

BRAIN TEASER

Interviewing and Selection

You are interviewing for an all-night cashier/manager at your convenience store. You are very excited to interview your next candidate. Her qualifications are a perfect fit for the job. She has managed other convenience stores and has no problem working the graveyard shift. When this candidate comes in, you are quickly disappointed. You are not quite sure, but it appears she may be a few months pregnant. You are worried about her safety and the safety of her baby, if she is pregnant. You want to make sure she's able to do the job. In addition, it has been really hard to find someone to fill this position. Having her leave for a few weeks, after being newly hired would be a hardship on your business.

How should you handle this issue?

- A. You have the right to ask, especially if she's going to take time off immediately after you hire her.
- B. You cannot ask a woman if she's pregnant. This is discrimination.
- C. OSHA requires you to keep your employee's safe. This job can be dangerous. You cannot put her safety at risk, or the safety of her unborn child.
- D. While asking the question is not illegal, exposure to a claim of discrimination may be established by the known information.

See below for answer



The correct answer is D.

Explanation:

According to the Equal Employment Opportunity Commission:

The Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under the Pregnancy Discrimination Act (PDA). Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees who are similar in their ability or inability to work.

Although the PDA does not prohibit employers from asking applicants or employees about gender-related characteristics such as pregnancy, such questions are discouraged. If it has been established that an employer knew of a pregnancy, and an employee claims discrimination based on this protected class, the EEOC will assume this information was used to take adverse action against the employee.

The law specifically prohibits employers from refusing to hire a woman because of her pregnancy related condition as long as she is able to perform the major functions of her job. An employer cannot refuse to hire her because of its prejudices against pregnant workers or because of the prejudices of co-workers, clients, or customers.

Even when an employer believes it is acting in an employee's best interest, adverse actions based on assumptions or stereotypes are prohibited. For instance, it is unlawful for an employer to involuntarily reassign a pregnant employee to a lower paying job involving fewer deadlines based on an assumption that the stress and fast-paced work required in her current job would increase risks associated with her pregnancy.

An employer may only reassign a pregnant worker based on concerns about her health or the health of her fetus if it can establish that non-pregnancy or non-fertility is a Bona Fide Occupational Qualification. In very few, if any, situations will an employer be able to establish this defense.