



## Ohio Laws Do Not Require Employers to Provide Maternity Leave to Employees Not Otherwise Eligible for Leave Under a Uniform Leave Policy

On June 22, 2010 the Ohio Supreme Court held that "an employment policy that imposes a uniform minimum-length-of-service requirement for leave eligibility with no exception for maternity leave is not direct evidence of sex discrimination" under Ohio's civil rights statutes and "the *McDonnell Douglas* burden-shifting analysis should be applied in cases involving such a policy." [\*McFee v. Nursing Care Mgt. of Am., Inc.\*](#), Slip Opinion No. 2010-Ohio-2744.

In *McFee* the employer had a uniformly-applied written policy requiring employment for a period of one year before an employee would be eligible for any leave for any purpose. After eight months on the job, before she was eligible for leave under the written policy, the plaintiff-employee took maternity leave for the birth of her child. As a result, her employment was terminated for being absent from work.

The plaintiff-employee filed a charge with the Ohio Civil Rights Commission, claiming her termination constituted unlawful sex discrimination on the basis of pregnancy. The case was ultimately appealed to the Ohio Supreme Court.

In a 5-1 decision, the Ohio Supreme Court held that the employer's minimum-length-of-service leave policy was "pregnancy-blind" in that it treated *all* employees equally by requiring that *every* employee reach 12

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months of employment before becoming eligible for leave. According to the court, Ohio's antidiscrimination laws do not provide pregnant employees with greater protections or preferential treatment over nonpregnant employees. Rather, state law simply "mandates that employers treat pregnant employees the *same* as nonpregnant employees who are similarly situated with respect to their ability to work." The court concluded, therefore, that "a pregnant employee may be terminated for unauthorized absence just as any other employee who has not yet met the minimum-length-of-service requirement but takes leave based upon a similar inability to work."

In reaching its decision, the Ohio Supreme Court resolved the apparent tension and ambiguity between Ohio Administrative Code 4112-5-05(G)(2) and (G)(5). It held that, when read together, the two provisions require that when *an employee is otherwise eligible for leave*, the leave provided for childbearing must be reasonable and the employer cannot lawfully terminate that employee for violating a policy that provides no leave or insufficient leave for temporary disability due to pregnancy or a related condition. In other words, an employee is entitled to maternity leave under Ohio law only when the *employee is otherwise eligible for leave* under the employer's uniformly-applied leave policies.

While the Ohio Supreme Court's decision in *McFee* clarifies under what circumstances an employer may deny an employee's request for maternity leave, it does not address other situations in which state and federal laws may require employers to grant leave to employees *ineligible* for leave under similar minimum-length-of-service policies, e.g., as a reasonable accommodation for a disability.

If you have any questions about this decision or about how other state and federal laws may affect your minimum-length-of-service leave policies, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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