

Publications

Labor and Employment Alert: Colorado Now Requires Reasonable Pregnancy Accommodations

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Effective August 10, 2016, Colorado employers will be required to provide job applicants and employees with reasonable accommodations for pregnancy and physical recovery from childbirth. An employer only has to provide an accommodation if requested and if the accommodation would not impose an undue hardship. The intent of this legislation (House Bill 1438) is “to combat pregnancy discrimination, promote public health, and ensure full and equal protection for women in the labor force by requiring employers to provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or a related condition.” An employer who violates the requirement to provide a reasonable accommodation commits an unfair or discriminatory practice.

Interactive Process and Reasonable Accommodations

Similar to the Americans with Disabilities Act (ADA), once an applicant or employee requests an accommodation related to pregnancy, the employer must engage in a “timely, good faith, interactive process to determine effective, reasonable accommodations.” The employer may require a note from a licensed health care provider stating the necessity of a reasonable accommodation before providing one. It behooves an employer to engage in this interactive process. A court is prohibited from awarding punitive damages for failing to accommodate if the employer demonstrates good faith efforts to identify and make a reasonable accommodation that would not impose an undue hardship and would provide an equally effective opportunity to the applicant or employee.

The law gives examples of a “reasonable accommodation” as more frequent or longer breaks, restroom breaks, meal breaks, and water breaks; acquisition or modification of seating; lifting limitations; temporary transfer to a less strenuous or hazardous position if available (along with being returned to the original position); job restructuring; light duty, if available; assistance with manual labor; or modified work schedules. An employer is not required to provide paid leave beyond that which it provides for similarly situated employees. But an

employee cannot be required to take leave if the employer can provide another form of reasonable accommodation.

In determining the types of accommodation or whether a particular accommodation would be reasonable, an employer is not required to hire new employees that it would not otherwise have hired; create a new position or light duty position unless the employer would do so for an equivalent employee; discharge an employee; transfer an employee with more seniority; or promote another employee who is not qualified to perform the job.

Nor is an employer is required to provide a requested accommodation if doing so would impose an undue hardship. This requires considering several factors: whether the accommodation will result in significant difficulty or expense given the nature and cost of the accommodation, the employer's overall financial resources, the number of employees, type of facilities, and the accommodation's effect on the expenses, resources, or operations. There is a rebuttable presumption that an accommodation does not impose an undue hardship if the employer provides a similar accommodation to other classes of employees.

Applicant and Employee Protections

The new law prohibits an employer from taking adverse action against an employee who requests a reasonable accommodation. Employers must provide written notice of the right to be free from discriminatory employment practices related to pregnancy accommodations to new employees at the start of their employment and to all current employees within 120 days of the law's effective date – so by December 8, 2016. In addition, employers must conspicuously post the required notice.

An employer is prohibited from denying employment opportunities to applicants and employees because they need a reasonable accommodation due to pregnancy, physical recovery from childbirth, or a related condition (which is undefined in the statute).

An applicant or employee cannot be required to accept an accommodation that she has not requested or that is unnecessary to perform the job's essential functions.

Contact your Vorys attorney if you have questions about pregnancy-related accommodations in Colorado or in one of the 16 other states, the District of Columbia, or cities that require similar reasonable accommodations (Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, Rhode Island, Texas, Utah, West Virginia; Central Falls and Providence, Rhode Island; New York, New York; Philadelphia, Pennsylvania). Similar legislation is pending in Ohio.