

HR Tips from Express



Pregnancy Discrimination Act

Express Personnel Services wants to help your organization be aware of common human resource issues and help you know how to comply with the Pregnancy Discrimination Act (PDA). For more information on complying with the PDA or to find out how Express can work with you to solve your human resource challenges, contact your local Express Personnel office today.

Pregnancy Discrimination Act (PDA)

The PDA amends Title VII's definition of sex discrimination to include pregnancy and related conditions. Under the PDA, employers with 15+ employees (note: many states have a lower threshold than 15) cannot refuse to hire, discharge or promote a woman because she is pregnant, might become pregnant, or has had an abortion. Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

Hiring Pregnant Applicants

Under the PDA, employers cannot refuse to hire a pregnant applicant if she is qualified and is able to perform the job. To avoid potential liability, you should not discuss an applicant's pregnancy during an interview, even if her condition is obvious. Instead, you should focus on the requirements of the job and the candidate's qualifications. If an applicant, as a result of pregnancy or pregnancy-related conditions, cannot perform the major functions of the job, the employer is NOT required to hire her.

Disciplining a Pregnant Employee for Performance/Attendance

Although a pregnant employee is protected from discrimination, you are not required to tolerate poor performance or attendance simply because she is pregnant. You may hold her to the same standards as other employees. If you learn the performance or attendance problems are related to the employee's pregnancy, the PDA requires that you treat her the same as you would any other employee with a temporary medical condition. Thus, if you accommodate other employees with temporary disabilities you must do the same for pregnant employees.

Leave Guidelines for Pregnant Employees

Since the Pregnancy Discrimination Act is an anti-discrimination law rather than a leave law, it does not require covered employers to give pregnancy leaves of any specific duration. Instead, it requires employers to provide pregnant employees the same leave and benefits granted to non-pregnant employees with temporary disabilities. However, pregnant employees may be entitled to leave under the Family Medical Leave Act and/or the Americans with Disabilities Act. If you are considering terminating a pregnant employee for absenteeism, you should always check to make sure these laws do not protect her from termination.

Jobs that May Endanger Pregnant Employees

According to the Equal Employment Opportunity Commission (EEOC), an employee who can perform the essential functions of a job must be considered eligible for employment, regardless of the presence of workplace hazards to fetuses. It does not matter that the employer may be able to prove that the worker will be exposed to materials that are harmful to fetuses or that an employer will incur greater costs in hiring women. Accordingly, if the employee is able to perform the job function, your only course of action may be to notify her of potential hazards and encourage her to discuss them with her doctor to determine if she should continue working. If, however, the employee is unable to perform the job functions, such as if she is restricted in standing or lifting, you can offer her a leave, or transfer her if a position is available, as allowed by your normal policies or the Family Medical Leave Act, if it applies.