

# JANUARY 2015 NEWSLETTER

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## AVOIDING PREGNANCY DISCRIMINATION IN THE WORKPLACE

### **FIRM ANNOUNCEMENTS:**

#### A. **2014 TOP ATTORNEYS**

Pozzuolo Rodden, PC is pleased to announce that both Philadelphia Life Magazine and Suburban Life Magazine included Joseph R. Pozzuolo and Judith P. Rodden on their 2014 Top Attorneys list. This list is based on readers who cast votes to help these magazines compile a definitive list of the 275 keenest legal minds in the Philadelphia area.

#### B. **DIGITAL ASSETS; ESTATE PLANNING FOR THE TWENTY-FIRST CENTURY**

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo and Kelly A. Barse , Esquire have written an Estate Planning article titled: “Digital Assets: Estate Planning for the Twenty-First Century” was published in the January 2015 publication of Practical Tax Strategies Journal of Thomson Reuters. A copy of this article can be obtained by clicking here: [Digital Assets Estate Planning For The Twenty-First Century.pdf](#)

### C. **BLOGS**

1. The following are a few of the business, tax and estate planning blogs posted on our main website [www.pozzuolo.com](http://www.pozzuolo.com) during the past month:

- a. Guardian Of Incapacitated Person Is Based On The Best Interest Of The Incapacitated Person
- b. Plaintiff Failed to Submit Sufficient Proof Of Constructive Discharge Based On Age, National Origin, Sex And Religious Discrimination To Prevail On Summary Judgment
- c. Employer Could Not Enforce Original Restrictive Covenant Because The Non-Compete In New Employee Handbook Was A Novation And Less Restrictive
- d. Wife Is Prohibited From Offering Any Statements Made By Decedent To Establish Common Law Marriage And Letters Of Administration Were Granted To Third Party
- e. Petition To Remove Administrator Based On Favoritism And Bias Is Denied

Please visit our website [www.pozzuolo.com](http://www.pozzuolo.com) for more information on these and other relevant topics.

2. The following are a few of the family law blogs posted on our family law website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) during the past month:

- a. Equitable Distribution Order Was Enforced Because The Trial Court Proceeding Was Profoundly Flawed And No Objections Were Made
- b. A Child Support Order Based On Shared Parenting Can Only Be Modified Based On Non Compliance Over A Reasonable Period
- c. Father Who Resides In California Was Granted Primary Custody Of Minor Child Based On The Best Interest Of The Child Test
- d. When Parents Agree to Share Child’s College Expenses in Property Settlement Agreement Daughter Should Not Be Left With Uncertainty Regarding What Will Actually Be Paid, By Whom and When
- e. An Agreement Between Parents To Pay \$10,000 Liquidated Damages Should Either Parent Legally Challenge Child Custody Or Visitation Rights Is Not Unenforceable And Void As Against Public Policy

Please visit our website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) for more information on these and other relevant topics.

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## **QUESTION OF THE MONTH:**

### **CAN A CHILD FORCE A PARENT TO PAY FOR HIS COLLEGE TUITION?**

Answer-See Page 5 of this Newsletter

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## **AVOIDING PREGNANCY DISCRIMINATION IN THE WORKPLACE**

Employers with pregnant employees need to be aware of both federal and state laws that govern the rights of pregnant employees in the workplace. The rights of pregnant employees vary from state to state and, at both the federal and state level, the applicability of these laws depends on how many employees an employer has.

### **Federal Law**

Pregnancy discrimination is governed at the federal level by the Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, it is illegal to discriminate against someone on the basis of race, color, religion, national origin or sex. Title VII protections apply only to employees who work for an employer with 15 or more employees. These protections apply to private companies, state and local governments, employment agencies, training programs and labor organizations, as well as to the federal government.

In 1978, Congress amended Title VII of the Civil Rights Act of 1964 and added the Pregnancy Discrimination Act. Under this Act, any employment discrimination on the basis of pregnancy, childbirth or related medical conditions arising from being pregnant constitutes sex discrimination under Title VII. Women who are pregnant or affected by pregnancy-related conditions must be treated in the same manner in all terms and conditions of employment as other applicants or employees with similar abilities or limitations.

Under the Pregnancy Discrimination Act (PDA), an employer cannot refuse to hire a woman because of a pregnancy-related condition as long as she is able to perform the major functions of her job. Employers are also prohibited from treating a pregnant applicant or worker differently in any terms and conditions of work because of her pregnancy, or a pregnancy-related condition. For example, under the Equal Employment Opportunity Commission (EEOC) enforcement guidelines, if an employer has a policy of giving lighter work to temporarily disabled employees, it must make the same accommodations for a pregnant employee if she is temporarily unable to perform all her job duties because of a medical condition related to her pregnancy. Furthermore, if the employer allows temporarily disabled employees to take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled because of pregnancy related medical condition to do the same.

Although a pregnant employee may become disabled due to a medical condition arising from being pregnant, it is also important to remember that pregnancy itself is not considered a disability. Additionally, the law in this area is unclear at the moment because of a pending United States Supreme Court decision on this subject that will elucidate the extent to which

employers must make accommodations for pregnant employees with work restrictions. However, until the Supreme Court issues its opinion, following the EEOC enforcement guidelines is the safest way to avoid pregnancy discrimination?

Under the PDA, pregnant employees are also protected from harassment because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Similar to sexual harassment, these employees are protected from harassment and behavior that results in a hostile or offensive work environment, or that later results in an adverse employment decision.

Employers are prohibited from creating special procedures for determining whether pregnant employees are able to work that are different from any procedures followed for disabled employees. However, if an employer requires employees to submit a doctor's statement regarding their inability to work before granting leave or paying sick benefits for non-pregnancy related disabilities or sickness, the employer is permitted to require employees affected by pregnancy-related conditions to submit similar statements.

Special policies regarding when a pregnant employee is allowed to return to work are also disallowed under the PDA. An employer cannot prohibit a pregnant employee from working solely because of the fact of the pregnancy as long as the employee can do her job. Additionally, if the pregnant employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer also may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

Employers must have the same policy for how long a job will be held open for a pregnancy-related absence as they would for employees on sick or disability leave. Similarly, employers must have the same policy for how employees on leave because of pregnancy-related conditions will be treated as they do for other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases and temporary disability benefits.

Under the Affordable Care Act of 2010, Congress created The Nursing Mothers Break Time Provision which requires employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. Employers are also required to provide a private place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk. However, employers do not have to pay employees for the time spent expressing the breast milk. Employers with fewer than 50 employees are not subject to this provision if compliance with the provision would impose an undue hardship on the employer. Employers with more than 50 employees must comply with the provision regardless of hardship.

### **Pennsylvania Law**

Pennsylvania does not have a statute that directly addresses pregnancy discrimination and the rights of pregnant workers but courts have interpreted the Human Relations Act as protecting pregnant employees. Courts have repeatedly noted that pregnancy is a specifically female condition and discrimination on the basis of pregnancy is equivalent to discrimination on the basis of being female. The Human Relations Act prohibits employment discrimination on the

basis of sex and The Pennsylvania Human Rights Commission has interpreted this provision to prohibit employers from having written or unwritten policies or practices that exclude women from employment due to pregnancy unless the employer can show that the exclusion is warranted. This Act applies to employers with four or more employees working in Pennsylvania.

Under the Human Relations Act, employers must apply all policies and practices, including leave and benefit policies, equally to those employees who have a disability due to pregnancy or childbirth as to those with non-pregnancy related disabilities. Similar to the PDA, employers may not require employees to take leave due to pregnancy or childbirth. For example, an employer may not have a policy in place where the employee must stop working when she reaches the third trimester of her pregnancy regardless of her actual ability to perform her job. Pennsylvania does not have any laws that address the rights of female workers to express breast milk at the work place after having given birth.

### **New Jersey Law**

New Jersey provides broad protections against pregnancy discrimination under the New Jersey Law Against Discrimination. Under this law, employers are prohibited from discriminating on the basis of pregnancy and this law applies to all employers other than religious organizations. Employers with employees in New Jersey must provide reasonable accommodations for women who are pregnant or who have medical conditions or disabilities related to pregnancy and/or childbirth.

Similar to Pennsylvania, New Jersey also does not have any law that specifically address the rights of female workers to express breast milk while at work.

If you have pregnant employees and are concerned about what accommodations must be made for those employees, an experienced labor law attorney can help you navigate your obligations as an employer under both federal and state law.

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### **QUESTION OF THE MONTH:**

#### **CAN A CHILD FORCE A PARENT TO PAY FOR HIS COLLEGE TUITION?**

The answer to this question depends heavily on which state you reside in. Different states have different standards for determining whether and to what extent a parent is obligated to financially support their child while that child is receiving post-secondary education. Typically, the duty to support a child financially, including contribution to college expenses, does not extend beyond a child's emancipation. In basic terms, emancipation is defined as the time when a child is expected to be self-reliant and self-supporting. However, depending on which state you reside in, the Court will apply different sets of rules in determining if a child is truly emancipated.

In Pennsylvania, the issue is simple. A Pennsylvania child is typically considered

emancipated when he has turned eighteen years old and graduated from high school, whichever occurs last. Accordingly, Pennsylvania parents cannot be forced to pay for their child's college tuition. The Pennsylvania Supreme Court confirmed this in Mackay v. Mackay, by ruling that "Pennsylvania Law does not impose an obligation on parents to provide for their children's college expenses."

There is, however, an ongoing controversy happening in New Jersey over this issue. New Jersey does not have a set statutory age when a child is considered to be emancipated, but instead makes that determination on a case by case basis. Whether a child is currently enrolled in college as opposed to living independently or working full time is a factor given great weight in New Jersey towards showing that a child is not yet emancipated. Accordingly, there is a prevailing trend in New Jersey to find that in most circumstances, a child who is attending college after high school is not truly emancipated and his parents are thus required to provide some financial support.

The foundation for this ongoing dispute was laid in the 1982 New Jersey Supreme Court case Newburgh v. Arrigo. In Newburgh, the court wrote, "In general, financially capable parents should contribute to the higher education of children who are qualified students." Until recently, the disputes over mandated college tuition have been between the divorced custodial parent and non-custodial parent. However, an ongoing case has shown that it is just as possible for a child to sue both of his parents and request the Court compel them to pay for his college tuition.

In August 2013, Caitlyn Ricci sued her parents Maura McGarvey and Michael Ricci for tuition to Rowan College at Gloucester County. The judge ordered her parents pay \$906 towards that tuition. The now twenty-one year old Caitlyn Ricci, who currently attends Temple University has taken her parents back to court seeking \$16,000 in tuition for her new school. Although Superior Court Judge Thomas Shusted Jr. has yet to make a final determination on this new matter, he has upheld the earlier decision regarding the Rowan College tuition.

This unique case has drawn considerable attention both locally and on a national scale, with several commentators suggesting that whatever the outcome, it may be time for legislators to enact a statutory age of emancipation in New Jersey. The debate over the extent of parents' obligation to their children is sure to continue as everyone awaits Judge Shusted's final ruling on this controversial and evolving issue.

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- If there are any legal questions you would like this office to answer in the future, please email the question to us at [info@pozzuolo.com](mailto:info@pozzuolo.com). Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
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## **PUBLICATIONS**

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs\\_Articles.shtml](http://pozzuolo.com/Pubs_Articles.shtml)

### **Corporate/Tax Articles**

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

### **Estate Planning Articles**

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled

- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

***Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.***

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at [INFO@POZZUOLO.COM](mailto:INFO@POZZUOLO.COM).