

# Pregnancy Discrimination Nurse Aide

The U.S. Circuit Court of Appeals for the Eleventh Circuit recently upheld a healthcare employer's legal right to give light duty assignments only to employees unable to lift because of medical restrictions imposed by their physicians due to on-the-job injuries.

The employer's right to do this would not be affected by the fact that pregnant employees with the same quantitative lifting restrictions imposed by their physicians due to pregnancy would face loss of their positions, that is, those pregnant employees would not have the right to sue for pregnancy discrimination under the U.S. Pregnancy Discrimination Act.

The court cautioned, however, that if employees in general are given modified light-duty assignments because of physicians' lifting restrictions without regard to the underlying reason, but pregnant employees with physicians' lifting restrictions are excluded, illegal pregnancy discrimination would occur.

In this case a pregnant nurse's aide became concerned because one of the patients on the unit weighed 250 pounds. She asked her physician's advice and her physician wrote a note she was restricted from lifting more than 25 pounds.

When she gave the note to her supervisor her supervisor indicated no modified duty accommodation would be offered, as it was company policy only to offer light duty accommodation to employees who had physicians' lifting restrictions from on-the-job injuries.

The aide asked her physician to remove her lifting restriction, which the physician refused, and the aide was laid off until after she had given birth.

The court ruled this was not differential treatment of a pregnant employee and threw out her pregnancy discrimination lawsuit. **Spivey v. Beverly Enterprises, Inc.**, 196 F. 3d 1309 (11th Cir., 1999).

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***The Pregnancy Discrimination Act (PDA) says that women affected by pregnancy, childbirth or related medical conditions must be treated the same for all employment-related purposes as others similar in their ability or inability to work.***

***The PDA does not require employers to give preferential treatment to pregnant employees.***

***An employer has the right to give modified duty assignments to employees unable to lift patients due to on-the-job injuries.***

***By opting to give light duty to employees injured on the job, however, the employer takes on no legal obligation to give light duty as an accommodation to pregnant employees unable to lift patients due to pregnancy-related medical restrictions imposed by their physicians.***

***If the employer were to give modified duty to just any employee with a medical restriction from lifting, it would be illegal pregnancy discrimination to deny the same to a pregnant worker.***

UNITED STATES COURT OF APPEALS,  
ELEVENTH CIRCUIT, 1999.

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