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We're Pregnant: New State Law Protections for Pregnant Employees

Several states across the country (including most recently Connecticut and Massachusetts) have enacted legislation that provides additional protections to pregnant employees. In these laws, pregnancy is broadly defined to include not only pregnancy, but also childbirth and related conditions (such as lactation and expressing milk for a nursing child, which is addressed in more detail in the article, "How Long and Where Can Employees Breastfeed or Pump Milk? States Continue to Weigh In"). Many of these laws require an employer to reasonably accommodate a pregnant employee unless the employer can demonstrate that doing so would result in undue hardship – a difficult standard to meet. This article provides an overview of the recently enacted legislation in Connecticut and Massachusetts, as well as similar requirements in New Jersey and New York.

Connecticut

In July 2017, Connecticut passed legislation carving out protections for pregnant employees in the workplace. Under this legislation, most employers are required to reasonably accommodate pregnant employees. Common examples of reasonable accommodations are allowing employees to sit while working or to take additional or longer breaks, temporarily restructuring a job if feasible, or modifying work schedules. Employers should also take preventive measures to ensure they are not discriminating against pregnant employees. For example, an employer must not "limit, segregate or classify an employee in a way that would deprive her of employment opportunities due to her pregnancy." In practical terms, this means that pregnant employees should be provided the same employment opportunities as their non-pregnant colleagues.

To comply with this law, employers must provide employees written notice of the right to be free from discrimination in relation to pregnancy, childbirth and related conditions. An employer can comply with this requirement by placing a poster, in both English and Spanish, in a "conspicuous place accessible to all employees" at the workplace. If postings are not used, employers must provide notice to any new employee at the start of employment and, to employees who notify their employer of a pregnancy, within 10 days of that notification. For existing employees, employers were required to provide notice by January 29, 2018.

Massachusetts

Massachusetts passed a similar law called the Pregnant Workers Fairness Act in July 2017, ***which becomes effective April 1, 2018***. This law amends the Massachusetts anti-discrimination law to include "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" as a protected class. Employers must engage in a "timely, good faith and interactive process to determine an effective, reasonable accommodation to enable the employee or prospective employee to perform the essential function of the employee's job or the position to which the prospective employee has applied." Like Connecticut, Massachusetts provided guidance on how an employer may reasonably accommodate pregnant employees in the workplace. Although an employer may require an employee to provide documentation from a healthcare professional before providing a reasonable accommodation, it must not request documentation for the following accommodation requests: "i) more frequent restroom, food, or water breaks; ii) seating; iii) limits on lifting more than 20 pounds; and iv) private non-bathroom space for expressing breast milk."

Employers must provide written notice to employees of their right to be free from discrimination in relation to pregnancy or a pregnancy-related condition. The written notice must be provided in a handbook, pamphlet or other means of notice distributed to employees. Employers must provide notice to new employees at the commencement of employment, to

existing employees by the effective date of the act (April 1, 2018), and to employees who notify their employer that they are pregnant or have a need to lactate or express breast milk for a nursing child, within 10 days of that notification.

New Jersey

In 2014, the New Jersey Law Against Discrimination was amended to add pregnancy, childbirth and related conditions as a protected category. Employers must not treat a woman that an "employer knows, or should know, is affected by pregnancy or breastfeeding in a manner less favorable than" others not affected by pregnancy or breastfeeding. Employers must take care here as the statute's plain text prohibits employers from treating women they "*should know*" are affected by pregnancy or related conditions, although at the same time employers generally are prohibited from inquiring about whether an employee is pregnant. Employers must reasonably accommodate pregnant workers unless the accommodation imposes an undue hardship on the employer.

New York

In 2014, the New York City Human Rights Law was amended to include protections for pregnant employees. More recently, it was further amended (on January 18 to be effective October 15, 2018) to require employers to engage in a "cooperative dialogue" – which is similar to the interactive process required under the Americans with Disabilities Act – with pregnant employees who request a reasonable accommodation. Employers must also provide a written determination to the employee requesting an accommodation following the process. (See our other article in this issue, "Now Put It in Writing: New York City's New Employer Requirements for Workplace Accommodations.")

At the state level, pregnant employees are protected by the New York State Human Rights Law, which covers pregnancy-related medical conditions as part of the law's protections against disability and sex discrimination.

Key Takeaways

In light of these laws, employers should review handbooks, policies, posters and other employee communications addressing pregnancy-related conditions and ensure those communications comply with all applicable laws. For Massachusetts employers in particular, this will require issuing the notice under the new law to all employees, new hires, and pregnant or protected employees, as explained above, by April 1. Further, employers should educate and train managers to make them aware of these laws, including recent guidance, to ensure compliance when interacting with pregnant employees and employees who are returning to work after leave. Finally, employers should consult counsel with any questions on navigating these legal requirements.

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