

Management Alert



Governor Baker Signs Into Law The Massachusetts Pregnant Workers Fairness Act

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Seyfarth Synopsis: Effective April 1, 2018, Massachusetts will expand its anti-discrimination statute to specifically prohibit the discrimination against, refusal to hire, and the termination of individuals due to pregnancy or pregnancy-related conditions (including lactation or the need to express breast milk for a nursing child). Employers also will be required to provide reasonable accommodations to pregnant workers for conditions related to pregnancy. Massachusetts will join approximately twenty other states and the District of Columbia in expanding protections against pregnancy-related discrimination.

On July 27, 2017, Governor Baker signed into law the Pregnant Workers Fairness Act, which will take effect on April 1, 2018. The law will expand the Commonwealth's anti-discrimination statute, making it unlawful for an employer to discriminate against, refuse to hire, or terminate an individual due to pregnancy or pregnancy-related conditions, including lactation or the need to express breast milk for a nursing child.

An employer will be required to provide a reasonable accommodation for an employee's "pregnancy or any condition related to the employee's pregnancy," if the employee requests such an accommodation and provided that the requested accommodation would not impose an undue hardship on the employer. Employers will be required to engage in a timely, good faith, and interactive process to determine an effective, reasonable accommodation. However, the statute includes a non-exhaustive list of potential accommodations:

- More frequent or longer paid or unpaid breaks;
- Time off to attend to a pregnancy complication or recover from childbirth, with or without pay;
- Acquisition or modification of equipment or seating;
- A temporary transfer to a less strenuous or hazardous position;
- Job restructuring;
- Light duty;
- Private non-bathroom space for expressing breast milk;
- Assistance with manual labor; and
- Modification of work schedule.

In addition, the law will prohibit employers from:

- Taking an adverse action against an employee (including failing to reinstate to the original or equivalent position) for

requesting or using a reasonable accommodation;

- Denying an employment opportunity because of the need for a reasonable accommodation related to the employee's pregnancy or pregnancy-related condition;
- Requiring an employee to accept an accommodation that the employee chooses not to accept if that accommodation is unnecessary to enable the employee to perform the essential functions of the job;
- Requiring an employee to take leave if another reasonable accommodation could be provided without imposing undue hardship on the employer; and
- Refusing to hire a person because of pregnancy or a pregnancy-related condition, so long as that person could otherwise perform the essential functions with a reasonable accommodation, and doing so would not impose an undue hardship on the employer.

An employer will be able to deny a requested accommodation if it can demonstrate that the requested accommodation would impose an undue hardship. Whether an accommodation would impose an undue hardship depends on the cost of the accommodation, the financial resources of the employer, the overall size of the employer's business with respect to number of employees, the nature of the employer's facilities, and the impact of the accommodation on the employer's operations. Further, the law specifies that employers will not be required to displace a more senior employee in order to grant an accommodation, or promote an employee who cannot perform the essential functions of the job with or without reasonable accommodation.

As part of the interactive process, employers will be permitted to require documentation from an appropriate health care provider regarding most requested accommodations. However, an employer will be prohibited from requiring documentation for four accommodations: (1) more frequent restroom, food or water breaks; (2) seating; (3) limits on lifting over 20 pounds; and (4) private non-bathroom space for expressing breast milk.

Employers are required to distribute written notice to employees (through a handbook, pamphlet, or other means) of their rights to be free from discrimination in relation to pregnancy and pregnancy-related conditions, including the right to a reasonable accommodation for pregnancy-related conditions. Moreover, employers must provide written notice to new employees at or prior to commencement of their employment, and to employees who notify the employer of a pregnancy or pregnancy-related condition within ten days of such notification.

With its enactment, the law will allow individuals to pursue claims for discrimination on the basis of pregnancy or pregnancy-related conditions like any other claim of discrimination under Section 4 of General Laws Chapter 151B, the state anti-discrimination law, and potentially recover damages, attorneys' fees, costs, and injunctive relief.

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