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11 Appeal from the United States District Court for the
12 Southern District of New York (Wood, C.J.).

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14 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
15 **AND DECREED** that the judgment of the district court be
16 **AFFIRMED.**
17

18 Plaintiff-Appellant Maria Infante appeals from a
19 judgment and order of the Southern District of New York
20 (Wood, C.J.) entered on January 9, 2006, granting summary
21 judgment in favor of Ambac Financial Group.
22

23 We assume the parties' familiarity with the underlying
24 facts, the procedural history, and the issues presented for
25 review. In a nutshell, Infante took maternity leave from
26 her job at Ambac; due to health complications, she extended
27 her leave five times but remained employed pursuant to
28 Ambac's short-term disability leave plan. When Infante was
29 medically cleared to return to work, Ambac did not reinstate
30 her. Infante alleges that this adverse employment action
31 was based on sex and pregnancy discrimination, in violation
32 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
33 2000e, et seq., ("Title VII"), the New York State Human
34 Rights Law, N.Y. Exec. Law § 290, et seq., and the New York
35 City Human Rights Law, N.Y.C. Admin. Code § 8-101, et seq.
36

37 We review de novo the district court's grant of summary
38 judgment. Maquire v. Citicorp Retail Servs., Inc., 147 F.3d
39 232, 235 (2d Cir. 1998). In doing so, we construe the
40 evidence in the light most favorable to the non-moving party
41 and draw all reasonable inferences in its favor. See
42 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986);
43 see also Maquire, 147 F.3d at 235. Summary judgment is
44 appropriate only where "there is no genuine issue as to any
45 material fact and . . . the movant is entitled to judgment
46 as a matter of law." Fed. R. Civ. P. 56(c).

1 Infante's Title VII claims are governed by the familiar
2 three-part burden shifting framework of McDonnell Douglas
3 Corp. v. Green, 411 U.S. 792, 802-05 (1973). The same
4 standards apply to Infante's state and city claims.
5 Weinstock v. Columbia Univ., 224 F.3d 33, 42 n.1 (2d Cir.
6 2000).

7
8 Having reviewed the undisputed record, we conclude that
9 Infante fails to create an issue of fact that merits sending
10 this case to the jury. Even assuming, arguendo, that
11 Infante makes out a prima facie case of discrimination, she
12 fails to present sufficient evidence to rebut Ambac's
13 legitimate, non-discriminatory reason for its decision. See
14 McDonnell Douglas, 411 U.S. at 804.

15
16 Ambac avers that it could not rely on the possibility
17 of Infante's return from her leave because she had
18 repeatedly extended her anticipated dates of return--
19 sometimes on one or two business days' notice. Ambac thus
20 faced uncertainty about when, if ever, Infante would return,
21 as well as the increasing work demands of Infante's former
22 accounting unit. After Infante had extended her return date
23 by more than six weeks, Ambac decided to interview
24 replacements. As of that time, Infante's leave of absence
25 was outside the scope of the twelve-week job protection
26 provided by the Family and Medical Leave Act, 29 U.S.C. §
27 2612 ("FMLA"). Ambac's short-term disability leave policy
28 contains no similar job protection provision. So Ambac was
29 under no legal or contractual obligation to hold Infante's
30 job open for her, and was entitled to interview (and hire)
31 replacement candidates whom it deemed more qualified for the
32 role.

33
34 Infante makes no showing sufficient to rebut Ambac's
35 legitimate justification for replacing her. Contrary to
36 Infante's contention, there is no evidence that Ambac's
37 actions violated company policy. When Ambac agreed to
38 interview Infante for alternative positions (after her leave
39 of absence), Infante was asked several questions that,
40 according to her, evidenced discriminatory intent. Infante
41 also questions the business logic behind Ambac's decision to
42 replace her despite her expressed willingness to return to
43 her job before a suitable replacement had been identified.
44

45 Viewing this evidence in the light most favorable to
46 Infante, we conclude that it is insufficient to send this

1 case to a jury. The questions Infante was asked during her
2 interviews were incidental and did not evince a direct link
3 between gender stereotypes and Ambac's rejection of Infante
4 for the positions. Cf. Back v. Hastings On Hudson Union
5 Free Sch. Dist., 365 F.3d 107, 125 n.12 (2d Cir. 2004). We
6 agree with the District Court that Infante's allegations
7 concerning the logic of Ambac's business decisions are
8 nothing more than supposition.

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10 For the reasons set forth above, the judgment of the
11 district court is hereby **AFFIRMED**.

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14 FOR THE COURT:
15 CATHERINE O'HAGAN WOLFE
16 By:
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