

# South Carolina Human Affairs Commission

## Technical Services and Training Division



# Prevention Corner



*An ounce of Prevention is Worth a Pound of Cure.*

~Benjamin Franklin

**January 2023**

South Carolina  
Human Affairs  
Commission  
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[www.schac.sc.gov](http://www.schac.sc.gov)

The South Carolina Human Affairs Commission strives to alleviate problems of discrimination through the enforcement of the SC Human Affairs Law (including the SC Pregnancy Accommodations Act and the SC Lactation Support Act.), the SC Fair Housing Law, the SC Equal Enjoyment and Privileges to Public Accommodations Law

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## Employee Discipline & Termination: Understanding Your Responsibilities To Help Prevent Discrimination

Ensuring that managers involved in discipline or termination understand their responsibilities may help prevent discrimination.

### ***A few best practices from the U. S. EEOC includes:***

- Ensure that the disciplinary and termination decisions are not based on race, color, national origin, religion, sex (including pregnancy, childbirth, or related medical conditions, sexual orientation, or gender identity), age or disability.
- Document the reason(s) for the discipline or termination.
- To prevent misunderstandings, clearly communicate the reason(s) for the discipline or termination decision to the employee.



### **What actions should I take before I discipline or terminate an employee?**

1. Clearly define and communicate policies and the essential duties/work expectations of his/her job when the employee is hired.
2. Provide a copy of duties and expectations to the employee. If unwritten, write a job description to set expectations.
3. Managers should ensure that they have conversations or meetings with the employee regarding performance issues. Document what was discussed; what was decided; and what follow-up occurred.

Source: <https://www.eeoc.gov/employers/small-business/7-how-can-i-avoid-breaking-law-when-i-discipline-or-fire-employee>; SC Human Affairs Commission

**(800) 521-0725, Relay 711**  
**803-737-7800 or <https://www.schac.sc.gov/>**

### **How can I schedule training?**

(803) 737-7800 or (800) 521-0725, Relay 711  
email: [training@schac.sc.gov](mailto:training@schac.sc.gov)

## 2 THINGS

WE'RE  
TALKING  
ABOUT

# HOT TOPICS

## 1

**Myth:** Under the Americans Disabilities Act (ADA), an employer cannot terminate an employee who has a disability.

**Fact:** Employers can terminate workers with disabilities under three (3) conditions:

- The termination is unrelated to the disability or;
- The employee does not meet legitimate requirements for the job, such as performance or production standards, with or without a reasonable accommodation or;
- Because of the employee's disability, he or she poses a direct threat to health or safety in the workplace.

Source: [Employers and the ADA: Myths and Facts | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/whd/ada/mythsandfacts.html)

## 2

**Retaliation:** Retaliation has become the most frequently cited basis of discrimination in wrongful termination claims filed with EEOC, surpassing race discrimination.

**Why it matters:** *As far as the breakdown of charges filed in 2021, retaliation was the most common, accounting for 56% of the filed charges. Coming in second was disability bias, with 37.2% of all charges. Claims for racial bias comprised 34% of filed charges.*

Source: <https://www.eeoc.gov/data/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021>; [EEOC Releases 2021 Performance Statistics - Kollman & Saucier P.A. \(kollmanlaw.com\)](https://www.kollmanlaw.com/newsroom/2021-performance-statistics)

## Press Release 11-29-2022

### Circle K to Pay \$8 Million to Resolve EEOC Disability, Pregnancy, and Retaliation Charges

PHOENIX – Circle K Stores Inc. has entered into a nationwide agreement with the U.S. Equal Employment Opportunity Commission (EEOC) to resolve disability, pregnancy and retaliation discrimination charges, the federal agency announced today.

This resolution resolves multiple charges of discrimination filed against Circle K and related entities, ending an investigation in which the EEOC determined it had reasonable cause to believe:

- **Circle K denied reasonable accommodations to pregnant employees and those with disabilities, subjecting them to actions such as:**
  - Involuntary unpaid leave,
  - Retaliation, requiring employees be 100% healed to return to work,
  - Terminations.

These actions violate the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964, and the Pregnancy Discrimination Act.

**Read the entire article at** [Circle K to Pay \\$8 Million to Resolve EEOC Disability, Pregnancy, and Retaliation Charges | U.S. Equal Employment Opportunity Commission](https://www.eeoc.gov/newsroom/2022-11-29-circle-k-to-pay-8-million-to-resolve-eeoc-disability-pregnancy-and-retaliation-charges)



**Answers to your questions about Pregnancy Discrimination and Lactation Support Laws.**

## **Can I take disciplinary action against a pregnant employee?**

Pregnant employees are expected to be in compliance with the same work performance standards expected of all other employees.

An employer may take disciplinary action against an employee during pregnancy, as long as the employer avoids discrimination and is sure that disciplinary action is appropriate for the circumstances.

- Ensure that the disciplinary action is not being taken for reasons related to pregnancy, childbirth, or related medical condition.
- Ensure that the disciplinary action is applied fairly and consistently.
- Employers must treat pregnant employees the same as any other temporarily disabled employee.



If a pregnant employee is treated more severely than others have been treated in similar circumstances, her pregnancy may be perceived as the cause for the disciplinary action.

Source: SC Human Affairs Commission; US Equal Employment Opportunity Commission

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## **Press Release 12-23-2014**

### **Justice Department Files Pregnancy Discrimination Lawsuit against the Chicago Board of Education**

WASHINGTON - The Justice Department today announced the filing of a lawsuit against the Chicago Board of Education, alleging that the board discriminated against pregnant teachers at Scammon Elementary School by subjecting them to adverse personnel actions, including termination in some instances, after they announced their pregnancies.

According to the complaint, these adverse personnel actions were in violation of Title VII of the Civil Rights Act of 1964. Title VII is a federal statute that prohibits employment discrimination on the basis of sex, race, color, national origin, and religion. The statute explicitly prohibits employers from discriminating against female employees due to pregnancy, childbirth, or related medical conditions.

- **The suit, filed in the United States District Court for the Northern District of Illinois, alleges that, starting in 2009,**
- **the principal at Scammon subjected female teachers to lower performance evaluations, discipline, threatened termination and/or termination because of their pregnancies.**
- **The complaint further alleges that the board approved the firing of six recently pregnant teachers employed at Scammon and forced two other recently pregnant teachers to leave Scammon.**

**Read the entire article at [Justice Department Files Pregnancy Discrimination Lawsuit against the Chicago Board of Education | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](http://www.eeoc.gov)**

**\*\*Please Note: This newsletter is not intended to be used as legal advice**

## **PREVENTION CORNER**

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### **Employer Best Practices**

- 1. Align policies, procedures, and practices with state and federal EEO laws.**
- 2. Follow your personnel policies.**
- 3. Conduct a thorough review of recruitment, hiring, promotion, and termination practices to ensure compliance with state and federal laws.**
- 4. Ask yourself, is the employee a member of a protected class?**
- 5. Document performance issues. Focus on the facts.**
- 6. Be cautious before terminating any employee who has recently claimed that the employer has done something illegal. This may look like retaliation.**

Source: SC Human Affairs Commission; U.S. EEOC

**EEO laws are designed to protect the rights of ALL individuals.**

**If you feel like you have experienced discrimination,  
contact us for help.**

**South Carolina Human Affairs Commission  
(800) 521-0725, Relay 711 or 803-737-7800**

**<https://www.schac.sc.gov/>**

**The mission of the South Carolina Human Affairs Commission is to  
Prevent and Eliminate Unlawful Discrimination in Employment, Housing,  
and Public Accommodations.**



**Full Time Position Available**

**Legal Assistant**    One (1) position



**For more details about these positions:**

Please visit [www.careers.sc.com](http://www.careers.sc.com) and search “State Human Affairs Commission” in the search bar.

**or**

**Click on the link below.**

[Job Opportunities | Departments: State Human Affairs Commission | Sorted by Job Title ascending | Our state. Your future. Discover the possibilities. \(governmentjobs.com\)](#)

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