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COMMENTARY

Pregnancy Complications Not Enough to Trigger Accommodation Obligation

Deeming it a case of first impression, the court was confronted with what information a disabled employee must provide to her employer to trigger employer's duty to accommodate a disability under the Rehabilitation Act.

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By Jeffrey Campolongo | November 23, 2022 at 01:32 PM

Sometimes men just do not get it. At least that's the impression given by a panel of appellate judges in a recent decision out of the U.S. Court of Appeals for the Eleventh Circuit. A former state employee in the Georgia Governor's Office of Student Achievement had her reasonable accommodation claim thrown out because she purportedly failed to link her medical complications from a Cesarean section and her request to work remotely following childbirth. See *Owens v. State Of Georgia, Governor's Office Of Student Achievement*, Case No. 21-13200 (11th Cir. Nov. 9, 2022). Breaking from EEOC policy, the court held that Owens did not sufficiently explain the nature of her pregnancy-related complications or how remote work would accommodate any disability-based work restrictions. Deeming it a case of first impression, the court was confronted with what information a disabled employee must provide to her employer to trigger the employer's duty to accommodate a disability under the Rehabilitation Act.

When Is a C-Section a Disability?

Nicole Owens began working for the Governor's Office Of Student Achievement (GOSA) in 2016 as a web content specialist and served in this role until her termination in 2018. In early 2018, Owens informed GOSA that she had a "high-risk pregnancy" and wanted to take time off under the Family Medical Leave Act (FMLA) until her due date. Owens was on FMLA from early 2018 until July 20, 2018. Owens gave birth via Cesarean section on July 18, 2018, according to the published opinion.

Shortly after giving birth, Owens informed GOSA that she would need to work remotely for several months. In support of her request, Owens provided GOSA with two notes from her physician, which mentioned Owens' c-section delivery, stated that she was "doing well," and concluded that she "may" telework until November 2018. Owens also separately informed

GOSA that she was requesting remote work because of complications resulting from childbirth, including two blood transfusions. The opinion noted that Owens did not provide any detail about the nature of these complications or how they would be accommodated by teleworking, nor did GOSA ask for any details.

Once Owens exhausted all leave under the FMLA, she was placed on unpaid leave by her supervisor because she (the supervisor) knew that “most childcare facilities don’t accept infants younger than six weeks.” As a result of Owens’ request for remote work, GOSA allowed Owens to telework for the next several weeks. When Owens’ supervisor asked her how her milestone doctor’s appointment went, Owens responded that, because of complications from her c-section delivery, she would need to continue teleworking until Nov. 5, 2018. Based on alleged concerns with Owens’ productivity and responsiveness while teleworking, the supervisor found it important to ensure that Owens’ teleworking accommodation was necessary, not merely her own personal preference.

The interactive process continued, culminating in Owens’ submission of reasonable accommodation forms completed by Owens and her doctor. Finding the information submitted insufficient, GOSA demanded that Owens either submit additional documentation or return to the office. Despite calling her doctor’s office daily trying to expedite her paperwork request, when Owens failed to update the forms to her employer’s satisfaction, she was fired on Oct. 11, 2018.

Owens sued GOSA alleging failure to accommodate and retaliation, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and discrimination, in violation of the Pregnancy Discrimination Act, 42 U.S.C. Section 2000e(k). The district court granted summary judgment for GOSA on all three claims. As to the first claim, the district court reasoned that Owens failed to establish a prima facie case of failure to accommodate because she never notified GOSA of her disability or connected that disability with her requested accommodation. As to the other claims, the district court concluded that Owens failed to establish that GOSA’s proffered reasons for terminating her were pretext for discrimination. And, even if Owens triggered GOSA’s accommodation duties, the court determined that her accommodation claim still failed because she caused a “breakdown” in the “interactive process” between her and GOSA.

In the appellate decision, the court went to great lengths to describe the accommodation process and the role each party plays in that process. An employee must provide her employer enough information to assess how her proposed accommodation would help her overcome her disability’s limitations, the court said. Notably, those words—“overcome her disability’s limitations”—appear nowhere in the actual statute. Rather, it is a fiction created by courts to assess the quantum of evidence needed to determine if the requested accommodation is reasonable. The court further claimed that the interactive process requires an employee to link her disability to her requested accommodation by explaining how the requested accommodation could alleviate the workplace challenges posed by her specific disability.

In the instant case, the judges were not satisfied that Owens had an “obvious limitation on functioning that arises from having had a c-section or a blood transfusion five or six weeks earlier.”

Although her doctor’s recommendation that she telework qualifies as a demand for a specific accommodation, it does not explain how that accommodation would alleviate any physical or mental limitation, the court wrote. Owens never identified what disability she had; rather, the court said, she merely pointed to her c-section and blood transfusions as information identifying a disability. “These are medical procedures and treatments, not disabilities.”

Let’s translate what that means for those who have never had to endure a c-section or childbirth, which includes the three appellate judges who decided the case. If the complications of this major surgery are not obvious to the men deciding your case, then apparently you do not have a ‘disability.’ Here is a handy guide to some of the less-obvious complications and limitations:

- Vaginal bleeding for several weeks after delivery, sometimes resulting in blood transfusions or anemia.
- Injury to internal organs such as the bowel or bladder.
- Adhesions or scar tissue that forms inside the pelvic region causing blockage and pain that can also lead to future pregnancy complications such as placenta previa or placental abruption.
- Extended hospital stays after a cesarean for three to five days after birth (if there are no complications).
- Afterpains that feel like menstrual cramps for days after delivery that narrow the blood vessels in the uterus.
- Breast swelling and soreness.
- Hair and skin changes in the first three to four months due to hair growing faster and falling out less.
- Postpartum depression or anxiety during the first few weeks of motherhood.

The foregoing is just a sample of the less than obvious results of Cesarean section surgery. There are also the corresponding limitations that may or may not be obvious to some.

According to <https://www.mountsinai.org/health-library/discharge-instructions/going-home-after-a-c-section>, women should be able to do most of their regular activities in four to eight weeks. Before then:

- Do not lift anything heavier than your baby for the first six to eight weeks.
- Short walks are an excellent way to increase strength and stamina. Light housework is OK. Slowly increase how much you do.
- Expect to tire easily. Listen to your body, and don’t be active to the point of exhaustion.
- Avoid heavy house cleaning, jogging, most exercises, and any activities that make you breathe hard or strain your muscles. Do not do sit-ups.
- Don’t drive a car for at least two weeks.
- Try eating smaller meals than normal and have healthy snacks in between.
- Any hemorrhoids you develop should slowly decrease in size. Some may go away.

While the court here may not have been satisfied that Owens linked her request to work from home during recovery to an actual disability, I would imagine there are several mothers out there who would disagree. Sometimes it’s something as simple as needing to use the

restroom more frequently, or to change a pad or adult diaper in the privacy of your own home. Other times it could be the crippling postpartum depression that prevents a woman from being able to make it into an office. And sometimes, men just don't get it.

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