The Soto Law Group, P.A.

LABOR & EMPLOYMENT PRACTICE GROUP

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NEW YEAR, NEW RULES: WHAT YOUR COMPANY NEEDS TO KNOW FOR 2015 – PART II

PREGNANCY DISCRIMINATION CLAIMS NOW VIABLE IN FLORIDA

In April 2014, the Florida Supreme Court ruled that the Florida Civil Rights Act (FCRA) covers pregnancy discrimination, the Court taking the broad view that pregnancy discrimination extends to the laws regarding protection of an individual based on gender. In this case, *Delva v. The Continental Group*, the Plaintiff worked as a front desk manager at a property management firm. She filed suit against the Defendant employer alleging that because of her pregnancy, the employer heightened the scrutiny of her work, refused to allow her to change shifts and work extra shifts (despite company policy allowing such things), refused to allow her to cover shifts, and refused to schedule her for work after she returned from maternity leave. While the underlying merits of the discrimination claims have since been remanded back to the circuit court, the issue before the Florida Supreme Court was whether Plaintiff could bring a claim for pregnancy discrimination under the FCRA. The decision was a resounding "yes" with the Court ruling 6-1 in favor.

In its liberal construction of the FCRA, the Court explained that "[t]o conclude that the FCRA does not protect women from discrimination based on pregnancy — a primary characteristic of the female sex — would undermine the very protection provided in the FCRA to prevent an employer from discriminating against women because of their sex." *Delva v. The Continental Group*, 137 So. 3d 371, 375 (Fla. 2014).

Recently, the Equal Employment Opportunity Commission (EEOC) issued its first comprehensive update on the subject of pregnancy discrimination in more than 30 years by issuing new enforcement guidelines on the treatment of pregnant employees under the federal Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act (ADA). Importantly, the EEOC guidelines highlight who is covered by the PDA, which medical conditions related to pregnancy or childbirth are covered by the PDA, and how employers must address issues such as employee leave, light duty requirements, and equal parental leave. For example, employers may not force an employee to take leave because she is or has been pregnant, as long as she is able to perform her job. Requiring leave violates the PDA even if the employer believes they are acting in the employee's best interest. Additionally, the PDA covers current, past, and potential pregnancy – an employer may not discriminate based on an employee's intention or potential to become pregnant (even if the job presents risks to the pregnant employee or her fetus).

What does this mean for employers? Employers should continue to ensure that their policies and procedures include prohibition of gender discrimination, including pregnancy, and that its managers and supervisors are knowledgeable in such policies and procedures. Employers should keep open lines of communication with its employees and allow the employee to determine when they want to take their leave as they are in the best position to determine their ability to work. Documenting the employee's decisions and any discussions employer has with employee, such as when they will take their leave, are important in protecting the employer should a pregnancy discrimination claim arise.

For more information on how to handle or prevent potential pregnancy discrimination issues, contact me at Christina@sotolawgroup.com or (954) 567-1776.

Sources:
http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm
http://www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm
http://www.jacksonlewis.com/resources.php?NewsID=4831
Delva v. The Continental Group, 137 So. 3d 371 (Fla. 2014)

WAGE AND HOUR CLAIMS #1 ISSUE FOR EMPLOYERS IN 2015

The number of wage and hour lawsuits will continue to grow in 2015, becoming a source of major financial exposure for employers and is considered the number one "headache" in corporate workplace issues. A new litigation trend report expects this number will only rise throughout 2015, with increased litigation regarding off-the-clock claims brought by non-exempt employees; independent contractor classification; joint employer liability; unpaid overtime; and missed or late meal and rest breaks. The report also anticipates increased activity and continued aggressive litigation by federal agencies.

Employers are wisely investing in compliance training and procedures. Most importantly, employers need to know how to pay employees and to ensure payroll methods are compliant with state and federal laws. Generally, employers should familiarize themselves with both federal and state wage and hour laws, and recognize that where state law is provides broader protections to employees, that state law will control. Employers are also advised to start conducting self-audits and continue enhancing workplace compliance programs.

Employers can also minimize exposure by carefully reviewing its basis for categorizing any employees as "exempt" from the minimum wage and overtime requirements of state or federal law. Misclassification is often the foundation for wage and hour claims. Employers are also encouraged to ensure that non-exempt employees do not work "off-the-clock." Compensable time includes any time that an employer permits an employee to work, including such time spent by employee during a meal break or after regular business hours conducting work for the employer. Such time must be paid by the employer, and employer **must** keep accurate time records for all non-exempt employees.

Inaccurate time records for non-exempt employees seems to be the number one problem among employers in the construction industry. Often times the employer relies on the project superintendent or other office employee to keep accurate time records for non-exempt employees on site, allowing handwritten time cards or other records that the employee has not reviewed. It is advised that employers create timesheets for each non-exempt employee, requiring the employee's signature each week verifying that the hours are accurate and correct. Keeping organized, accurate records will not only help the employer stay compliant but will tremendously assist an employer in defeating or resolving a wage and hour claim in its infancy.

For more information on compliance procedures and other wage and hour issues, contact me at Christina@sotolawgroup.com or (954) 567-1776.

Sources: Corporate Counsel; "Wage and Hour Suits 'No. 1 Headache' for Employers in 2015";
http://www.corpcounsel.com/id=1202714132470/Wage-and-Hour-Suits-No-1-Headache-for-Employers-in-2015#ixzz3PtZXyNyW;
11th Annual Workplace Class Action Litigation Report, Seyfarth Shaw LLP, 2015 Edition;
http://www.pepperlaw.com/publications_update.aspx?ArticleKey=3115

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