amount to harassment, but if the conduct is so frequent or severe that it creates a hostile or offensive work environment or when it results in

an adverse employment decision (such as the victim being fired or demoted) it meets the legal definition of harassment and is prohibited in the workplace. Harassment can be the result of conduct on the part of an employer, a supervisor, a co-worker, or even a non-employee. If it occurs in the workplace it is prohibited.

THE FAMILY AND MEDICAL LEAVE ACT



The Family and Medical Leave Act of 1993, or FMLA, is a federal law that entitles eligible employees who work for a covered employer to take up to 12 weeks of unpaid leave for certain family and medical reasons. Although the FMLA does

not require an employer to compensate an employee while out on leave, it does require the employer to protect the employee's job as well as continue group health insurance coverage under the same terms and conditions as existed prior to the leave. The FMLA may apply both to a woman who has just given birth and to the child's other parent for the "birth of a child and to care for the newborn child within one year of birth."

THE ROLE OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

For a violation of most federal employment discrimination laws a victim is required to file a complaint with the Equal Employment Opportunity Commission, or EEOC, before being allowed to pursue an actual lawsuit in court. The EEOC is the federal agency responsible for investigating, and occasionally litigating, cases of employment discrimination; however, the reality is that a complaint can sit with the EEOC for months, even years, without a resolution. After the EEOC has had the complaint for 180 days though, an attorney can request a "Right to Sue" letter that essentially gives the victim the right to move on and pursue a lawsuit in state or federal court.

DAMAGES FOR VIOLATIONS OF PREGNANCY DISCRIMINATION LAWS

When an employer violates one of the various state or federal pregnancy discrimination laws a victim may be entitled to compensatory damages and punitive damages. Compensatory damages are intended to compensate a victim

for out of pocket expenses incurred as a result of the violation as well as for the emotional trauma the discrimination caused.

Punitive damages are intended to punish a defendant and, as such, are only awarded when an employer's conduct was especially malicious or reckless.

Pregnancy discrimination laws are complex and difficult to navigate. Not all laws apply to all employers or all situations. For the victim of pregnancy discrimination it can be a bit daunting to try and figure out where to start which is why it is always best to consult with an experienced Florida employment law attorney first if you believe you are the victim of pregnancy discrimination.

Florida Statutes, [Florida Civil Rights Act](#)

Equal Opportunity Employment Commission, [Pregnancy Discrimination](#)

U.S Department of Labor, [Family and Medical Leave Act](#)

Equal Opportunity Employment Commission, [Facts about Pregnancy Discrimination](#)

Workplace Fairness, [Pregnancy Discrimination](#)

About the Author



Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – www.floridaovertimelawyer.com.

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