

II. Present Situation:

Title VII Civil Rights Act of 1964¹

Title VII of the Civil Rights Act of 1962 (Title VII) prohibits discrimination on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

Pregnancy Discrimination Act²

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert*³ that Title VII did not include pregnancy under its prohibition against unlawful employment practices. The Pregnancy Discrimination Act (PDA), passed in 1978, amended Title VII to define the terms “because of sex” or “on the basis of sex,” to prohibit discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.⁴ Under the PDA, an employer cannot discriminate against a woman on the basis of pregnancy in hiring, fringe benefits (such as health insurance), pregnancy and maternity leave, harassment, and any other term or condition of employment.⁵ The PDA further provides that its provisions do not require an employer to pay for health insurance benefits for abortion, except in specified circumstances, and do not preclude an employer from providing abortion benefits.

Florida Civil Rights Act of 1992

The Florida Civil Rights Act of 1992 (FCRA) was enacted to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status...”⁶ FCRA provides protection from discrimination in the areas of education, employment, housing, and public accommodations.

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.⁷ For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual’s race, color, religion, sex, national origin, age, handicap, or marital status. Unlike Title VII, the

¹ 42 U.S.C. 2000e. et. seq.

² Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978).

³ 429 U.S. 125, 145 (1976).

⁴ The PDA defines the terms “because of sex” or “on the basis of sex” to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so infected but has similar ability or inability to work.

⁵ For more information, see U.S. Equal Employment Opportunity Commission, *Facts about Pregnancy Discrimination*, <http://www.eeoc.gov/facts/fs-preg.html> (last visited March 13, 2013).

⁶ Section 760.01, F.S.

⁷ Section 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

FCRA has not been amended to specifically include a prohibition against pregnancy discrimination.

Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a component of sex discrimination, the FCRA does not. The fact that the FCRA is patterned after Title VII but failed to include this provision has caused division among both federal and state courts as to whether the Florida Legislature intended to provide protection on the basis of pregnancy status. Since the Florida Supreme Court has not yet considered the issue, the ability to bring a claim based on pregnancy discrimination varies among the jurisdictions.

The earliest case to address the issue of pregnancy discrimination under the FCRA was *O'Laughlin v. Pinchback*.⁸ In this case, the plaintiff alleged that she was terminated from her position as a correctional officer based on pregnancy. The First District Court of Appeals held that the Florida Human Rights Act was preempted by Title VII, as amended, as it stood as “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by not recognizing that discrimination against pregnant employees is sex based discrimination.”⁹ By preempting the Florida statute, the court did not reach the question of whether the Florida law prohibits pregnancy discrimination. However, the court did note that Florida law had not been amended to include a prohibition against pregnancy-based discrimination.

The court in *Carsillo v. City of Lake Worth*¹⁰ found that since the FCRA is patterned after Title VII, which considers pregnancy discrimination to be sex discrimination, the FCRA also bars such discrimination. The court recognized that the Florida statute had never been amended, but concluded that since Congress’ original intent was to prohibit this type of discrimination, it was unnecessary for Florida to amend its statute to import the intent of the law after which it was patterned.

The court in *Delva v. Continental Group, Inc.*¹¹ held that FCRA does not prohibit pregnancy discrimination based on the *O'Laughlin* court’s analysis that the FCRA had not been amended to include pregnancy status. The issue before the court was narrowly defined to whether the FCRA prohibited discrimination in employment on the basis of pregnancy; therefore, it did not address the preemption holding in *O'Laughlin*. The court certified the conflict with the *Carsillo* case to the Florida Supreme Court.¹²

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is covered by its provisions.¹³ Like the state courts, the federal courts finding that the FCRA does

⁸ 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

⁹ *Id.* at 792.

¹⁰ 995 So.2d 1118 (Fla. 4th DCA 2008), *rev. denied*, 20 So.3d 848 (Fla. 2009).

¹¹ 96 So.3d 956 (Fla. 3d DCA 2012), *reh'g denied*.

¹² The case was filed with the Florida Supreme Court on October 16, 2012 and assigned case number SC12-2315.

¹³ Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185, (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325 (S.D. Fla. 2011). Federal courts finding that FCRA does provide protection against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent.*

provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy discrimination primarily did so because the Legislature has not amended the FCRA to specifically protect pregnancy status.

Florida Commission on Human Relations

The Florida Commission on Human Relations (commission) is an administrative body that is charged with carrying out the purposes of the FCRA. The commission is comprised of 12 members who are appointed by the Governor, subject to Senate confirmation.¹⁴ The commission is administratively housed within the Department of Management Services (department); however, the commission is not subject to the control, supervision, or direction of the department.¹⁵ The commission is statutorily authorized to receive, initiate, investigate, hold hearings on, and act upon complaints alleging any discriminatory practice under the FCRA.¹⁶

III. Effect of Proposed Changes:

The bill adds to the FCRA a new basis upon which employment discrimination is prohibited. Specifically, it provides that it is an unlawful employment practice for an employer to discharge or to fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of or on the basis of pregnancy, childbirth, or a related medical condition.

The bill further requires a woman affected by pregnancy, childbirth, or a related medical condition to be treated the same for all employment-related purposes, including receipt of benefits under fringe benefits programs, as other persons not so affected but similar in their ability or inability to work.

The bill specifies that its provisions do not require an employer to pay health insurance benefits for abortion.

The bill's language is patterned after portions of the federal Pregnancy Discrimination Act. The bill will clarify legislative intent as to whether pregnancy discrimination is prohibited under the FCRA.

The bill's effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority that counties

Fla., Inc., 1996 WL 529202 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476 (M.D. Fla. 2009), and *Constable v. Agilysys, Inc.*, 2011 WL 2446605 (M.D. Fla. 2011).

¹⁴ Section 760.03, F.S.

¹⁵ Section 760.04, F.S.

¹⁶ Section 760.06, F.S.

or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 774 will clear up court conflicts and reduce the need to litigate whether pregnancy status is protected under the FCRA.

C. Government Sector Impact:

According to the commission, this bill will not impact their workload and would not create any administrative costs.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

Individuals may currently bring claims for pregnancy discrimination under Title VII in federal courts.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

CS/CS by Governmental Oversight and Accountability on April 2, 2013:

The CS/CS:

- Removes a provision titling the act the “Protect Our Women Act.”
- Removes an amendment to include pregnancy or related conditions in a definition of the term “sex,” upon which basis employment discrimination is currently prohibited, and instead creates a separate prohibition against employment discrimination on the basis of pregnancy or related conditions.

¹⁷ Commission, *SB 774 Staff Analysis*.

- Removes a provision extending the time frame in which the commission must complete an investigation from 180 days to 240 days.

CS by Commerce and Tourism on March 18, 2013:

The CS removes provisions that allow the commission or an administrative law judge to include an award for punitive and compensatory damages in its recommended order.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
