Seventh Circuit Holds Work-Related Light Duty Policy Need Not Be Extended to Pregnant Employees

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Practice Area: School Law & Government Law

On August 16, 2022, the U.S. Court of Appeals for the Seventh Circuit decided *EEOC v. Wal-Mart Stores, Inc.*, and ruled that a light duty policy only covering workers injured on the job was lawful, and did not illegally exclude pregnant employees. The decision can be found here. The decision provides guidance under federal law for employers considering whether they can limit light duty to only those employees injured on the job. In particular, this decision is helpful for public safety employers due to the frequency with which light duty is requested and utilized by public safety employees.

From 2014–2017, the Wal-Mart Distribution Center in Menomonie, Wisconsin offered a temporary light duty under a "Temporary Alternate Duty" Policy ("TAD Policy") to employees who were injured on the job. The TAD Policy allowed workers injured on the job to keep working and earning their full wages, while complying with any medical restrictions. Employees on light duty under the TAD Policy were reevaluated for potential return to duty after 90 days. Wal-Mart did not offer similar light duty opportunities to pregnant employees or employees injured outside of their work for Wal-Mart. Instead, workers who were pregnant or injured off the job were required to take leave. The EEOC sued Wal-Mart, alleging the TAD Policy violated the Pregnancy Discrimination Act by denying light duty to pregnant employees.

The Court concluded that, since Wal-Mart's TAD policy was drafted and executed to comply with Wisconsin's worker's compensation law, Wal-Mart had a legitimate, nondiscriminatory justification for only providing accommodations to employees injured on the job, and not pregnant employees or employees injured off the job. Relatedly, the Court concluded Wal-Mart's justification outweighed the burden on pregnant employees. Since Wal-Mart only applied its TAD Policy to workers injured on the job and there was no evidence only pregnant people were excluded from its TAD Policy, the Court held Wal-Mart's TAD Policy did not intentionally discriminate against pregnant employees.

This decision begs the question: can employers limit light or alternate duty to employees injured on the job? Yes, provided the limitation is based upon a carefully crafted and consistently applied policy. To fashion a light or alternate duty policy that passes muster, it must be supported by public policy and applied consistently with no exceptions.

Additionally, employers should be mindful that the court's ruling in *EEOC v. Wal-Mart Stores, Inc.* does not eliminate their potential Americans with Disabilities Act ("ADA") obligations to pregnant workers. Some pregnant workers may have one or more impairments related to their pregnancy that qualify as a "disability" and, as a result, these workers may be entitled to a disability accommodation in the form of light or alternate duty. Similarly, public safety employers must be mindful of any applicable collective bargaining agreements that contain light duty provisions and may limit otherwise available options. Depending on the nature of a light duty program, municipal employers should also remain aware they may have an obligation to bargain over certain aspects or impacts of the program.
