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Supreme Court Of Florida Holds That The Florida Civil Rights Act Prohibits Discrimination On The Basis Of Pregnancy

By: Sara Soto, Esq.
Leonel Peraza, Jr., Esq.

In *Delva v. Continental Group*, No. SC12-2315 (Fla. April 17, 2014), the Supreme Court of Florida held that discrimination on the basis of pregnancy violates Section 760.10(1)(a) of the Florida Statutes, the unlawful employment practices provision of the Florida Civil Rights Act (FCRA). The decision is significant in two key respects. First, it resolves a conflict among Florida's intermediate appellate courts regarding whether pregnancy discrimination is sex discrimination within the meaning of the FCRA. Second, the damages limitation under Title VII of the Civil Rights Act of 1964, which is applicable to such claims, does not apply to a statutory claim under the FCRA.

The employee filed suit against her former employer, the Continental Group, Inc., "alleging that Continental took adverse employment actions against her due to her pregnancy, in violation of Section 760.10 of the FCRA." Slip Op. at 3. This discrimination allegedly included heightened scrutiny of her work, refusing to allow her to change shifts, work extra shifts, and cover other employee's shifts, and refusing to schedule her for work after her maternity leave. *Id.* No dispute existed that the employee stated a cause of action for discrimination if Section 760.10 applied to pregnancy discrimination. *Id.*

The FCRA, found in Sections 760.01-760.11 and 509.092 of the Florida Statutes, §760.01(1), Fla.Stat. (2013), is intended "to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state." §760.01(2), Fla.Stat. (2013). Among other things, the FCRA prohibits an employer from discharging, or failing or refusing "to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status." §760.10(1)(a), Fla.Stat. (2013). Unlike Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, the FCRA does not contain an express provision barring adverse employment action on the basis of pregnancy.

In *Delva*, the trial court dismissed the complaint for failure to state a cause of action under the FCRA, and the employee appealed to the Third District Court of Appeal. When the Third District considered the issue, conflicting precedent existed among Florida's intermediate appellate courts. In *O'Loughlin v. Pinchback*, 579 So. 2d 788 (Fla. 1st DCA 1991), the First District Court of Appeal stated that the FCRA did not recognize that discrimination against pregnant employees is sex-based discrimination. In *Carsillo v. City of Lake Worth*, 995 So.2d 1118 (Fla. 4th DCA 2008), the Fourth District Court of Appeal held that discrimination on the basis of pregnancy is prohibited by the FCRA "because the Florida Statute is patterned after the Federal Civil Rights Act, which considers pregnancy discrimination to be sex discrimination." *Id.* at 5. Ultimately, the Third District adopted the First District's

reasoning in *O'Loughlin* and held that the FCRA did not forbid pregnancy discrimination. The Third District certified conflict with the Fourth District's decision in Carsillo, and the Supreme Court accepted jurisdiction, setting the stage for its resolution of these conflicting opinions on a pure issue of law.

Consistent with traditional modes of statutory interpretation, the Supreme Court of Florida looked to the "actual language used in the statute and its plain meaning." Slip op. at 7. While Section 760.10 "does not specifically include the word pregnancy" in listing the classes of individuals protected under the FCRA, it does "explicitly make it an unlawful employment practice for an employer ... to discriminate against any individual ... because of such individual's ... sex." *Id*. at 7-8. Additionally, the Court found significant language in the FCRA specifically providing that it is to be "liberally construed" to further its remedial purposes. *Id*. at 7.

"The inquiry necessarily involves determining whether distinctions based on pregnancy are sex-linked classifications." *Id*. at 8. As pregnancy is a "natural condition unique to women and a primary characteristic of the female sex," discrimination on the basis of pregnancy is discrimination on the basis of sex. *Id*. Further buttressing its interpretation, the Supreme Court of Florida reasoned that "to conclude the FCRA does not protect women from this type of discrimination would undermine the very protection provided for in the FCRA," and would be "plainly inconsistent with legislative intent." *Id*. at 9. According to the court's opinion, a liberal construction of the provision, in a manner that promotes its purposes, "makes clear that discrimination based on pregnancy, a natural condition unique to females and a primary characteristic of the female sex, is subsumed within the prohibition in the FCRA against sex discrimination in employment practices." Id. at 10. As a result, the court reversed the Third District's decision and remanded with instructions to reinstate the former employee's complaint. *Id*. at 2-3.

Section 760.11(5) of the Florida Statutes in part provides a civil remedy against an employer for violating the FCRA. §760.11(5), Fla.Stat. (2013). While successful claimants under either Title VII or the FCRA may recover compensatory and punitive damages, compare 42 U.S.C. § 1981a(a)(1) with § 760.11(5), Fla.Stat. (2013), the amounts of compensatory and punitive damages recoverable under the two statutory schemes are different. Depending on the number of persons employed by the defendant employer, a prevailing Title VII claimant may recover from $50,000 to $300,000 in aggregated compensatory and punitive damages. 42 U.S.C. § 1981a(b)(3). In contrast, there is no limit on compensatory damages under the FCRA, which include "damages for mental anguish, loss of dignity, and any other intangible injuries[.]" §760.11(5), Fla.Stat. (2013). Punitive damages, however, may not exceed $ 100,000. § 760.11(5), Fla.Stat. (2013).

Given the absence of a limitation on compensatory damages, the *Delva* decision may result in more pregnancy-related claims brought in Florida under the FCRA to take advantage of the an award of compensatory damages potentially greater than the amount recoverable under Title VII. ■

For more information about any of the topics covered in this issue of the Labor & Employment Law Alert, please contact:

Jed L. Marcus, Esq.
jmarcus@bressler.com
973.966.9678

Carole G. Miller, Esq.
cmiller@bressler.com
205.719.0400

Kenneth J. Cesta, Esq.
kcesta@bressler.com
973.660.4431

MJ Dobbs, Esq.
mjdobbs@bressler.com
973.966.9682

Tracey Salmon-Smith, Esq.
tsmith@bressler.com
973.660.4422

Sara Soto, Esq.
ssoto@bressler.com
954.430.7815

Leonel Peraza, Jr.
lperaza@bressler.com
954-430-7821