

OHIO SUPREME COURT ALLOWS LIMITS ON MATERNITY LEAVE

On Tuesday, the Ohio Supreme Court ruled that it is not gender discrimination for an employer to deny maternity leave to a worker after approximately eight months of employment. The Court found that where a company employment policy requires a minimum term of service before any employee is eligible for leave, that policy is not direct evidence of sex discrimination under Ohio's civil rights statutes as long as the policy is uniformly applied to all employees.

The Court's decision reversed a ruling by the 5th District Court of Appeals, which held that the policy banning maternity leave was discriminatory.

The case involved a nursing home worker, Tiffany McFee (McFee), who missed work because of medical issues related to her pregnancy and childbirth. At the time McFee was hired, the nursing home provided her with an employment policy that required all employees to work for one year before becoming eligible for any leave of any kind. McFee obtained a physician's note stating she was unable to work due to pregnancy-related swelling until six weeks after the delivery. Having only been employed approximately eight months, she was denied maternity leave. As a result of McFee's absence without leave, she was terminated from her position.

In its decision, the Court stated that under Ohio law, pregnant employees must be treated the same for employment related purposes as employees who are not pregnant but who are similar in their ability or inability to work. Thus, Ohio law does not provide greater protections for pregnant employees than nonpregnant employees. To prevail on a pregnancy discrimination claim, a plaintiff must show that the employer treated her differently because of her pregnancy. In this case, all nursing home employees were required to work for 12 months before becoming eligible for leave. Since this employment policy treated all employees the same, a pregnant employee could be terminated for unauthorized absence just as any other employee who has not yet met the minimum-length-of-service requirement but takes leave based upon a similar inability to work.

This decision will affect all employers who are not subject to the Family Medical Leave Act because they have fewer than fifty employees. It will also affect those employers subject to the FMLA if the employee seeking maternity leave does not qualify for family medical leave. This situation could arise if an employee has not worked at least twelve months for the employer or at least 1250 hours in the twelve month period prior to requesting the leave. It would also apply if the employee has exhausted her FMLA leave.

Employers should note that the leave policy in this case treated pregnancy the same as any other disabling condition. A uniform treatment of all medical-related leaves is necessary to avoid discrimination. DFHK will provide a full discussion of this ruling in our July e-newsletter.