Labor & Employment

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CONTRACEPTIVES AND PREGNANCIES: NEW STATE AND FEDERAL COURT RULINGS MAY IMPACT YOUR COMPANY

by Claudia D. Orr

The Michigan Civil Rights Commission recently ruled that it is illegal for Michigan employers to exclude contraceptive drugs and devices from their prescription plans. Eventually, this ruling could be challenged in court but, until then, the Michigan Department of Civil Rights has authority under state law for enforcement. While "religious employers" are exempt from the ruling, some entities owned or operated by them (i.e., charitable organizations or hospitals serving the public) are not.

While the above ruling is pro-employee, a recent ruling by the United States Court of Appeals for the Sixth Circuit concerning light duty work for pregnant workers is not. Specifically, in *Reeves v Swift Trans. Co.*, Inc., 446 F.3d 637 (6th Cir. 2006), the court re-examined obligations under the Pregnancy Discrimination Act (PDA), 42 U.S.C. § 2000e(k), which requires employers to treat pregnant employees the same for all employment related purposes as others "not so affected but similar in their ability or inability to work." This has long been believed to prohibit an employer from refusing to provide light duty to a pregnant employee if it provides light duty to others (i.e. those who have a work related injury) who are not pregnant.

However, in 2001, the Michigan Court of Appeals held that, under the state's civil rights law, favored or light duty work could be provided to employees with "workers' comp" injuries without providing light duty assignments for pregnant workers. See *Cunningham v Dearborn Bd. of Educ.*, 246 Mich App 621 (2001).

EMPLOYERS MAY NOW RESERVE LIGHT DUTY FOR EMPLOYEES INJURED ON THE JOB TO THE EXCLUSION OF ALL OTHERS REQUESTING FAVORED WORK.

Unfortunately, employers having 15 or more employees were not relieved of their obligations under the PDA – until *Reeves*. In that case, the Sixth Circuit found such a policy to be pregnancy-blind, noting that the decision to grant light duty rested on whether there had been a work related injury, ignoring pregnancy, childbirth or related medical conditions. Therefore, absent some additional proof that the employer intended to discriminate against pregnant workers by implementing such a policy, employers may now reserve light duty for employees injured on the job to the exclusion of all others requesting favored work.

If you need further information concerning the cases above or require assistance in updating policies, please contact your Plunkett & Cooney attorney directly, or in the alternative, Plunkett & Cooney's Labor & Employment Law Practice Group Leader Theresa Smith Lloyd at (248) 901-4005.