

Ohio Supreme Court Reverses Mandatory Maternity Leave Ruling

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NEWS | 6.22.2010

Tom Tarpy, a labor and employment partner at Vorys, Sater, Seymour and Pease LLP and a member of the Ohio Management Lawyers Association (OMLA) applauded a decision issued today by the Ohio Supreme Court that reverses a ruling requiring employers to provide maternity leave for a "reasonable period of time." Tarpy, as counsel for OMLA, filed an amicus brief in the Ohio Supreme Court and participated in oral argument before the Court calling for the decision to be reversed.

Tarpy said the decision answers questions about the constitutional limits of the Ohio Civil Rights Commission's (OCRC) rule-making authority and is significant for Ohio employers.

"Nothing in the applicable Ohio Revised Code language supports or even suggests the creation of mandatory maternity leave," said Tarpy. "The directive from the legislature is that all persons 'shall be treated the same.' As well intentioned as its motive may have been in creating an unlawful preference for pregnant employees, the OCRC exceeded its authority and acted like a legislature rather than the appointed administrative agency it is."

The Ohio Fifth District Court of Appeals in its hearing of [Nursing Care Management of America, Inc. d/b/a Pataskala Oaks Care Center v. the Ohio Civil Rights Commission](#) established a rule requiring employers to provide maternity leave for a "reasonable period of time." It further required employers to reinstate the employees to their former positions (or comparable positions that provided the same status and pay) regardless of what the employers' current policies were on disability or maternity leave. It also applied the same requirement regardless of whether the employees qualify for leave under the Family and Medical Leave Act (FMLA). In July 2009, the Ohio Supreme Court agreed to hear an appeal by Nursing Care Management of America, which asked the high court to reverse the appeals court decision.

According to Tarpy, the balancing of work and family, maternal and fetal health, the rights of employers, and the providing of maternity leave are important matters of public policy, but the General Assembly

has never delegated to the OCRC the authority to weigh and balance competing policy matters concerning maternity leave.

The Ohio Management Lawyers Association is a non-profit corporation. Its stated purpose is “to provide an organization and forum for the exchange of information, discussion of common issues and problems, and promotion of the administration of justice with respect to employment, labor, and other areas of law affecting employers.” Its membership consists of senior Ohio labor and employment attorneys in private practice who represent employers throughout the state.