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ALERT

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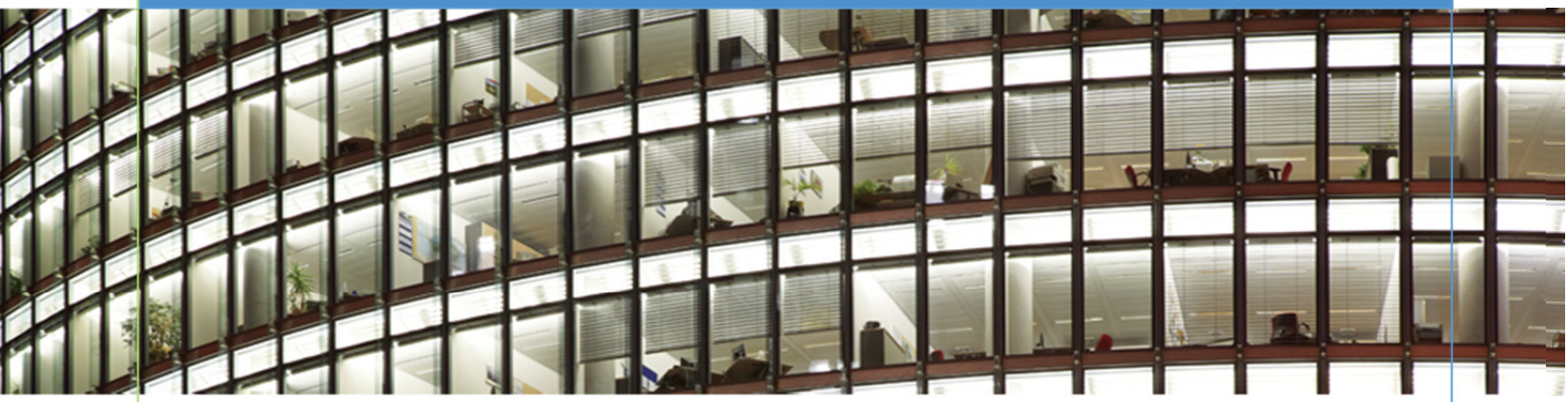

New York City Extends Human Rights Law to Pregnant Women with 'Pregnant Workers Fairness Act'

The New York City Council, citing concerns "that pregnant women are vulnerable to discrimination in the workplace," recently passed a bill amending the City's Human Rights Law (HRL) to expressly provide for "reasonable accommodation" protections to pregnant employees in New York City. The bill, signed by Mayor Michael R. Bloomberg on October 2, 2013, requires that employers offer reasonable accommodations "to the needs of an employee for her pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential requisites of the job." The law is scheduled to go into effect on January 29, 2014. Employers operating in New York City should familiarize themselves with how the amendment will create new obligations and supplement employees' existing rights.

Titled "The Pregnant Workers Fairness Act" (PWFA), the law requires employers in New York City to provide their pregnant employees with "reasonable accommodations" for their pregnancies or related medical conditions. The PWFA explains that such accommodations "may include bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things."

The PWFA does not alter an employer's right to demonstrate, among other things, that a proposed accommodation would cause "undue hardship." Nor does it preclude employers from establishing, as an affirmative defense, that the employee "could not, with reasonable accommodation, satisfy the essential requisites of the job."

Employers are required to provide employees notice of their rights under the PWFA, "in a form and manner to be determined by the" Commission on Human Rights. The law requires that notice shall be given to new employees at the start of their employment and to existing employees within 120 days after the law's effective date. Notice "may also be conspicuously posted" at the employer's place of business.

The PWFA expands pregnant employees' rights in ways not encompassed under existing federal or state legislation. While the federal Pregnancy Discrimination Act (PDA) prohibits pregnancy discrimination, employers are generally not required to provide reasonable accommodation of an employee's pregnancy or related conditions. Similarly, the Americans with Disabilities Act (ADA) and New York State Human Rights Law generally do not extend to pregnancy, since a normal pregnancy is not considered a "disability" under those laws.

Key Take Aways

Although the PWFA does not offer an exhaustive list of pregnancy-related conditions eligible for accommodation, the courts will likely view such conditions quite broadly. The HRL states that its provisions "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title have been so construed." Employers should be mindful that any physical condition directly related to pregnancy could potentially trigger an obligation to provide a reasonable accommodation. Under PDA and Title VII case law, for example, such conditions have ranged from lactation and interruption of normal menstrual cycles to elective abortions.

Employers should also bear in mind that, unlike certain other anti-discrimination statutes such as Title VII, the HRL does not require an exhaustion of administrative remedies prior to bringing suit. As such, plaintiffs can bring their claims in court in the first instance.

Moreover, there is no form of reasonable accommodation that is categorically excluded under the HRL. Employers should be aware that, if sued under the PWFA, they will have the burden of demonstrating that proposed accommodations would cause "undue hardship," taking into account fiscal costs, the nature of the particular employment and workforce, the size of the business, and the physical characteristics of the workplace. Alternatively, the employer should be ready to produce evidence that the pregnant employee could not, with reasonable accommodation, satisfy the essential requisites of the job.

Employers in the City of New York should prepare by considering pregnancy-related conditions that may be covered under the new law, reviewing their current policies in light of these legal developments, and training supervisors to be mindful of the new law and its effects.

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