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OHIO CIVIL RIGHTS COMMISSION'S PROPOSED PREGNANCY RULES ON HOLD

The Ohio Civil Rights Commission (OCRC) has proposed rules that would significantly broaden the protections afforded to employees with conditions related to pregnancy in the State of Ohio. These broader protections include mandatory job-protected leaves of absence, in most cases for 12 weeks, regardless of the duration of the employee's tenure with the employer. Also, as to employers who provide accommodations or light duty assignments to employees who suffer job-related injuries (typically to save expenses relating to workers' compensation claims), the proposed rules would require those employers to provide similar accommodations for employees with pregnancy-related conditions. These regulations would apply to any employer who employs four or more persons. The proposed rules greatly expand the protections afforded by the federal Family and Medical Leave Act and could cause significant additional burdens on many employers.

Before these new rules can take effect, they must be submitted to a legislative committee called the Joint Committee on Agency Rule Review (JCARR). JCARR's primary function is to review proposed new, amended, or rescinded rules to ensure that: (1) the rules do not exceed the scope of the agency's authority; (2) the rules do not conflict with an existing rule; (3) the rules do not conflict with the General Assembly's intent in enacting the statute under which the rule is proposed; and (4) the agency has prepared a complete and accurate rules summary and fiscal analysis of the proposed rule. If JCARR determines that one or more of these criteria has not been met, JCARR can recommend to the General Assembly that it invalidate the rule. JCARR can also send the rule back to the agency.

On December 3, 2007, JCARR considered the proposed pregnancy rules. JCARR found that the OCRC failed to complete the required fiscal analysis of the costs of complying with the proposed rule on those who would be affected by the rule such as businesses, school districts, and political subdivisions. Consequently, JCARR ordered the OCRC to revise and refile the rules after a 90-day period. JCARR will then again review the proposed rules under the four-pronged framework outlined above and determine whether the proposed rule should be approved.

While the OCRC is revisiting the proposed rules, it is unclear what enforcement position the OCRC will take concerning maternity leave and accommodations for pregnant employees. Because the OCRC has taken the position that the new regulations are merely an attempt to clarify existing rules, it seems likely that the OCRC will continue to interpret the current law as requiring the measures indicated in the proposed regulations.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

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