by Jaclyn L. West and Donald R. Lee

New development in pregnancy discrimination law is good news for hoteliers

Imagine that you are sitting at your desk on any ordinary day. There is a knock at your door, or perhaps your phone rings. One of your long-time employees has been looking into retirement, and she has a problem with her retirement benefits. When she had her first baby in 1977, she was on bed rest for six months. Now her retirement benefits don't reflect those six months as part of her seniority accrual. What can you say? The policy was legal at the time, and the hotel has since changed it to comply with the current law. But does the hotel have to recalculate her benefits to add six months of seniority, even though it was legal not to give her seniority credit back then? And if the hotel does recalculate her pension, does it have to recalculate everyone else's too – including those already retired?

Pregnancy Discrimination Act

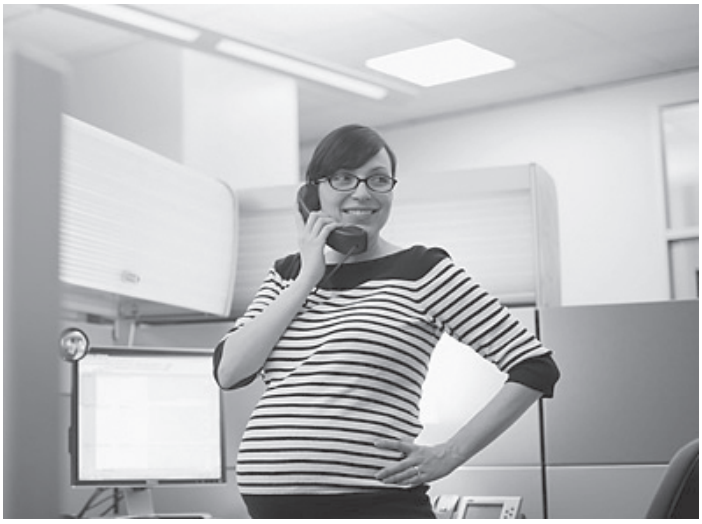
Federal employment law prohibits employment discrimination on a host of categories, including gender. Throughout the sixties and seventies, one of the most hotly debated issues was the question of whether employment policies that discriminated on the basis of pregnancy were lawful. In 1976, the Supreme Court weighed in, stating that pregnancy discrimination was not unlawful sex discrimination. While it acknowledged that only women could become pregnant, the Supreme Court found that a disability plan that excluded pregnancy-related disabilities was not sex discrimination. Congress responded by passing the Pregnancy Discrimination Act (the "PDA"). The PDA took effect in 1979 and prohibited differential treatment of employees based on pregnancy or pregnancy-related conditions.

With the passage of the PDA, it is clear that hoteliers and other employers cannot implement or maintain policies after 1979 that treat pregnant employees worse than non-pregnant employees. But what about pregnancies that occurred before 1978 that are still impacting employees' conditions of employment to this day?

New developments

The Supreme Court addressed that issue just a few weeks ago in a case called *Hulteen v. AT&T*. Ms. Hulteen, as well as current and former employees of AT&T, claimed they were disadvantaged by AT&T's service credit accrual plan because they had taken pregnancy leave before 1979. Prior to 1979, the service credit accrual plan did not permit female employees to accrue retirement credit when they took disability leave for pregnancy-related conditions. However, the service credit accrual plan did allow employees to continue accruing service credit for retirement when out on other forms of medical or disability leave. At the time, the differential treatment was lawful.

When the PDA took effect in 1979, AT&T changed its policy to allow pregnant employees to accrue full service credit for time on pregnancy-related leave. But AT&T did *not* allow Ms. Hulteen and other employees who had taken pregnancy-related leave prior to 1979 to obtain service credits retroactively.



Ms. Hulteen claimed that AT&T's pension plan was a continuing violation of federal employment law and the PDA. The basis of her claim was that her pension benefits were calculated based on approximately seven fewer months of seniority than she would otherwise have accrued had she not taken pregnancy-related leave. The Supreme Court disagreed. The Court said that, while the same policy operating today would certainly violate federal labor law, AT&T did not violate the law by "giving current effect" to policies that were in place before the PDA was passed. Essentially, the Court refused to apply the PDA retroactively.

What this means for hoteliers

What does this mean for hoteliers? Simply put, it's good news. If the Supreme Court had said that the PDA applies retroactively, hoteliers around the country would have to revisit the policies they had in place thirty years ago and recalculate the benefits of all employees who took pregnancy-related disability leave during that time, and didn't get credit for it. Instead, the Court upheld the longstanding principle that laws do not apply retroactively unless Congress specifically says so.

While it is still vitally important for hoteliers to ensure that their current pregnancy and disability leave policies comply with the law, there is no need to revisit the benefits of all female employees at or nearing retirement age to determine if their benefits will change due to their having taken pregnancy leave before 1979.

Related articles from the TRC[SM] archives:

- "Complying with the Pregnancy Discrimination Act: A primer for hoteliers" – Vol. 14, No. 5.
- "Employees on the "mommy track": Hoteliers should proceed with caution" – Vol. 15, No. 6.

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