

HR QUESTION ? of the month



Pregnant new hire – terminate employment?

Question: We hired a new employee about a week ago and now she is telling us that she is 4 months pregnant. She did not disclose this during the hiring process. The manager wants to terminate her employment. What are the possible ramifications if we terminate her? It looks as if she was seeking employment for health insurance benefits only.

Response: It is unlawful to discriminate against employees on the basis of their membership in a protected class, and this includes gender and pregnancy. In fact it is an express violation of federal law (and your state's law is similar) to take adverse employment action, which would include the termination of employment, because of a woman's pregnancy or even her failure to disclose that she is pregnant -- no law requires a woman to do so. Accordingly, we strongly advise against terminating the employment of the new employee based on the fact that she is pregnant or because she did not advise prior to her hire that she was pregnant.

Specifically, the federal Pregnancy Discrimination Act of 1978 makes clear that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination that is expressly prohibited by Title VII of the Civil Rights Act of 1964. State law in your state is consistent on this issue. Therefore, we reiterate our strong advice against any proposal to end the employment of this employee based on her disclosure of being pregnant, or her failure to previously disclose that she was pregnant, or because the employer suspects that she sought "employment for health insurance benefits only." A decision to end employment based on any one or more of these reasons is unlawful, and exposes the employer to potential (if not likely) claims of pregnancy and gender discrimination that may be difficult to defend, if defensible at all.

The best practice and our recommendation is to ignore the fact of the employee's pregnancy and treat her exactly as you would any other employee from a performance and policy standpoint. She should not be treated any differently, and certainly no worse, on account of the fact that she is pregnant, nor should she be subjected to adverse action because she did not previously disclose she is pregnant (as noted, this was not required of her, nor should the employer have asked) or because the employer speculates she may have sought employment to secure health insurance benefits. Even if the latter assumption is true (and the employer should avoid making any inquiries to verify), it would not be a lawful basis on which to discriminate against her, including ending her employment.

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Of course, her pregnancy does not entitle an employee to better or more preferential treatment in the workplace, either. If the subject employee does not meet performance expectations or violates company policy, she can and should be treated no differently than any other non-pregnant employee who is similarly situated would be treated. The employer must take care to ensure that any adverse action taken in this situation, however, is not different or more severe than that which would be issued had she never disclosed that she was pregnant (and particularly given that the manager may be predisposed to do so as it appears he or she is displeased with this employee's failure to disclose her pregnancy during the hiring process -- as noted, there was no obligation on her part to do so).

For more information on pregnancy discrimination, please see <https://www.eeoc.gov/laws/types/pregnancy.cfm> and https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm. We also recommend that you have the manager review these resources as it appears he or she may be unfamiliar with the federal law as it relates to pregnancy discrimination in the workplace. It may further be beneficial to provide him or her and other managerial and supervisory personnel with training as to basic employment law obligations in the workplace to ensure the workplace is free from unlawful harassment and discrimination, and that managers and supervisors are aware of their obligations under federal and state discrimination laws relative to employment.

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