

## 7th Circuit: Termination of Pregnant Employee Raises Multiple Potential Legal Claims

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By Darin R. Leong

A former activities director of a nursing home who was terminated while experiencing pregnancy-related medical complications could not succeed on her claims for pregnancy discrimination, disability discrimination and retaliation, according to the 7th U.S. Circuit Court of Appeals.

In August 2006, Beverly Healthcare LLC hired Victoria Serednyj as an activities director for its nursing home. Beverly maintained a "modified work policy," which permitted "light duty" for employees with work-related injuries but prohibited "light duty" for nonwork-related injuries.

In January 2007, Serednyj informed her supervisor that she was pregnant. Toward the end of February 2007, Serednyj began to have complications with her pregnancy, including spotting and cramping. Serednyj went to the hospital and was informed that her progesterone levels were low and that she had bleeding behind her placenta and a shearing of her uterus.

On March 1, 2007, Serednyj's doctor restricted her from "working in any capacity." From March 2 to March 14, 2007, Serednyj was placed on bed rest.

Serednyj's supervisor informed her that per Beverly's modified work policy, Serednyj would be terminated if she could not return to work on March 14 without restrictions.

On March 13, 2007, Serednyj's doctor wrote her a note stating, "light duty or unable to work until further notice." Serednyj gave the note to her supervisor, who again informed her that she did not fall within Beverly's modified work policy because her injury was not work-related and that Serednyj did not qualify for leave under the Family and Medical Leave Act (FMLA). Beverly then terminated Serednyj's employment.

Serednyj sued Beverly, alleging: 1) pregnancy/gender discrimination under Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act (PDA); 2) disability discrimination under the Americans with Disabilities Act (ADA); and 3) retaliation.

The district court granted summary judgment in favor of Beverly and dismissed all of Serednyj's claims. The 7th Circuit affirmed the district court's ruling.

With respect to Serednyj's pregnancy discrimination claim, the 7th Circuit ruled that Beverly's modified work policy complied with the PDA because it treated nonpregnant employees the same as pregnant employees, (i.e., both were denied a light-duty accommodation for nonwork-related injuries). The 7th Circuit also ruled that Serednyj's pregnancy discrimination claim failed because she could not identify nonpregnant employees who were treated more favorably than she was.

With respect to Serednyj's disability discrimination claim, the 7th Circuit ruled that

Serednyj's pregnancy complications did not "substantially limit a major life activity," which is required to prove an ADA violation. In particular, the 7th Circuit ruled that Serednyj was not substantially limited in the major life activity of "reproduction" because Serednyj's complications did not last throughout the pregnancy or extend beyond childbirth. Moreover, Serednyj's pregnancy-related complications did not substantially limit the major life activity of "lifting" because her restriction was of limited duration and because the "inability to do heavy lifting [was] not a substantial limitation as compared to the average person."

Finally, the 7th Circuit ruled that Serednyj's retaliation claim failed. The 7th Circuit identified Serednyj's protected activity as her producing a letter requesting an accommodation (as opposed to her prior verbal requests), which was submitted after her termination. The court reasoned that Beverly could not retaliate against Serednyj for conduct (i.e., requesting an accommodation in writing) that had not yet occurred at the time of her termination.

*Serednyj v. Beverly Healthcare LLC*, 7th Cir., No. 10-2201 (Aug. 26, 2011).

**Professional Pointer:** Although the 7th Circuit upheld dismissal of Serednyj's claims, the case highlights the multiple potential pitfalls (FMLA leave, pregnancy discrimination, disability discrimination, retaliation) for employers when pregnancy-related leave issues arise. Moreover, the 7th Circuit's decision appears to be contrary to an opinion issued by the 9th Circuit, which finds bright-line rules regarding disability accommodations per se illegal under the ADA. Employers should also be sure to take into account state law requirements; some states, such as Hawaii, have statutes offering additional protections to pregnant workers.

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**Editor's Note: This article should not be construed as legal advice.**

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