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Pregnant Employees Receive Protections Under Massachusetts' Pregnancy Accommodations Law

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Massachusetts Passes Pregnancy Accommodations Law

On July 27, 2017, Massachusetts Governor Charlie Baker signed into law a bill that will grant pregnant employees the right to receive reasonable accommodations in the workplace. Massachusetts is the latest state to pass a pregnancy accommodation law, joining 21 other states and the District of Columbia. In the past three months alone, Connecticut, Nevada, Vermont, and Washington State have also passed similar laws, which have taken or will take effect at various dates this year or next year. Like many of the similar state laws, the Massachusetts law, entitled the Massachusetts Pregnant Workers Fairness Act (MPWFA), will expand protections for pregnant employees beyond the federal minimum.

Current Pregnancy Protections for Employees

Federal law already protects workers who are pregnant or who have given birth under such laws as Title VII of the Civil Rights Act (Title VII) and the Americans with Disabilities Act (ADA). Workplace discrimination based on pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Employees with limitations in their ability to work due to pregnancy, childbirth, or related conditions are entitled to the same workplace accommodations as workers with similar limitations that are not caused by pregnancy. The Supreme Court made that clear in a case about the availability of light duty work, *Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338 (2015). Under the ADA, although pregnancy itself is not considered a disability, covered employers must provide reasonable accommodations for many pregnancy- and childbirth-related medical conditions that constitute covered disabilities, unless doing so would impose an undue hardship on the employer.

Although the language of each state's pregnancy accommodation law varies, states with these laws generally offer more expansive protection than federal law in terms of what conditions must be accommodated. Because the laws specifically offer reasonable accommodations for pregnancy and childbirth – rather than simply a related condition, workers' conditions need not fall under the scope of the ADA to qualify for accommodations (e.g., a medical complication), nor do workers need to find comparable employees who have received accommodations for purposes of a Title VII claim.

For example, several states' laws specifically contemplate lactation and the need to express breast milk as a covered condition. Under these laws, pregnant employees generally do not need to show that coworkers with similar, non-pregnancy-related limitations are given accommodations. Some states, including Massachusetts, also limit employers' ability to require medical documentation for certain, specific requests such as more frequent restroom, food, or water breaks. Most pregnancy accommodation laws also provide greater coverage by being applicable to employers with fewer employees than what is required under Title VII and the ADA (15 or more employees).

The Massachusetts Pregnant Workers Fairness Act

The MPWFA, which will go into effect April 1, 2018, amends Massachusetts's existing anti-discrimination law to prohibit employers from discriminating against, failing to hire, or firing an employee based on pregnancy or a condition related to pregnancy, including but not limited to the need to express breast milk. The MPWFA also prohibits employers from denying workers reasonable accommodations for pregnancy and pregnancy-related conditions, and retaliating against employees for requesting such accommodations.

Under the Act, reasonable accommodations for workers might include, but are not limited to, more frequent or longer unpaid breaks; time off to recover from childbirth, with or without pay; modified equipment or seating; job restructuring; private non-bathroom space to express breast milk; or assistance with manual labor. Like the ADA, the MPWFA requires an employer to engage in a good faith "interactive process" with an employee requesting accommodations in order to determine an effective and reasonable accommodation that would allow the employee to perform the essential functions of her position. While an employer may normally require the employee to provide documentation from a healthcare provider, it may not do so when the accommodation requested is for (1) more frequent restroom, food, or water breaks; (2) seating; (3) or limits on lifting over 20 pounds.

Also similar to the ADA, the MPWFA does not require an employer to provide a reasonable accommodation when the employer can show that doing so would pose an "undue hardship," which the Massachusetts act defines as an action requiring significant difficulty or expense. To determine whether an undue hardship exists, a finder of fact must consider the following factors: (1) the nature and cost of the needed accommodation; (2) the overall financial resources of the employer; (3) the overall size of the business of the employer with respect to the number of employees and the number, type, and location of its facilities; and (4) the effect on expenses and resources or any other impact of the accommodation on the employer's program, enterprise, or business.

The Act further provides that employers may not require employees to accept accommodations if such accommodations are unnecessary for the worker to perform the essential functions of her job. Similarly, employees may not be forced out on leave if a reasonable accommodation would enable them to perform the essential functions of their position.

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