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April 2005

EMPLOYMENT LAW NEWS

**Municipality Not Liable For Claim Of
Discrimination As Normal Pregnancy Is
Not A Handicap**

In a ruling of first impression, the Honorable Peter A. Buchsbaum, J.S.C. ruled that a normal pregnancy is neither a handicap or perceived handicap. In Geralyn Marie Larsen v. Township of Branchburg, Docket No. SOM-L-480-03 The Court ruled in favor of the firm's client, The Township of Branchburg, dismissing the plaintiff's claims for handicap discrimination and perceived handicap discrimination holding that the plaintiff's normal pregnancy was not a recognized handicap or perceived handicap protected under the NJLAD.

The litigation arose from the plaintiff Officer Geralyn Larsen's employment as a Patrol Officer with the Township of Branchburg's police department. Throughout her employment, Officer Larsen was always in good standing within the Police Department. On December 9, 2002, Officer Larsen advised her chief that she was pregnant. At such time, Officer Larsen also requested to be placed in a light duty position. However, the Police Department has no light duty policy. Officer Larsen provided the Chief of Police with a note from her physician indicating she was unable to perform the essential functions of a patrol officer during her pregnancy. The department would not allow Officer Larsen to return to work as a patrol officer after

receiving the note. Officer Larsen was offered full and part time positions in another department with the Township which she refused.

Officer Larsen filed an action alleging discrimination based upon handicap and perceived handicap, and a claim for a failure to accommodate her handicap. In granting the Township's motion, the Court referred to similar situations presented in other jurisdictions for claims under the Americans with Disabilities Act ("ADA"). In cases brought under the ADA for disability discrimination, the Court cited various decisions holding that "pregnancy, absent abnormal or unusual circumstances, is not a disability." In recognizing that New Jersey courts often look to the interpretation of federal statutes for help in interpreting its own statutes, the Court followed the definition of disability under the ADA in holding that pregnancy, by itself, when there are no complications, is not a handicap under the NJLAD.

Further, the Court recognized that even if pregnancy is not a handicap under the NJLAD, the plaintiff may still prevail if she was "perceived as having a handicap." Thus, the plaintiff is able to prove handicap discrimination, even if she does not suffer from a handicap, if the Township and more particularly the Police Department perceived her as having a handicap and engaged in discriminatory conduct against plaintiff. In this case, the Court found that the plaintiff was not perceived as having a handicap.

The Court agreed with the Township's argument that the plaintiff was not perceived as having a handicap because the Township was responding to the physician's note indicating that the plaintiff could not perform some of the normal duties of a Police Officer. The Court found that there was no evidence that the Township or the Police Department engaged in any discriminatory practices against the plaintiff.

The Court also found that the Township engaged in the interactive process in good faith and offered plaintiff a reasonable accommodation. Finally, the court ruled that a police department is not required to have a light duty policy. **The Township is represented in this action by Richard P. Flaum, Esq.** who heads the firm's Labor and Employment Department.



DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C., is a full service law firm which provides a broad range of legal representation. A significant portion of our practice is devoted to the representation of public entities and parties in employment matters. For a complete copy of the opinion, contact Mr. Flaum by telephone:

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