



PREGNANCY DISCRIMINATION CASE EFFECTS CHANGE IN OHIO LAW

The Ohio Supreme Court recently rejected the Ohio Civil Rights Commission's ("OCRC") long-held position that an employer's failure to provide maternity leave for pregnant employees—regardless of the employee's length of service—constitutes sex discrimination under Ohio law. In a five-to-one decision, *McFee v. Nursing Care Management of America, Inc.*, the Court held that Ohio law does not obligate employers to grant maternity leave to employees who do not meet the employers' uniformly applied minimum-length-of-service requirements for leave eligibility.

The employer in *McFee*, Pataskala Oaks Care Center ("Pataskala Oaks"), required employees to be employed for a one-year period prior to being eligible for leave of any kind. Eight months into her employment with Pataskala Oaks, Tiffany McFee ("McFee") presented her employer with a physician's note stating that she was unable to work due to pregnancy-related conditions. Three days after McFee gave birth, Pataskala Oaks terminated McFee's

employment due to her absence from employment before she had become eligible for leave.

In making its decision, the Ohio Supreme Court emphasized that Ohio discrimination law, like federal discrimination law, does not call for special, favorable treatment for pregnancy. Instead, the law requires only that employers grant pregnant employees the same leave that is granted to employees with other medical conditions. Thus, the Court held that the OCRC's administrative rules cannot mandate preferential treatment for employees affected by pregnancy.

Ohio Administrative Code §4112-5-05-(G)(2), enacted in 1977, provides that where an employee who is temporarily disabled due to pregnancy or a related medical condition is terminated, such termination will constitute sex discrimination if the termination was the result of an employment policy that provided "insufficient or no maternity leave." Prior to *McFee*,

the OCRC interpreted its rule as requiring employers to offer some maternity leave to its employees, regardless of their length of service. The Supreme Court rejected this interpretation, finding that the OCRC's interpretation would constitute an unconstitutional expansion of Ohio public policy. The Court held that §4112-5-05-(G)(2) has to be read in context with Ohio Administrative Code §4112-5-05-(G)(5), which requires a pregnant employee to qualify for leave under the employer's policy in order to receive maternity leave. In other words, employers need not make exceptions to their policies for pregnant employees who have not satisfied the employer's length-of-service requirements.

Although this decision does not obviate employers' obligations to provide maternity leave under statutes like the Family Medical Leave Act ("FMLA") or their own sick-leave policies, the Ohio Supreme Court's decision in *McFee* solidifies employers' rights to uniformly apply minimum-length-of-service requirements for leave eligibility, without exception for pregnant employees.

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