

January 23, 2014

New Jersey Governor Signs Pregnancy Discrimination Amendment Into Law

On January 21, New Jersey Governor Chris Christie signed into law an amendment to the New Jersey Law Against Discrimination (LAD). With the amendment, which took effect immediately, the LAD now expressly includes pregnancy and childbirth as specifically enumerated protected categories.

The amendment prohibits employers from treating women affected by pregnancy any less favorably than employees who are not affected by pregnancy, provided the employees are similar in their ability or inability to work. The statute defines pregnancy to include childbirth, medical conditions related to pregnancy or childbirth, and recovery from childbirth.

Under the amended LAD, employers are now required to provide covered employees reasonable accommodations for pregnancy-related needs. This obligation is triggered when a pregnant employee or an employee with a medical condition relating to pregnancy or childbirth requests an accommodation on the advice of her physician. Reasonable accommodations may include bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work. Notably, the amendment specifies that it is not meant to increase or decrease any employee's entitlement to paid or unpaid leave. Thus, to the extent employers provide paid or unpaid leave to employees for other purposes, they must make such leave available to employees affected by pregnancy. However, there is no additional leave requirement for pregnant employees.

Employers must provide such requested accommodations unless they can demonstrate that doing so would pose an undue hardship on their business operations. Whether an accommodation would be an undue hardship depends on the overall size of the employer's business, the type of operations, the nature and cost of the accommodation needed, and the extent to which the accommodation would require eliminating a pregnant employee's essential job functions.

Employers are also prohibited from penalizing covered employees who make use of accommodations.

This new amendment to the LAD follows a recent amendment to the New York City Human Rights Law that will provide similar protections to women affected by pregnancy when it goes into effect on January 30. The New York City law goes somewhat further than the LAD amendment in that it requires employers to make disability leave available to employees for childbirth-related reasons and prohibits employers from requiring pregnant employees to take unpaid leaves in lieu of providing other accommodations. Both the New York City and New Jersey laws are part of a trend of recent legislation aimed at expanding the protections for and accommodations available to pregnant women in the workplace.