

# Equal employment opportunity and employee rights essay sample

[Business](#), [Employment](#)



Over the course of history in the United States there have been many laws put in place to protect employees and employers. The Americans with Disabilities Act of 1990 and the Pregnancy Discrimination Act of 1978 are two such acts signed into law. Each of the laws protects workers from termination for causes outlined in the acts. Issues about drug testing have become more prominent in the workplace because of the different types of testing procedures available. The Americans with Disabilities Act of 1990 is a wide-ranging civil rights law that prohibits, under certain circumstances, discrimination based on disability.

It affords similar protections against discrimination to Americans with disabilities as the Civil Rights act of 1964, which made discrimination based on race, religion, sex, national origin, and other characteristics illegal. The Pregnancy Discrimination Act of 1978 was added as an amendment to the sex discrimination section of the Civil Rights Act of 1964 to protect pregnant women or women that are of child bearing age from discrimination in the workplace. Drug testing has become popular in many businesses in today's society. This upsets many employees because they think that what they do on their own time does not affect what they do at work. The way drug testing is administrated has been of some topic, which has even been brought up in local court cases lately. Americans with Disabilities Act of 1990

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state, and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job

training, and other terms, conditions, and privileges of employment (EEOC. GOV, 2008). This act was created that people with disabilities are treated fairly in the workplace. In April 2010 Bridget Hardt sued Reliance Standard Life Insurance for not providing her with permanent disability benefits. Her case was presented and partially proven but the judge ruled that Reliance Standard Life Insurance should be awarded time to assemble a proper benefit plan. The judge believed that because of misinformation the company could not be afforded the opportunity to make a fair decision on disability benefits for Ms. Hardt (Hardt v. Reliance Standard Life Ins., 2010). After a short period the case went back to court and Ms. Hardt was awarded benefits. After another filing by her about attorney fees, she was eventually awarded attorney fees and retroactive disability benefits.

Employees have to know that they have many rights that employers have to respect. However, that does not mean that employees should falsely accuse employers of discrimination. There needs to be valid proof that unfair acts of discrimination are taking place. The relationship needs to be created by contract. It can either be in writing or oral, unless the contract is to last more than a year it has to be in writing to satisfy a state's statute of frauds. The contract can have any lawful terms that the employee or employer wish to include such as time, pay, benefits, and also a description of the position that the employee will be assuming. Employers and employees alike have certain rights and can expect certain rights from each other when a relationship is started. Employers have the right to expect employees to have the skills that they state they have, they have the right to expect employees

to perform at a certain level. Employers also have the right to tell the employee what tasks to perform and also how to perform those tasks.

Employees have an agreement to work only for an employer during hours of employment meaning that they can not do personal tasks or work on private business ventures on the employer's time. Employees are also expected to follow instructions set forth by the employer and also abide by the company rules.

As far as rights for the employee go, the employee is entitled to be paid for the work he or she do. Most company's also offer employees any number of fringe benefits. An employee can also expect the employer to provide a safe place to work and equipment. That although varies by what the type of work that the employee is doing. If an employee becomes disabled on the job he or she should be properly evaluated, and he or she should receive disability benefits. In addition, any prospective employees who have a certain type of disability should be viewed on the basis that they can do a specified job despite their disability. The employee can also expect that proper training should be provided by the employer. Many employers keep records of their employees such as payroll, tax information, and information regarding illness and injury because that is what the law requires. Employers keep other records as well to keep job performance at its best, records such as reference and credit checks, job performance reports, and records of disciplinary actions. These records are important for both the employee and the employer. The Pregnancy Disabilities Act of 1978

Firing expecting mothers once was normal, refusing to hire expecting mothers, and disciplining expecting mothers for becoming pregnant; this is discrimination because of pregnancy. The Pregnancy Disabilities Act (PDA) of 1978 is an amendment to Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of women becoming pregnant, giving birth, or any related medical condition (EEOC, 2011). The PDA applies to any organization with 15 or more employees. In 1978 this act was passed to reverse the Supreme Court's decision in the matter of General Electric versus Gilbert. The Supreme Court stated that Title VII sex discrimination in employment does not include a ban on pregnancy-based discrimination (Colker, 2011). Because of this injustice to childbearing women, Congress provided a broad antidiscrimination protection to pregnant women by amending Title VII of the Civil Rights Act.

The PDA protects pregnant women from becoming fired, pay cuts, and any adverse actions from the employer. A company cannot refuse to hire a woman because of pregnancy, companies must provide breast feeding mothers a place to use a breast pump, and pregnant women will receive the same benefits as non-pregnant employees. Companies also cannot forbid a female employee who is within childbearing age of hazardous duties (AAUW, 2008). Companies must treat pregnant women as if that individual has a temporary disability, and may need extra accommodations. In 1993 Congress enacted the Family and medical Leave Act, which allows women to take six weeks leave after a birth or adoption of a child. The combination of

the two acts has ensured pregnant women have more job security and legal rights concerning pregnancy (Colker, 2011).

Pregnancy discrimination has become a fast growing type of discrimination with 70% of women with children are back on the workforce. In 2007 The EEOC had to file suit against a financial news service called Bloomberg, LP. The company has 72 current and former employees who became pregnant while working for the company and claim pregnancy discrimination. The employees were ridiculed, demoted, excluded from management, had reduced pay, transferred, displaced, or fired after announcing the pregnancy or returning from maternity leave. Bloomberg's defense to the allegations was that the pregnant women lost momentum (AAUW, 2008). The case will have between 150 - 200 depositions taken, which includes the company's founder Michael Bloomberg, who was no longer in charge of the day-to-day operations of the company. Although when he was there on a day-to-day basis a few years prior he had told one of the women who had originally brought the case to the EEOC that she should kill her baby instead of caring her baby to term.

The company is in violation of the PDA, and will have to answer to this; however, the company denies all accusations and states there is no proof. This lawsuit went on for years and eventually settled out of court with no mention of wrongdoing from the company. The Human resources (HR) department of every company has the responsibility to ensure that all employees returning from maternity leave have the same fair treatment as all other employees returning from leave. If the company's policy is to hold

that position until that individual is back then all employees should receive the same position back. If the company's policy is that once an individual returns that a job will be given back, but it may not be the same one an individual had previously. Some companies have a policy that employees who have to take leave may have to wait until there is an opening to return to work. Drug Testing

### The Issue

Drug testing has become a widespread issue in the workplace because the recent legalization of medical marijuana. Patients whom are prescribed medical marijuana to help treat medical conditions are faced with a dilemma because the drug used to treat their conditions is the same thing that could cost them their job. Employees who use marijuana off-work hours on their personal time, to help heal their condition are protected under the law from criminal consequences associated with marijuana, but are not protected from their job drug testing. Currently, employers have the right to terminate employees who fail a drug test even if the employee has legal clearance to use the drug. Alison Holcomb described the situation best by saying “ Whether the patient decided to use marijuana, OxyContin, or an anti-depressant should be a private medical matter and unless the use of that medical treatment has an impact on her ability to do her job, or involves a safety issue, she should not be forced to choose between her doctor's advice and earning a living” (Schwartz, 2010). The Law

Numerous lawsuits have been filed by medical marijuana patients terminated after failing a drug test. Recently the Washington Supreme Court

ruled an “ 8-1 decision that state law does not provide any employment protections for medical marijuana users and does not require companies to accommodate those patients” (Baker, 2011, para. 2). This decision is derived from a lawsuit filed in 2007 where a woman who worked at TeleTech Customer Care Management was fired after her pre-employment drug screen returned positive (Baker, 2011). Another case that took place in 2008 involved an employee of RagingWire Telecommunications, based in Sacramento, who was fired for using medical marijuana. This decision shed light on other cases pertaining to this matter by specifying, “...the state’s medical marijuana laws protect patients from criminal prosecution, it provides no protection on the job” (Schwartz, 2010, para. 13). However, certain states such as Vermont, Hawaii, New Mexico, Montana, Colorado, New Jersey, and Michigan identify employee protections in which the only grounds employers have for termination is there is on-the-job consumption (Schwartz, 2010). Implications

HR departments are challenged and faced with a sensitive issue when employees who use medical marijuana for health reasons are terminated for violating a policy they may have been abiding by. Most employees rely and depend on the medical benefits provided by their employer so when they are fired for using a prescription drug, not only do they lose a source of income but also the lose of medical benefits provided by the employer. HR departments represent the employee as well as the employer so showing compassion while enforcing policy is the suggested approach. Holcomb advises, “ human resources departments should tread carefully, contact



their legal counsel and adhere to both federal and state laws regarding the use of pot” (Schwartz, 2010). HR departments are assisted by the policy developed by the employer and acknowledged by every employee prior to employment, which identifies the company’s stance on the drug, and alcohol policy. The HR department at Comcast strictly follows the policy, stated in the employee handbook on Comcast’s intranet and includes the use of drugs both on-duty and off-duty as grounds of termination (Comcast, 2011).

### Conclusion

Employees across the United States are aware that laws protect their rights in the workplace. When a company looks to hire an employee, laws such as Americans with Disabilities Act are designed to protect potential employees from discrimination due to a disability. Women know that she is covered when she has a child but may not know that the Pregnancy Discrimination Act protects her from being fired or harassed because of her pregnancy. The issues surrounding drug testing are still in the process of determining the best test procedure for drug use. With the ever-changing society the laws and regulations protecting employees and employers will continue to change throughout the years.

### References

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