

DID WALMART FAIL TO ACCOMMODATE PREGNANT EMPLOYEE?



A Macedonia-born woman brought legal action against her former employer, Walmart. She alleged that being placed on unpaid leave was discrimination resulting from her pregnancy and national origin. She further claimed retaliation and the company's failure to accommodate her. The woman worked part-time as a stocker on the overnight shift. In November 2008, she learned that she was pregnant. She experienced some complications and saw her physician three times in January. She then informed her supervisor that her doctor restricted her to lifting no more than 20 pounds – while a requirement for stockers is the ability to lift 50 pounds. The supervisor assigned the woman to work baby food and toothbrush aisles. Pregnancy complications, including spotting, ensued. The woman was assigned to another aisle – one that she complained about to another supervisor – and one night realized that she was bleeding again. She immediately saw her doctor and was told that she had miscarried. In May 2009, she was pregnant again and said that she was restricted to lifting only 10 pounds. She asked to be transferred to a position where she only folded clothes – but it didn't exist, as such a position would also require stocking. The company personnel manager told the woman that she would have to take a leave of absence until she was no longer restricted from her job duties. A month later, she had another miscarriage. She filed a lawsuit shortly thereafter. The suit cited Civil Rights Act violations – discrimination and retaliation for an EEOC (Equal Employment Opportunity Commission) complaint – as well as state-law claims of intentional and negligent infliction of emotional distress, negligent supervision and liability under respondeat superior (in which employers are responsible for employees' – including supervisors – actions). The district court did not believe that the woman could make a case for trial with her evidence. Summary judgment was granted in



favor of Walmart on all claims.

Appellate judges focused on an essential element of a discrimination claim – that “similarly-situated” employees outside of the plaintiff's protected class received preferential treatment. The woman pointed out two African American employees who had worked while pregnant, but this argument failed as neither woman had been assigned light-duty work or requested medical restrictions. She also could not name an employee in a similar position but who was not pregnant and treated more favorably. She further challenged Walmart's Accommodation Policy and claimed it was unfair for pregnant employees. But the policy was in line with Title VII of the Civil Rights Act – which, in essence, states that creating an entirely new position to accommodate the employee is not a requirement for the employer. With regard to the retaliation claim, appellate judges – disagreeing with federal judges – acknowledged that the woman suffered an adverse action from the company forcing her to take unpaid leave. But to prove retaliation, the plaintiff had to show that her EEOC charge was the “motivating factor” in the mandatory leave of absence – but it seemed clear that the medical restrictions were the reason for Walmart's decision. The appeals court concurred with the district court's dismissal of all claims, federal and state. Its grant of summary judgment favoring the defendant was affirmed.