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Massachusetts Enacts Pregnant Workers Fairness Act

On July 27, 2017, Massachusetts Governor Charles Baker signed into law “[An Act Establishing the Massachusetts Pregnant Workers Fairness Act](#).” The new law (i) prohibits discrimination against employees on the basis of pregnancy or a condition related to pregnancy and (ii) requires employers to provide reasonable accommodations to expectant and new mothers in the workplace.

The Pregnant Workers Fairness Act does not go into effect until April 1, 2018; at which time Massachusetts employers will be required to provide written notice to employees of their rights under the Act.

A New Protected Class Added to Massachusetts Law

The Pregnant Workers Fairness Act amends the Massachusetts Fair Employment Practices Act, General Laws Chapter 151B, Section 4, to add “pregnancy or a condition related to said pregnancy, including, but not limited to, lactation, or the need to express breast milk for a nursing child” to the categories of employees protected from discrimination. Massachusetts courts have previously recognized pregnancy discrimination as a form of prohibited sex discrimination.

Obligation to Grant Reasonable Accommodations

Massachusetts employers will be required to accommodate all pregnant employees just as they are required to accommodate employees with disabilities. Federal law is distinguishable. Under the Americans with Disabilities Act (ADA), an employer is required to accommodate a pregnant employee with a disability (such as complications related to pregnancy), but not pregnancy itself, which is not defined as a disability under the ADA. Thus, the Massachusetts law expands an employer’s reasonable accommodation obligations.

The Massachusetts Pregnant Workers Fairness Act defines a reasonable accommodation to include the following:

- > more frequent or longer paid or unpaid breaks;
- > time off to recover from childbirth with or without pay;
- > acquisition or modification of equipment or seating;
- > 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; or
- > modified work schedules.

As with the ADA, any requested accommodation is subject to an employer's assertion of undue hardship, defined under the Pregnant Workers Fairness Act as "an action requiring significant difficulty or expense." An employer may require documentation to support the need for an accommodation, although medical documentation is not required for requests by a pregnant employee for more frequent breaks, seating accommodations, or limits on lifting over 20 pounds.

Employer Prohibited Conduct

The Pregnant Workers Fairness Act prohibits employers from taking adverse action against an employee who requests an accommodation or from denying an employment opportunity based on the need to provide a reasonable accommodation. Employers are also prohibited from requiring a pregnant employee to take a leave of absence if another reasonable accommodation may be provided without undue hardship.

Next Steps for Massachusetts Employers

Prior to the law's April 1, 2018 effective date, Massachusetts employers should revise their employee handbooks and policies to ensure compliance with the law's substantive provisions, and be prepared to provide employees with the required written notice.

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