

## Pregnancy Discrimination Not Covered By Fla. Law

By Fla. Law

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*Wednesday, Jun 25, 2008* --- A federal judge has dismissed a Florida woman's claim of pregnancy discrimination against her former employer because the state law does not cover pregnancy discrimination.

On June 18, Judge John Antoon of the U.S. District Court for the Middle District of Florida dismissed Stephanie Boone's claim of sex discrimination by her former employer, Total Renal Laboratories, under the Florida Civil Rights Act.

Florida state law does not cover discrimination based on pregnancy although women could make pregnancy discrimination claims under federal law, the judge said.

"On its face, the FCRA does not cover pregnancy, and, surprisingly, there is not a definitive statement from a Florida state court regarding whether the act's prohibition on discrimination based on 'sex' includes pregnancy," the court said.

Boone filed a complaint in state court in December. She said Total Renal Laboratories, a Deland, Fla., medical research company, terminated her employment in violation of both Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act in 1978, and the FCRA.

The Florida law bars employment discrimination on the basis of "race, color, religion, sex, national origin, age, handicap or marital status."

Boone says she was fired by the company in March 2006. She had worked for the company as a dietitian in a dialysis center for over two years. She was approved in July 2005 for paid maternity leave but was fired nearly three weeks before the scheduled leave for failing to take a required licensing test, she said.

In April, the defendant moved the case to federal court. The defendant argued that the plaintiff's federal claim under the PDA was time-barred because it was not filed within 90 days of the Equal Employment Opportunity Commission's notice of the plaintiff's right to sue.

The plaintiff responded by clarifying that she was bringing her discrimination claim only under the FCRA.

In his ruling, Judge Antoon referred to O'Loughlin v. Pinchback, a 1991 case in which a Florida appellate court ruled that a claim for pregnancy discrimination could proceed under the Florida Human Rights Act, a predecessor to FCRA, due to the fact that the PDA of Title VII preempted state law to the extent that the statute provided less protection to employees than Title VII.

Despite the O'Loughlin decision, Judge Antoon found that because the Florida Legislature did not add language similar to the PDA to the FCRA when it was enacted in 1992, the Legislature did not intend to include pregnancy discrimination in the state law.

"We believe Judge Antoon's decision is correct," said Richard D. Tuschman, an attorney for the defense. "It is not only a logical construction of the statute, it is also supported by numerous other state and federal court decisions which have concluded that the Florida Civil Rights Act does not prohibit pregnancy discrimination."

Attorneys for the plaintiff could not be immediately reached for comment.

The plaintiff is represented in the matter by David W. Glasser of Glasser & Handel.

Total Renal Laboratories is represented in the matter by Epstein Becker & Green.

The case is Stephanie Boone v. Total Renal Laboratories, Inc., case number 562-Orl-28KRS in the U.S. District Court for the Middle District of Florida.