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60-Second Memo

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Seventh Circuit Holds that Pregnancy Complications Can Be a Disability under the ADA

By Aaron J. Graf, Esq.

For the first time a federal court of appeals has addressed whether a pregnancy complication is a disability under the Americans with Disabilities Act (ADA) and concluded that, while in some circumstances it might be, a plaintiff attempting to show that a pregnancy-related condition substantially limits a major life activity faces a "tough hurdle." [Serednyj v. Beverly Healthcare, LLC](#), --- F.3d ---, 2011 WL 3800123 (7th Cir. 2011).

Serednyj was employed as an activity director at a nursing home by Beverly Healthcare. In December 2006, Serednyj learned she was pregnant but suffered a miscarriage days later. A few weeks thereafter, in January 2007, Serednyj learned she was pregnant again. However, six weeks into the pregnancy, she began suffering from complications and was told that if the complications were not addressed immediately she may suffer another miscarriage. A doctor instructed her to avoid strenuous activities and heavy lifting and Serednyj informed Beverly of this.

Beverly responded that under its modified work policy, Serednyj could not return to work until she was cleared to resume full duty work by her doctor. The policy stated that Beverly only provided one type of restricted or limited duty for non-work related injuries or conditions - an accommodation under the ADA. The policy further

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provided that no other restricted or limited duty was permitted for non-work related injuries or conditions. Beverly had apparently uniformly and consistently applied this policy across the board.

Serednyj was placed on bed rest for two weeks, after which she was to be reevaluated by her doctor. Beverly informed Serednyj that if she could not return to work at full duty after the two-week period she would be let go. Serednyj's doctor continued to restrict her to light duty following the two-week period, as any strenuous activity or heavy lifting would jeopardize the baby. Thus, in accordance with its policy, Beverly terminated Serednyj. Serednyj brought suit alleging gender and pregnancy discrimination under the Pregnancy Discrimination Act (PDA) and Title VII, disability discrimination under the ADA, and retaliation. The district court granted summary judgment to Beverly, and the Seventh Circuit Court of Appeals affirmed.

The issue of first impression addressed by the Seventh Circuit was whether pregnancy complications rendered Serednyj "disabled" under the ADA. Of course, disability is defined under the ADA to mean (1) a physical or mental impairment that substantially limits one or more of the major life activities; (2) a record of such impairment; or (3) being regarded as having such an impairment. The court found that Serednyj did not qualify under any of the three prongs.

The court acknowledged that while a normal pregnancy is specifically excluded as a physical impairment, 29 C.F.R. Pt. 1630, App. § 1630.2(h), complications which may constitute physiological disorders, such as the premature rupture of membranes or the risk of premature birth, could qualify as physical impairments. However, even if a pregnancy complication is considered a physical impairment, the court noted the significant hurdle a plaintiff would face in showing a pregnancy complication limits a major life activity.

The court observed, "Pregnancy is, by its very nature, of limited duration, and any complications which arise from a pregnancy generally dissipate once a woman gives birth. Accordingly, an ADA plaintiff asserting a substantial limitation of a major life activity arising from a pregnancy-related physiological disorder faces a tough hurdle." The court discussed and acknowledged that there were foreseeable circumstances where complications that developed during pregnancy would not dissipate shortly after the pregnancy ended, and may qualify as a disability. However, such was not the case with Serednyj. Because Serednyj's complications did not last throughout her pregnancy or beyond giving birth, the court held that even if her complications qualified as a physical impairment, they did not substantially limit a major life activity given their transitory nature and, thus, she was not disabled under the ADA.

The decision does come with an important caveat that may limit its import on future cases. The court analyzed the case under the pre-2008 amendments to the ADA given that the events transpired prior to the effective date of the amendments. It is not certain at this time whether a similar fact pattern would be decided

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precisely the same under the newly amended ADA. After all, the avowed intent of the 2008 amendments were to make it easier for employees to sue for disability discrimination. Despite the fact the amendments do not address pregnancy with any specificity, it seems certain that an enterprising plaintiff's attorney will argue that the amendments have changed the law regarding pregnancy and disability nonetheless.

Also of note is the Seventh Circuit's analysis of whether the treatment of Serechny by Beverly violated the PDA. The court found that there was no violation of the PDA given that Beverly had followed its policies uniformly and the policy was pregnancy-blind. The court explained, "The policy complies with the PDA because it does, in fact, treat nonpregnant employees the same as pregnant employees -- both are denied an accommodation of light duty work for non-work-related injuries. This is all the PDA requires. We, therefore, agree with the district court and find that Beverly's modified work policy is 'pregnancy-blind,' and therefore valid."

In addition to instructing as to the possible future treatment of pregnancy complications under the ADA, this case also serves as an excellent reminder of the importance of developing policies proactively **and** following them consistently and uniformly. It was because the employer had a clear policy and followed that policy - even in light of the sympathetic plight of its employee - that the employer was able to avoid liability.

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