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New Jersey Supreme Court Weighs In on Pregnant Workers Fairness Act: Undue Hardship Is Not What You Thought It Was

In its first review of the New Jersey Pregnant Workers Fairness Act (PWFA), the New Jersey Supreme Court described the law as "one of the first and most expansive pieces of new legislation affirmatively protecting pregnant and breastfeeding workers" and clarified employers' obligations.

The Pregnant Workers Fairness Act

Passed in 2014, the PWFA amended the New Jersey Law Against Discrimination (NJLAD) to include pregnancy, including medical conditions related to pregnancy, childbirth, and recovery, as well as breastfeeding, as protected classifications under the law. The PWFA:

1. prohibits employers from treating pregnant or breastfeeding employees less favorably than other employees;
2. requires employers to provide reasonable accommodation upon the request of employees and based on the advice of a doctor, unless the accommodation poses an undue hardship; and
3. prohibits employers from penalizing employees who request such an accommodation.

Examples of pregnancy-related accommodations may include permitting increased breaks for increased water intake, bathroom use, or rest; providing assistance with manual labor; restructuring jobs; modifying work schedules; and temporarily transferring employees to less strenuous work. Prior to the recent decision in *Delanoy v. Township of Ocean*, many assumed the analysis of claims under the PWFA was the same as that under NJLAD. The Court's decision makes clear that is not the case.

Delanoy v. Township of Ocean

Kathleen Delanoy worked as a police officer for the Township of Ocean. She was one of three female police officers in a force of over 50 officers. In April 2011, Delanoy informed the then-Chief of Police that she was pregnant and could not perform her typical duties as a police officer. At the time, the Township did not have a light-duty assignment policy for pregnant officers.

A few months later, the Township issued two Standard Operating Procedures (SOPs) for light-duty assignments. One was the Maternity Assignment, which applied only to pregnant officers, and the other was the Light/Modified Duty Assignment, which applied to injured officers who were not pregnant. Both SOPs required medical documentation and officers' exhaustion of their accumulated paid-leave time prior to any light-duty assignment. The SOPs, however, differed in two key aspects. The Maternity Assignment required that an employee's projected return date be "no more than 45 calendar days past the expected due date," and the Township could waive the exhaustion-of-accumulated-leave condition under the Light/Modified Duty Assignment. The Township placed Delanoy on a Maternity Assignment in accordance with the Maternity Assignment SOP.

Delanoy filed a lawsuit alleging that the SOPs violated the PWFA because they treated pregnant employees less favorably than other employees. Delanoy also alleged that the accommodation provided by the Township was not reasonable and amounted to an unlawful penalization. Specifically, she alleged that after she informed her supervisors that her pregnancy

prevented her from carrying a gun or defending herself on patrol while on the Maternity Assignment, she was unfairly assigned to handle records and work as a "walk-in" officer, responsible for fielding complaints from the public, instead of other more desirable light-duty assignments.

The trial court granted the Township's motion for summary judgment, finding that the Maternity SOP as applied to Delanoy did not violate the PWFA's "equal treatment" mandate. The Appellate Division reversed, holding that under the PWFA, the Maternity SOP was facially invalid because it treated pregnant employees unfavorably. Ultimately, the case was heard by the New Jersey Supreme Court.

In a unanimous decision, the New Jersey Supreme Court held that the Maternity SOP violated the PWFA and the NJLAD by placing additional burdens on pregnant officers who sought a light-duty assignment as compared to non-pregnant officers who needed leave and accommodations for other medical conditions. In affirming the Appellate Division, the court explained that the PWFA expressly recognizes three distinct causes of action for pregnant and breastfeeding women — unequal or unfavorable treatment, failure to accommodate, and unlawful penalization.

The Court stated that an employee might succeed in bringing forth an ***unequal or unfavorable treatment claim*** when an employer treats an employee it knows, or should know, is pregnant or breastfeeding less favorably than other employees. The Court agreed with the Appellate Division that the Maternity SOP "was facially invalid because it plainly treated pregnant employees differently and less favorably than non-pregnant employees who were similar in their ability or inability to work."

The Court then held that, unlike other NJLAD accommodation claims, the PWFA contains its own "analytic structure" for ***failure to accommodate claims***. Under the PWFA, an employee must show (1) that she was pregnant or breastfeeding; (2) that she made a request for a reasonable accommodation; and (3) that the employer failed to provide a reasonable accommodation. Notably, the Court made clear that, unlike the undue hardship defense in other accommodation actions, an employee's inability to perform an essential function of her job ***is merely a factor to be considered*** when assessing an employer's assertion of undue hardship, which would ultimately be assessed by a jury. In other accommodation claims, an employee's inability to perform essential functions would automatically constitute undue hardship, without need to resort to a jury. Accordingly, the Court held that Delanoy established a prima facie case of a failure-to-accommodate claim under the PWFA, but remanded the case to the trial court to determine whether the Township could meet its burden to prove undue hardship.

Finally, the Court noted that an employee may establish a claim that she was ***unlawfully penalized*** if the conditions of the accommodation are "particularly harsh" or when the request for an accommodation subjects her to a hostile work environment. The Court remanded the case to the trial court to determine whether the condition in the Maternity Assignment SOP that forced Delanoy to lose her accumulated leave in exchange for a light-duty assignment and/or her "walk-in" assignment was harsh enough to be a penalty.

Takeaways

Given the Court's decision in *Delanoy*, employers should be cautious in their treatment of pregnant or breastfeeding employees' special needs in light of the three distinct causes of action recognized under the PWFA. Employers should review and revise their policies and practices to ensure that pregnant or breastfeeding employees are not treated less favorably than other similarly situated employees or penalized for accommodation requests. Employers must also ensure that the accommodation requests of pregnant employees are analyzed in accordance with the heightened PWFA standards rather than the undue hardship standards applicable to other accommodation matters.

Authors



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com