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MEDICAL RESTRICTIONS

Pregnancy and heavy lifting — what's an employer to do?

Do you ever hesitate when an employee hands you a note from a doctor limiting her physical activities? Do you wonder if you're required to provide the employee with light-duty work? What about pregnant employees? Should you accommodate their job duties during pregnancy? Several employment laws can apply to such medical issues. A recent decision by one of Florida's newest federal judges, Richard Smoak from Panama City, provides insight into the thought process you should apply to those situations.

Facts

Dawn McQueen was a customer service agent for AirTran Airways, Inc., where she worked at the counter and handled luggage for customers. The airline's written job description for the agents includes the ability to lift up to 70 pounds *repetitively*. Further, the airline requires that they be cross-trained to work in three job positions: the ticket counter, gate, and ramp.

McQueen became pregnant in March 2003. Fourteen weeks into her pregnancy, she gave her supervisor a note from her doctor recommending that she limit her lifting to no more than 30 pounds. She *didn't* have an abnormal pregnancy; instead, her doctor believed that even though she was healthy, she still should limit her lifting while pregnant. She would have required an accommodation for the rest of her pregnancy — approximately six months.

AirTran faced the dilemma of allowing McQueen to work without being *able* or *qualified* to perform a regular requirement of her job. The airline believed that allowing her to do so would jeopardize its business of transporting customers and their luggage. It thought that it wasn't feasible for any agent to perpetually avoid lifting up to 70 pounds. It was concerned about whether McQueen might misjudge the weight of a package and injure herself or jeopardize her pregnancy accidentally. On the other hand, if it placed her on leave, it ran the risk of a pregnancy discrimination lawsuit.

AirTran placed McQueen on unpaid leave under the Family and Medical Leave Act until she was able to lift up to 70 pounds. After placing her on leave, the airline held her position open for over 10 months. After she delivered her baby, she asked to return to work, and the airline received clearance from her doctor and immediately restored her to her former customer service position. End of story, right?

What's Inside . . .

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Not quite. McQueen sued AirTran, claiming pregnancy discrimination. She claimed that the airline discriminated against her by placing her on unpaid leave when she was *willing and able* to perform her duties at the ticket counter or gate *and* by refusing to modify her job assignment when it had previously done so for other employees. In analyzing her claim, Judge Smoak responded to two primary questions: (1) Was she *qualified* for her job position while under the doctor-imposed lifting restriction? (2) Did the airline apply its past practice and work rules differently to her because she was pregnant?

Was McQueen qualified?

Judge Smoak reasoned that when faced with a doctor's note stating that McQueen should limit her lifting to no more than 30 pounds, AirTran had no place substituting its judgment for the doctor's. The airline had a written policy that clearly required lifting up to 70 pounds repetitively, and she had signed and initialed that document. It thought that her doctor's limits on her activities were indefinite in duration and placed it in the impossible position of indefinitely ensuring that there was always another employee present with her whenever she was required to lift more than 30 pounds. It believed that such a requirement was sufficient to "jeopardize the company's ability to effectively and safely maintain its operations."

With no evidence that customer service agents didn't regularly lift up to 70 pounds, Judge Smoak found that McQueen was no longer qualified to work as a customer service agent. But was AirTran required to modify her job during her pregnancy? The judge answered no: "AirTran . . . was not obligated to accommodate McQueen by reassigning her to the gate or ticket counter positions during her pregnancy even if such accommodations were feasible." He reached that conclusion by finding that the Pregnancy Discrimination Act doesn't require employers to give *preferential or special treatment* to pregnant employees.

Was McQueen treated differently than other employees?

McQueen next attempted to prove discrimination by pointing to other situations in which employees with medical restrictions were accommodated by AirTran. She identified three employees, including herself, as examples of the airline's history of accommodating employees with medical restrictions. Her first example was her own situation when she had an on-the-job wrist injury. When that injury occurred, her doctor limited her to lifting no more than 15 pounds for a week. The next week, the doctor gave her a note restricting her lifting to 20 or 25 pounds.

The second employee McQueen pointed to was Bethany Purvis, who had injured her foot at work and was placed on crutches for a period of time. Although she wasn't an illustration of the lifting requirement, Judge Smoak assumed that an employee on crutches would be limited in her lifting. AirTran had accommodated Purvis by allowing her to sit down for 15 minutes every two hours and to work only at the gate or ticket counter for approximately one month.

The last employee McQueen relied on was Naveed Malik, who had injured her back at work. Malik's doctor, however, ordered her to take leave from work until her back had healed. After a one-month leave, she returned to work without any lifting restrictions.

Judge Smoak compared AirTran's treatment of McQueen to its treatment of the other employees who were under physician-imposed lifting restrictions and concluded that her evidence that she was treated differently because of her pregnancy was insufficient to prove discrimination. In short, the judge concluded that accommodating injured employees for weeks or a month was significantly different from McQueen's request to be accommodated for a span of six months, the remaining duration of her pregnancy. Thus, he found that the three situations she relied on weren't similar to her own situation. *Dawn McQueen v. AirTran Airways, Inc.*, Case No. 3:04-CV-00180-RS-EMT (N.D. Fl., December 30, 2005).

Significance for Florida employers

Judge Smoak's reasoning provides insight for all Florida employers about decisionmaking when employee medical restrictions are involved. First, make sure you have a written job description that's accurate. Furthermore, in

situations involving pregnancy, you should ask yourself how you have treated nonpregnant employees when they have asked for medical accommodation. How, for example, have you treated male employees when they were injured or required surgery?

You can catch up on the latest court cases involving pregnancy discrimination in the subscribers' area of www.HRhero.com, the website for Florida Employment Law Letter. Just log in and use the HR Answer Engine to search for articles from our 50 Employment Law Letters. Need help? Call customer service at (800) 274-6774. ❖

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