

Anticipating attendance issues, company preemptively fires pregnant employee

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The Pregnancy Discrimination Act (PDA) forbids pregnancy bias in any aspect of employment, including hiring, firing, pay, job assignments, promotions, or any other term or condition. Although the Act was signed into law more than 40 years ago and great strides have been made to allow women to work while pregnant, pregnancy discrimination remains a widespread problem. Just ask the server who was fired from an Arizona eatery because the owner couldn't "have a big fat pregnant woman working in my restaurant" (for more details, see my [November 2017 article](#) in the Arizona Employment Law Letter). Sadly, pregnancy bias still presents itself in other blatant forms. How so, you ask? Read on.

Facts as alleged by the EEOC

Tiffany Lewis was visibly pregnant when a staffing agency hired and placed her in a customer service representative (CSR) position with a 24-hour call center. The job required her to complete a two-week training session. Approximately a week into the class, she was released from the CSR assignment.

Afterward, Lewis asked the staffing agency why her assignment had ended. She was told it was cut short because of low call volume. She responded she didn't understand how the reason could be low call volume since another training class was scheduled to start in a couple of weeks. She received no further clarification.

Later, another CSR told Lewis she heard Lewis and another CSR named "Peralta" had been terminated because of their pregnancies based on management's belief they would be unable to comply with the company's attendance policy.

The staffing agency met with call center management to inquire about the reason for the release. The call center responded Lewis was released over concerns she wouldn't be able to comply with the attendance policy because she was pregnant. The agency took no further action in response to the information.

After a lengthy investigation, the Equal Employment Opportunity Commission (EEOC) sued the staffing agency and call center on behalf of Lewis and other aggrieved

individuals. After the call center's unsuccessful attempt to have the case dismissed, the parties eventually agreed to the entry of a consent decree settling the lawsuit.

Very public resolution

In early May, the EEOC issued a press release announcing its settlement with the call center. The public decree requires the call center to:

- Pay \$120,000 and issue a letter of apology to the aggrieved individuals;
- Review and revise its discrimination policies, and train all employees on Title VII of the Civil Rights Act of 1964 and other antidiscrimination laws; and
- Post a "Notice to Employees" for two years letting them know it violated Title VII by terminating workers because they were pregnant.

Words to the wise

It should go without saying, but preemptive actions taken by employers worried pregnant employees will violate a policy are discriminatory. You must treat women affected by pregnancy or related conditions in the same manner as other applicants or employees who are similar in their ability or inability to work. Of course, you may address any attendance issues that arise, but not based on unsubstantiated concerns.

Depending on the reason for the attendance issues, pregnant employees may be entitled to additional employment protections under the Family and Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA). Before taking action against a pregnant employee, supervisors should seek guidance from HR or employment counsel to ensure a legitimate, nondiscriminatory reason exists.

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