

# One Minute Memo<sup>®</sup>



## What Maryland Employers Should Expect When An Employee's Expecting: The Reasonable Accommodations for Disabilities Due to Pregnancy Act

On May 16, 2013, Governor Martin O'Malley signed legislation that amends the Maryland Fair Employment Practices Act ("FEPA") and expands Maryland employers' obligations to accommodate pregnant employees. The Reasonable Accommodations for Disabilities Due to Pregnancy Act requires that Maryland employers with 15 or more employees provide pregnant employees who are temporarily disabled with light duty assignments or similar accommodations, unless the accommodation would impose an undue hardship to the employer.

The new law was introduced in response to the U.S. Court of Appeals for the Fourth Circuit's recent decision in *Young v. UPS*. In *Young*, the Fourth Circuit held that neither the Americans with Disabilities Act nor the Pregnancy Discrimination Act required that the employer accommodate the pregnant plaintiff's light duty accommodation request because similar accommodations were not offered to other employees (male or female) for injuries not sustained on the job. The plaintiff failed to show discriminatory animus since the employer acted pursuant to a facially neutral policy, which limited light duty accommodations to those employees injured on the job, when it denied her accommodation request.

Under the new law, covered employers must provide certain reasonable accommodations to pregnant employees who provide notice of a temporary disability, as long as it does not pose an undue hardship to do so. Employers must "explore" with the employee all possible means of providing a reasonable accommodation, including: (1) changing the employee's job duties, (2) changing the employee's work hours, (3) relocating the employee's work area, (4) providing mechanical or electrical aids, (5) transferring the employee to a less strenuous or hazardous position, or (6) providing leave. If an employee requests a transfer to a less strenuous job during the pregnancy, an employer must grant the request if: (1) it would do so for any other temporarily disabled employee; or (2) the woman's health care provider so advises, and the employer can do so without creating a new job or displacing employees. In making reasonable accommodations, employers are not required to create additional employment that it would not otherwise have created, discharge any employee, transfer an employee with more seniority than the employee requesting the reasonable accommodation, or promote any employee who is not qualified to perform the job.

Employers may require pregnant employees seeking an accommodation to submit a medical certification that includes the date the reasonable accommodation became medically advisable, the probable duration of the accommodation, and an explanatory statement as to the medical advisability of the accommodation.

The law also requires that covered employers post notices and update employee handbooks with information on an employee's right to a reasonable accommodation or leave on account of a disability caused or contributed to by pregnancy.

The amendment takes effect on October 1, 2013. In advance of the effective date, Maryland employers should update their handbooks accordingly and ensure that their accommodation policies and practices for pregnant employees meet the law's new requirements.

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