CUT AND PASTE POST
SEPTEMBER, 2019

Pregnancy Discrimination is Alive and Well in the United States

August 9, 2019 (AZ) - Community Care Health Network, LLC, d/b/a Matrix Medical Network ("Matrix") will pay $150,000 and furnish other relief to settle a pregnancy discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC). According to the lawsuit, Matrix rescinded a job offer made to Patricia Andrews within a week of learning she was pregnant. The lawsuit says Andrews was offered a credentialing manager position after a lengthy interview process that included her flying to Arizona twice for in-person interviews at Matrix' Scottsdale headquarters. The suit says that, within a week after learning she was pregnant, Matrix accused Andrews of not informing the company she was pregnant during the interview process and then withdrew the job offer.

August 28, 2019 (TN) - A Plus Care Solutions, Inc., a supplier of professional caregivers to clients with disabilities, has agreed to pay $200,000 and furnish injunctive relief to settle a pregnancy discrimination lawsuit by the EEOC. According to this lawsuit, since at least 2010, A Plus required its female employees to sign a pregnancy policy at orientation. According to the EEOC, the policy provided that the employees' employment would terminate at the fifth month of pregnancy, and A Plus enforced this policy by terminating pregnant women despite their ability to effectively perform their job duties. The EEOC filed suit after conciliation efforts failed.

A two-year Consent Decree settling the suit was entered on August 28, 2019. In addition to providing the monetary relief, posting anti-discrimination notices, and hiring an EEO specialist to provide supervisory non-discrimination training, A Plus must change its policy and practice of removing pregnant employees from the work schedule because of pregnancy and may no longer require pregnant employees to disclose that they are pregnant. A Plus has also agreed to issue letters of apology to the affected employees.

Professional Pointer: Discrimination based on pregnancy violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978. It also violates the Montana Human Rights Act.

The cases above are just two of many recent examples that popped up when I searched for "pregnancy discrimination" on the web, so pregnancy discrimination seems to be alive and well in the United States. (Interesting side note: @ 73% of HR Managers in the United States are female.)

To avoid the "Paternalist Pregnancy Policy Minefield", employers can adopt a policy that applies to all employees with a temporary disability (including pregnancy) who cannot perform their jobs, and then apply that policy consistently and fairly.

Inside

OSHA Prohibits Retaliation Against Whistleblowers

On August 27th, OSHA announced that it has ordered Kinder Morgan ("KM"), a Houston-based company, to pay a former employee back wages and other compensation after an investigation found KM fired the employee for engaging in whistleblowing activity. A "whistleblower" is anyone who discloses information that s/he reasonably believes is evidence of illegality, gross waste or fraud, mismanagement, abuse of power, general wrongdoing, or a substantial and specific danger to public health and safety.

In this case, the employee told a contractor working for KM that KM had attempted to avoid complying with Pipeline Safety Improvement Act (PSIA) spill reporting requirements. KM insisted the employee retract the statement. When the worker refused, the KM fired the employee. In a press release, OSHA said the employee's actions were protected activity and the firing violated whistleblower protections.

Kinder Morgan has been ordered to:

- pay $113,040 in back wages, $30,000 in compensatory damages and $20,552 in attorney's fees
- remove any references in the worker's employment record to exercising whistleblower rights under PSIA
- not retaliate or discriminate against the employee
- pay interest on the back wages, and
- post a notice of OSHA's findings in a conspicuous place in its facility.

Kinder Morgan may appeal the OSHA order to the U.S. Department of Labor's Office of Administrative Law Judges.

Former City Administrator Files Wrongful Discharge Suit.

Matthew Lurker, the former Administrative Officer for the City of Laurel, Montana, has filed a wrongful discharge suit against the City. According to an article in the Billings Gazette, in 2018 Lurker was contracted to serve four years with the city, but there was a "clause or clauses allowing the City to terminate his employment without cause even after his probationary period of employment."

According to the lawsuit, Lurker was fired in retaliation after for filing a grievance protesting Interim Mayor Tom Nelson's behavior toward him, calling it a hostile and retaliatory work environment. The lawsuit claims that Lurker was not under a "written contract for a specific term," and instead was an employee governed by Montana's Wrongful Discharge Employment Act (WDEA). Lurker is represented by Jason Ritchie, of Ritchie Manning Kautz PLLP. The City of Laurel is represented by attorneys Gerry P. Fagan, and Afton E. Ball, who are contracted with the city through the Montana Municipal Interlocal Authority.

This case is interesting for a couple of reasons: 1) It is going to weigh the strength of an employment contract against the strength of the WDEA, with a 'retaliatory twist' thrown in; and 2) Jason Ritchie has made presentations to GVRHA. He is a well-respected employment law attorney who doesn't have a reputation for taking on frivolous cases. Stay tuned!

White Collar Rule Update

We are waiting for the White House to put its stamp of approval on the new Rule. It is due any day now. There will be a "FLSA News Flash" posted as soon as anything happens, so keep an eye on the GVHRA website!