

Ohio Supreme Court Rules That Pregnant Employees Not Entitled To More Lenient Leave Policies

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Ohio employers with leave policies containing a uniform minimum length-of-service requirement do not have to make an exception for pregnant employees, the Ohio Supreme Court has ruled. The Court's decision provides much needed clarity for employers and reaffirms that the Ohio Civil Rights Act does not provide greater protections for pregnant employees than non-pregnant employees.

The case, *McFee v. Nursing Care Mgt. of Am., Inc.*, arose from a seemingly simple set of facts. Tiffany McFee, an employee at the Pataskala Oaks Care Center, requested leave due to pregnancy-related health conditions. At the time of her request, McFee had worked for Pataskala Oaks for approximately eight months. Pataskala Oaks' leave policy, as set out in its employee handbook, required an employee to be employed for one year before becoming eligible for leave for any purpose. Pataskala Oaks thus denied McFee's leave request, and she was ultimately terminated for violating Pataskala Oaks' attendance policy. McFee filed a charge with the Ohio Civil Rights Commission ("OCRC"), alleging that her termination constituted unlawful sex discrimination on the basis of pregnancy.

The Ohio Civil Rights Act requires that pregnant women "shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to perform work." Ohio Rev. Code § 4112.12(B). However, in administrative regulations enacted to carry out the statute's mandate, the OCRC created two seemingly conflicting regulations.

On the one hand, OCRC regulations provide that female employees must be granted a reasonable period of leave for childbearing when "under the employer's leave policy the female employee would qualify for leave." Ohio Admin. Code § 4112-5-05(G)(5). The regulation specifically acknowledges "equally applied minimum length of service requirements" as an example of a valid qualifying factor.

On the other hand, OCRC regulations state that sex discrimination occurs whenever a pregnant employee's termination is caused by an employment policy under which "insufficient or no maternity leave is available." Ohio Admin. Code § 4112-5-05(G)(2). The OCRC took the position that this regulation required employers to offer maternity leave to all pregnant employees, even those employees who have yet to meet mandatory length of service requirements. Failure to offer such leave would constitute direct evidence of sex discrimination. Lower courts were split on the issue.

The Vorys firm represented an amicus, the Ohio Management Lawyers Association, and filed briefs and participated in the oral argument before the Court urging the Court to reject the OCRC's interpretation of the law.

In a victory for employers, the Ohio Supreme Court agreed and declined to adopt the OCRC's interpretation of the regulation. Instead, the Court harmonized the competing regulations by holding that section (G)(2) only applies when "an employee is otherwise eligible for leave." The Court reasoned that the Ohio Civil

Rights Act neither mandates pregnancy leave nor provides pregnant employees with greater rights than their co-workers, and therefore the OCRC regulations could not do so either. The decision now places Ohio law in line with its federal Pregnancy Discrimination Act counterpart.

In practical terms, Ohio employers can now confidently apply their uniform length of service requirements to pregnant employees. Of course, employers should continue to make certain that all facets of their employee leave policies are applied uniformly and without regard to an employee's pregnancy status or any other protected category.

Finally, employers should be aware that this decision only impacts their requirements under the Ohio Civil Rights Act. Other legislation may require employers to treat pregnant employees preferentially rather than equally. For example, the recently passed federal Health Care Reform legislation requires employers to provide "a reasonable break time" for new mothers to express breast milk.

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