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CLIENT ADVISOR

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EEOC Issues Pregnancy Discrimination Guidance

On July 14, 2014, the Equal Employment Opportunity Commission (EEOC) issued updated guidance addressing employer obligations under the Pregnancy Discrimination Act (PDA) and providing clarification on how Title VII and the Americans with Disabilities Act (ADA) interact to protect pregnant employees. The new guidance has created controversy both because it addresses an employer's obligation to provide light duty to employees with pregnancy related restrictions and because the guidance was issued despite the fact that this very issue is currently pending before the U.S. Supreme Court. *See Young v. United Parcel Serv., Inc.*, 707 F.3d 437 (4th Cir. 2013), *cert. granted* 81 U.S.L.W. 6302 (July 1, 2014).

Young v. United Parcel Service, is an appeal from a federal appellate court decision that specifically disagreed with the EEOC's position that light duty programs restricted to workers injured on the job violates the PDA. According to the EEOC, employers have an obligation to provide an accommodation under the PDA if they provide light duty options to similarly situated non-pregnant employees. The EEOC maintains this position in the new guidance.

Although the Supreme Court's decision will ultimately trump the EEOC guidance and may make portions of the new guidance moot, the Court's decision is not expected until 2015. Until that time, employers would be wise to abide by the EEOC's guidance. Despite the controversy, policies that are not updated to reflect the change in how the PDA is interpreted or decisions made under the old interpretation could result in a charge of pregnancy discrimination. Employers should review pregnancy related policies, light duty policies, and seek legal counsel to review situations that involve pregnancy related accommodations.

You should contact your CL&P attorney if you have any questions.

SJC Limits Authority of Arbitrator in Teacher Dismissal Cases

The state's Supreme Judicial Court (SJC) recently issued a decision limiting an arbitrator's scope of authority under the state's teacher dismissal statute. *School Comm. of Lexington v. Zagaeski*, 2014 WL 3393541 (July 14, 2014). The *Zagaeski* decision clears up an issue left unresolved by the court in *School Dist. of Beverly v. Geller*, 435 Mass. 223 (2001); specifically, an arbitrator's authority to reinstate a teacher dismissed for conduct that the arbitrator found constituted, at least nominally, a valid basis for dismissal.

The Court held that an arbitrator exceeds his authority when he issues a decision modifying or reversing a school district's decision to dismiss a teacher after finding that the district has met its burden to show facts demonstrating one of the statutory grounds for dismissal. Zagaeski was a High School physics teacher who was dismissed in 2011 after joking with a student that the only way she could improve her grades, aside from studying harder, was through sexual favors. The 17 -year-old reported Zagaeski's comments to a school counselor which prompted an investigation and led to his dismissal for conduct unbecoming a teacher. Zagaeski, a teacher with professional teacher status, filed for arbitration under G.L. c. 71, s. 42.

Despite finding that Zagaeski's conduct violated the district's sexual harassment policy and created a hostile or offensive educational environment, Arbitrator Philip Dunn concluded that "Zagaeski's conduct constituted a 'relatively minor and isolated' violation of the harassment policy, which only 'nominally' constituted conduct unbecoming a teacher." *Zagaeski*, 2014 WL 3393541 *3. Arbitrator Dunn issued an award reinstating Zagaeski with full back pay, minus a two day unpaid suspension. The school district appealed.

Justice Lenk authored a lone dissenting opinion in which she took the view that an arbitrator is authorized to conclude, as the arbitrator in *Zagaeski* did, that a teacher engaged in misconduct, but that the misconduct was not serious enough to establish one of the statutory grounds for dismissal.

For more on this decision, visit our Education Blog at www.collinslabor.com.

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