

## MDM&C Update

[Click Here to Learn More About MDM&C >](#)

April 20, 2020

### ***PREGNANCY DISCRIMINATION AND COVID-19***

These are challenging times and employers have to adjust to unprecedented conditions. But, employment laws remain and responding to the coronavirus does not waive an employer's obligations. A recent case, *Durham v. Rural Metro Corporation*, shows that accommodations granted to other employees because of their medical condition must be granted to pregnant employees.

Kimberlie Durham worked as an emergency medical technician ("EMT"). Among her tasks were to assist her partner in carrying a patient on a stretcher, which without the patient weighed more than 100 pounds. In addition, she had to move equipment and other tasks that required heavy lifting. In fact, an essential function of the position required an employee to be able to lift 100 pounds. Ms. Durham became pregnant and her physician advised her not to lift more than 50 pounds.

She approached her immediate supervisor and advised him of her lifting restriction. Although her employer had a policy of accommodating employees with work related injuries and would create jobs for them so that they continue working with their restrictions, it was unwilling to do so for her. She was told that the only accommodation that her employer was willing to offer was to permit her to go on a short term unpaid disability leave. But according to her employer's policy, that leave could not exceed six months and it provided no guarantee that she could return to her job.

Durham sued claiming that her employer had violated the Pregnancy Discrimination Act, which requires pregnant employees to "be treated the same" as other employees "similar in their ability or inability to work." In this case Durham was not treated the same as other employees who were unable to work because of their lifting restrictions. Employees with work related injuries or disabilities were treated more favorably. The court stated that if an employer's policies or practices "impose a significant burden on pregnant workers," the employer's reasons for those policies or practices must be "sufficiently strong to justify the burden." If not, there is an inference of intentional discrimination. The court concluded that Durham had stated a claim and remanded the case to the trial court to determine if the employer could offer a sufficient reason for failing to accommodate Durham. Given that the employer has accommodated other employees with lifting restrictions, it will find it difficult to prove that its denial of Durham's request was justified.

Many employers continue to operate in this coronavirus environment and have had to grant accommodations to employees more susceptible to the virus. For example, employees with diabetes or compromised immune systems are advised to self-quarantine. Although medical data is incomplete regarding the risk of the coronavirus to a pregnant employee, an employer should carefully review a pregnant employee's request for an accommodation.

This is particularly true in Connecticut. Although federal law requires an employer to

treat pregnant employees the same as employees “similar in their ability or inability to work,” Connecticut requires more. An employer is required to make a reasonable accommodation for the pregnant employee unless such an accommodation is an undue hardship.

Requests from pregnant employees for an accommodation due to the virus must be carefully evaluated. Absent an undue hardship, they must be granted under Connecticut law.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at [bjacques@mdmc-law.com](mailto:bjacques@mdmc-law.com).

## *Offices*

---

NEW JERSEY | NEW YORK | COLORADO | PENNSYLVANIA  
CONNECTICUT | MASSACHUSETTS | DELAWARE | RHODE ISLAND | FLORIDA

The information provided in this Newsletter should not be relied upon as legal advice or a legal opinion on any specific set of facts or circumstances. The contents are intended for general information purposes only and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have. This Newsletter may be considered Advertising under the court rules of certain states.

© COPYRIGHT 2020 McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP. ALL RIGHTS RESERVED.

---

[Unsubscribe](#)