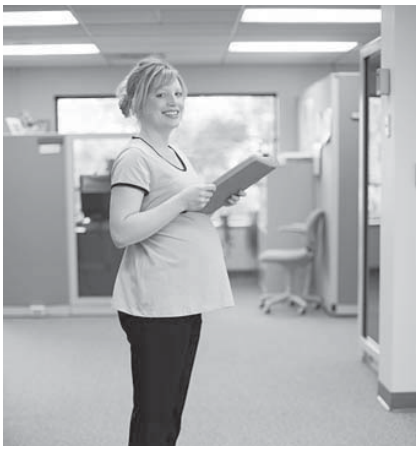
by Kara M. Maciel

Employees on the "mommy track": Hoteliers should proceed with caution



A hotelier recently interviewed a female candidate for a management position in the sales and catering department. Even though the applicant's experience demonstrated she was not qualified for the position, when she was denied the job, she quickly filed a discrimination claim alleging that the General Manager told her that her family responsibilities prevented her from working the necessary late and weekend hours required for the job. As this hotelier found out, no good deed goes unpunished.

Hoteliers are well aware that federal law protects pregnant employees from discrimination; however, more recently states and the federal Equal Employment Opportunity Commission are noticing a rise in bias claims brought by primary childcare givers, bringing new attention to issues faced by female employees in the workforce.

While long hours and few accommodations often pose problems for both male and female employees with families, the caregiver discrimination allegations arise when women who have children and juggle family and work are treated differently from male colleagues who do the same. Many women complain that when they return from maternity leave, they are questioned by their employer about their commitment to their job and their ability to travel and work late hours in the office.

Such allegations have proven to be financially and publicly damaging to companies. In one such high profile case against a financial services firm, the employer eventually agreed to pay $54 million rather than proceed to trial. In that case, the employer agreed to adopt a parental leave policy and train its managers on pregnancy rights.

In the example above, while the General Manager thought he was only looking out for the employee and trying to be considerate of her busy schedule, the employee vying for the promotion felt that her status on the "mommy track" impermissibly prevented her from ascending the corporate ladder. As noted, even where the employer has a legitimate reason for the employment decision, sometimes that alone is not enough to avoid a discrimination claim.

In one recent case, a court concluded that a female employee provided sufficient evidence of discrimination by indicating that her employer, who terminated her as part of a reduction in force, impermissibly fired her because of her pregnancy. The court stated that the employee must present evidence tending to indicate that the employer singled out the employee for discharge for impermissible reasons. The court, however, further explained that a mere "temporal proximity" between the reduction in force and the protected activity could establish the requisite causal connection. As such, the court determined that the employee in fact provided sufficient evidence of a nexus between her pregnancy and her termination, when she, among other things, showed that she was terminated only two months after her employer learned of her pregnancy, and that her employer provided changing rationales for its decision to terminate her as part of the reduction in force.

In summary, when making tough employment decisions, either in promotion or reduction in force decisions, hoteliers should be aware of the particular "temporal proximity" concerns when terminating a pregnant employee or an employee who has recently given birth. Further, it is not only important for an employer to treat all employees equally and fairly, but also to (i) effectively and consistently communicate to all of its affected employees the legitimate, business reasons supporting its employment decisions; and (ii) document such reasons and communications accordingly. Finally, management training and strong communication skills are key to avoiding potential discrimination claims. ✧

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