



## Employers Beware: The EEOC is Educating Doctors about Employment Laws Affecting Pregnant Patient-Employees

Recently, the Equal Employment Opportunity Commission (EEOC) issued guidance for use by pregnant employees' health care providers (HCPs). YES, the EEOC is now educating doctors about ways to help their pregnant patients deal with pregnancy related work limitations and restrictions. As you may already know, the EEOC is laser focused on pregnancy discrimination. The guidance seemingly reinforces their intent to continue to aggressively pursue pregnancy discrimination claims under Title VII, the Pregnancy Discrimination Act and the Americans with Disabilities Act. Even the EEOC does not enforce the Family Medical Leave Act, the guidance suggests that HCPs consider that option, too. Thus, employers need to exercise caution when making employment decisions about pregnant applicant and/or employees. We also strongly urge members to contact an ERA HR Consultant when evaluating options.

Below are highlights of the guidance:

- The guidance provides information for HCPs regarding their pregnant patients who present pregnancy-related medical conditions that interfere with their ability to perform their job.
- The guidance is only applicable to those employers who are covered by Title VII, PDA and ADA, i.e., employers with 15 or more employees.
- Often times, in evaluating reasonable accommodation(s), employers rely heavily on the medical certification provided by the employee-patient's HCP. Minimally, this medical certification is helpful during the interactive dialogue process. Here are a few of the recommended work restrictions suggested by the EEOC for HCPs to consider in their medical certifications:



[Tammy Bennett,](#)  
*Esq., Association  
 Counsel & Director  
 of Compliance  
 Services*  
 888.237.9554



1200 Edison Dr.  
 Cincinnati, OH 45216-2276  
 Phone: 513.679.4120  
 Fax: 513.679.4139  
 Toll free: 888.237.9554  
[www.hrxperts.org](http://www.hrxperts.org)

- \* Permission to sit or stand,
  - \* Ergonomically designed workstation,
  - \* Shift changes,
  - \* Permission to work from home,
  - \* Altered break and/or work schedule and
  - \* Elimination of marginal job functions.
- The guidance also educates the HCPs about the ADA and FMLA it provides, for example:
    - \* A condition does not have to be permanent, severe or result in a high degree of functional limitations to be “substantially limiting.” (Please keep in mind that the EEOC has previously cautioned employers to focus on whether they can grant the requested, or alternative, accommodation; rather than focusing on whether the condition satisfies the definition of a disability as defined under the ADA.)
    - \* If the patient-employee needs an accommodation to do her regular job because of a disability, the employer **must** give her one, without reducing her pay, unless doing so would involve **significant** difficulty or expense. (Emphasis in the original.)
    - \* Light duty should also be available if offered to non-pregnant employees for similar conditions.
    - \* If your patient is unable to work at all, she may be eligible for unpaid leave as reasonable accommodation or FMLA.

As indicated above, often employers rely on information provided by the employee’s HCP when evaluating reasonable accommodations. In some instances, the HCPs medical certification does not necessarily substantiate a need for the requested, or any, workplace accommodation. To lessen the frequency of this occurrence, the guidance also provides assistance on ways to properly complete a medical certification.