THE BUSINESS CASE FOR ACCOMMODATING PREGNANT EMPLOYEES

Best practices to reduce pay inequality in Oregon

Employers that accommodate pregnant employees can help eliminate the "motherhood penalty" while improving employee morale and productivity.

Pregnancy frequently represents the first time that many women begin to experience the need for accommodations to help them continue to work under restrictions placed upon them by their physicians. Many workplaces do not have training or experience in dealing with such requests, leading to them being denied in many cases, despite their frequently simple or modest nature (such as being able to sit for short periods, being able to have a water bottle close at hand, or having a lifting restriction).

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The business case

Businesses that provide reasonable accommodations for pregnant employees can benefit from stronger operations:

- Pregnancy accommodations usually come at **no or low cost to employers**.
- When employers provide reasonable accommodations, they are usually rewarded by employee **satisfaction, productivity and loyalty**.
- Companies can also better **retain a qualified employee** by making reasonable pregnancy accommodations, eliminating the cost of training a new employee.

Pregnancy accommodations: Little to no cost to employers

Employers that provide reasonable accommodations for their pregnant employees find benefits on many levels **without incurring significant costs**. Breaks are the most common requested pregnancy accommodation, followed by a change in schedule or time off for doctor appointments, or being able to carry a water bottle, or sitting for set periods every hour, or having a lifting restriction.[1]

Employers who create written guidelines for pregnancy accommodation requests – and make these guidelines accessible and well-known to their employees — put themselves in the position of retaining qualified employees without the added cost of retraining new employees.

Laws and guidelines: Understanding the landscape

The Americans with Disabilities Act Amendments Act (ADAAA) of 2008

- In 2008, the ADAAA broadened disability coverage and made the cause of an employee's impairment irrelevant to the determination of whether the impairment causes a disability under the ADA.[2] Therefore, if a pregnant employee requests a lifting restriction, the fact that the request came as a result of pregnancy should be irrelevant.
- Despite the existence of the ADAAA, many employers still deny the accommodation requests of pregnant employees, leaving themselves open to discrimination cases. In the meantime, these pregnant employees often find themselves taking unpaid leave under the Family Medical Leave Act or the Oregon Family Leave Act.

The Pregnancy Discrimination Act of 1978

- Prohibits discrimination against employees and applicants on the basis of "pregnancy, childbirth and related medical conditions."[3]
- Despite the existence of the PDA, many pregnant employees still find themselves in the position of requesting accommodations for pregnancy-related conditions which their employers deny, a number estimated as high as a quarter of a million women a year.[4]

A survey by the Job Accommodation Network (JAN), a service of the Office of Disability Employment Policy of the U.S. Department of Labor, shows that fifty-seven percent of requested accommodations by employees were granted at no cost, while thirty-six percent of employers reported a one-time cost.[5]

The Family Medical Leave Act (FMLA):

- Allows employees to take up to twelve weeks of unpaid, job-protected leave for incapacity due to pregnancy, prenatal medical care or childbirth.
- To be eligible to take FMLA leave, the employer must employ fifty employees within seventy-five miles, and the employee must have worked for the employer for at least twelve months, for a minimum of 1, 250 hours.[6]
- While FMLA provides much-needed job protections to pregnant and post-partum women, if a woman takes leave early in her pregnancy, she could use up the twelve weeks of leave before her pregnancy is even over.

The Oregon Family Leave Act (OFLA):

- Allows employees to take twelve unpaid weeks off for pregnancy disability or prenatal care.
- To be able to take protected OFLA leave, employees must have been on the job for at least 180 days, and have worked at least twenty-five hours a week.[7]
- The same issues arise for pregnant employees who use OFLA as use FMLA; the protected twelve weeks of leave that a pregnant employee takes can expire well before the birth of the child, leaving pregnant employees with the choice of returning to work without pregnancy accommodations in place, or being forced to resign.

Avoiding pregnancy accommodation-related lawsuits

In 2011, the cost of resolutions, settlements and monetary awards concerned with pregnancy discrimination cases rose to $17.2 million, from $5.6 million in 1997.[8]

Many pregnancy discrimination cases come about as a result of employers who deny pregnancy accommodations. In response, the Equal Employment Opportunity Commission released guidelines on how employers should provide reasonable accommodations for their pregnant employees.

Key suggestions include:

- Having a process in place for expeditiously considering reasonable accommodation requests made by employees with pregnancy-related disabilities
- Granting the accommodations where appropriate
- Making a written reasonable accommodations policy widely available to all employees, and training managers to recognize such requests, and
- Avoiding assuming that pregnancy-related impairments are not disabilities.[9]

Case study: Pregnancy accommodations

One employer that has already made the commitment to provide reasonable accommodations for pregnant employees is Jeld-Wen. Its Human Resources Department increased managerial training on the interactive process of pregnancy accommodations and relevant laws. At Jeld-Wen, Human Resources folds "accommodations for pregnancy-related disabilities into disability training. At Jeld-Wen, the process begins by reviewing state or local requirements. Then, HR engages in an interactive process, exploring all possible accommodations and chooses the best one for the employee and employer. Once the accommodation is implemented, it's important to monitor the situation and make adjustments as needed."[10]

Pregnancy accommodation: Paid leave

Companies that have made the choice to offer employees paid maternity leave can point to clear evidence that the choice had a positive effect on their bottom line.

Google executives noticed that the attrition rate for their female employees who had babies was double that of their other employees and worked to reduce that rate by changing their three month, partial-pay maternity leave to a five month, full-pay maternity leave, thereby dropping their attrition rate by fifty percent.[11]

Case study: Paid family leave, best practice example

Laughing Planet Café – home of 278 employees and nine Portland locations – provides paid family leave for its workforce.

When one of the company's managers expressed concern about the unpaid leave that she would be taking after the birth of her child, Laughing Planet's owner and chief executive, Franz Speilvogel, promised to look into it. Speilvogel and his executive team determined that the cost of replacing a new employee equals about $5,000 in time and wages, and that even if ten of his employees were on paid leave at any one time, having his remaining employees cover the hours would still cost less than the $50,000 it would cost to hire ten replacements.[12] As a result, Laughing Planet Café made the choice to offer twelve weeks of paid maternal/paternal leave to all employees, regardless of whether they are full-time or part-time employees, a decision which Speilvogel believes to be both a good business decision and a matter of personal responsibility.[13]

Notes

1 http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace

2 http://web.a.ebscohost.com.libproxy.pcc.edu/ehost/pdfviewer/pdfviewer?sid=5ea24bec-9098-42d6-9170-62ecec524174%40sessionmgr4001&vid=3&hid=4104 A Sip of Cool Water: Pregnancy Accommodation after the ADA Amendments Act

3 http://www.eeoc.gov/laws/statutes/pregnancy.cfm The Pregnancy Discrimination Act U.S. Equal Employment Opportunity Commission

4 http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace

5 http://askjan.org/media/downloads/lowcosthighImpact.pdf Workplace Accommodations: Low Cost, High Impact

6 http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf FMLA

7 http://www.oregon.gov/boli/TA/pages/t_faq_oregon_family_leave_act_01-2011.aspx#reasons

8 http://www.washingtonpost.com/national/health-science/pregnant-women-fight-to-keep-jobs-via-reasonable-accommodations/2014/08/04/9eb13654-1408-11e4-8936-26932bcfd6ed_story.html Pregnant Women Fight to Keep Jobs via Reasonable Accommodations

9 http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#acco

10 http://www.shrm.org/publications/hrmagazine/editorialcontent/2014/0214/pages/0214-pregnancy-accommodation.aspx Accommodating Pregnant Employees

11 http://www.nytimes.com/2012/08/23/technology/in-googles-inner-circle-a-falling-number-of-women.html?pagewanted=all&_r=0

12 http://www.bloomberg.com/news/articles/2015-01-23/the-laughing-planet-caf-paid-maternity-leave This Oregon Restaurant Just Gave its Workers Paid Parental Leave

13 http://www.oregonlive.com/business/index.ssf/2015/01/laughing_planet_caf_known_for.html Laughing Planet Cafe, Known for Burritos, Adds Paid Parental Leave To Its Menu

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