

NJ Supreme Court Reaffirms Pregnant Employees' Rights to Accommodations

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At a time when vaccinations are on everyone's mind, the New Jersey Supreme Court has given a shot in the arm to New Jersey pregnancy discrimination laws. In Delanoy v. Township of Ocean, 2021 N.J. LEXIS 176 (Mar. 9, 2021), the Supreme Court considered, for the first time, the reaches of the New Jersey Pregnant Workers Fairness Act ("PWFA") and expanded the protection it affords pregnant and breastfeeding employees in the workplace. In Delanoy, a pregnant police officer brought a discrimination claim based on the police department's two standard operating procedures ("SOPs") for "light duty" work – one which applied to pregnant officers, the other to non-pregnant officers. The SOPs had two key differences. First, the maternity SOP required a return from "light duty" work no more than 45 days after the officer's due date, while the standard SOP had no time limit. Second, the standard SOP provided the police chief the discretion to waive a condition requiring accumulated leave to be exhausted, while the maternity SOP did not. The pregnant police officer filed a lawsuit against the police department under the PWFA alleging that she was required to use her available leave time in connection with light duty, but her male colleagues did not.

The PWFA amended the New Jersey Law Against Discrimination ("LAD") by adding "pregnancy or breastfeeding" as a protected classification within LAD prohibition and protections. The PWFA also added an entirely new section, subsection (s), that provides for three causes of action: (1) unequal or unfavorable treatment of pregnant or breastfeeding employees; (2) failure to provide a reasonable accommodation for pregnant or breastfeeding employees; and (3) illegal penalization of a pregnant or breastfeeding employee for requesting an accommodation. The Supreme Court interpreted the PWFA broadly and found that the SOPs constituted a *per se* violation of the prohibition on unfavorable treatment of pregnant employees and instructed the trial court to evaluate only causation and damages. The Supreme Court's decision demonstrates that the PWFA must be strictly construed in favor of pregnant and breastfeeding employees.

The Supreme Court also found that pregnant employees have a statutory right to reasonable accommodation of their pregnancy. The PWFA imposes an obligation on employers to make a reasonable accommodation to requests by pregnant employees that are supported by the advice of a physician. The statute lists examples of reasonable accommodations, including "bathroom breaks, breaks for increased water intake, period rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work." While the Supreme Court also recognized that the PWFA permits employers to claim an undue hardship exemption from their statutory obligation to accommodate pregnant employees in the workplace, it is the employer who has the burden to establish such hardship as an affirmative defense. Importantly, the Court concluded that a pregnant employee's temporary

inability to perform an essential function of the position will not automatically establish undue hardship.

The Supreme Court's decision in Delaney is a reminder that employers must take seriously a pregnant employee's request for an accommodation. Employers should review their workplace policies with counsel to ensure that there is no unequal or unfavorable treatment of pregnant employees, who are entitled to statutory protection. Employers should also work with counsel and their human resources professionals to create a mechanism to address legitimate requests for accommodations made by pregnant employees that are supported by a physician.