



**JEREMY FARRELL &  
REBECCA MORAN**

Finishing residency, interviewing, and committing to their first full-time position is an exciting time for most physicians. But a lot can happen in the year between when the interviews and the job start—including pregnancy. Physicians who become pregnant during this time often wonder about their rights and obligations and how pregnancy could impact negotiations or the start of their careers. If the physician is pregnant during the interview process, must she disclose that information? If she signs her contract and subsequently becomes pregnant with a need to take leave at the beginning of her employment, can she be terminated? Will she be entitled to leave or other benefits? This article summarizes key legal protections and highlights things that a physician should consider while trying to navigate this situation.

The primary issue is that family leave policies vary greatly from one employer to the next, and the job-protected leave that is provided by the employer or by law often is not triggered until the employee reaches a particular length of service.

Unfortunately, the standard job-protected leave laws do not provide much help to physicians who find

## Pregnancy-Related Protections for New Physicians

themselves in this situation. There is the Family and Medical Leave Act (FMLA), which among other things, provides 12 weeks of unpaid leave to care for a newborn child. But employees aren't eligible to take FMLA leave until they work at a job for more than 12 months. There are also some instances where the Americans with Disabilities Act (ADA) could require employers to grant unpaid leaves of absences to employees. But a normal pregnancy and childbirth (one free of complications) do not qualify as disabilities under the ADA, meaning that employers are generally not under a duty to reasonably accommodate them.

That doesn't mean that individuals who find themselves in this situation are without legal protection. Those who are pregnant or intend to become pregnant are among the people protected against pregnancy discrimination at work by a federal law called the Pregnancy Discrimination Act (PDA).

The PDA prohibits a broad range of discriminatory conduct based on an individual's pregnancy, including refusing to hire an applicant. That means, in general, a job offer shouldn't be pulled just because an applicant is or becomes pregnant.

By extension, that means applicants are under no legal obligation to

disclose their pregnancy to current or prospective employers. In fact, the Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the PDA, recommends that employers not ask about pregnancy during the interview process.

Beyond that, the full extent of the PDA's protections is a bit murky, in that the statute doesn't clearly address the accommodations that employers may be required to make for pregnant employees or applicants. The PDA's general rule is that companies must treat pregnant women the same way they treat other employees with a similar ability or inability to work. The EEOC's regulations provide that if an employee cannot perform functions of her job for reasons relating to pregnancy, the employer must treat that employee in the same way it treats others who are temporarily disabled and unable to work. This could include providing leave without pay, modified job tasks, or alternative assignments.

While the precise contours of the PDA haven't been clearly drawn, the EEOC has taken up the case on behalf of pregnant job applicants who the agency felt had wrongfully had their job offers rescinded because they were pregnant. For example, in a 2019 case it brought against Scribe-X

## Legal Summary

Northwest, a medical documentation service provider, the EEOC alleged that Scribe-X unlawfully pulled an offer from a pregnant applicant. The EEOC's investigation revealed that the applicant applied for a position online, was given an offer, and then completed all pre-hiring screens. Several months later, she told the company she was pregnant. The next week, the CEO rescinded her offer, telling the applicant that she should have disclosed her pregnancy during the interview. The EEOC sued Scribe-X, and the parties ultimately agreed to settle. The terms required that Scribe-X pay \$80,000 and provide various other forms of compliance-related relief. In announcing the settlement, the EEOC stated that "rejecting a qualified applicant because of pregnancy is a form of sex discrimination" that violates the PDA.

A couple months later, the EEOC announced another settlement of similar claims against Matrix Medical, a nationwide healthcare company headquartered in Scottsdale, which alleged that Matrix also unlawfully rescinded a job offer for a credentialing manager position within a week of finding out the applicant was pregnant. The settlement required that Matrix pay \$150,000 to the applicant, write a letter of apology, and make various changes to its internal leave and non-discrimination policies.

Based on the above, physicians who are pregnant or who are likely to become pregnant are well-advised to consider the implications of this during the contract negotiation process. This includes learning as much as possible about the employer's leave policies, negotiating for additional general

paid time off, negotiating salary to offset loss of compensation during unpaid leave, and understanding the contractual parameters under which the employer can otherwise terminate the employment agreement (i.e. for convenience or for a disability lasting a certain number of days).

For a physician who becomes pregnant after the agreement has been signed, the main consideration is when to disclose that information. Technically, there is no obligation to disclose the pregnancy to your prospective employer but there can be advantages to doing so, bearing in mind the PDA's protections discussed above. This may prompt a dialogue between employer and employee about how best to move forward, which could include moving back the first day of employment or modified duties for a certain period of time.

Given the various considerations at play, individuals who find themselves in this situation are encouraged to consult with their attorney to explore their rights and the options available to them.

<sup>1</sup>Note: The PDA applies to employers who have more than 15 employees. Depending on your jurisdiction, state laws may offer additional protections.



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