

## Publications

### *Labor and Employment Alert: Massachusetts Enacts the Pregnant Workers Fairness Act*

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Massachusetts law already protects employees from discrimination on the basis of race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry and veteran status. On July 27, 2017, Massachusetts enacted the Pregnant Workers Fairness Act to include pregnancy and conditions related to pregnancy including lactation or the need to express breast milk for a nursing child as a protected category. The act further requires that employers provide “reasonable accommodations” to pregnant and nursing mothers. The act will become effective on April 1, 2018.

### Reasonable Accommodation

The Pregnant Workers Fairness Act makes it illegal for an employer to deny a reasonable accommodation for an employee’s pregnancy or any condition related to the employee’s pregnancy including lactation or the need to express breast milk for a nursing child if the employee requests such an accommodation. A “reasonable accommodation” includes: more frequent or longer paid or unpaid breaks; time off to recover from childbirth with or without pay; acquisition or modification of equipment or seating; temporary transfer to a less strenuous or hazardous position; job restructuring; light duty; private non-bathroom space for expressing breast milk; assistance with manual labor; or a modified work schedule.

Additionally, the act makes it illegal to:

- take adverse action against an employee who requests or uses a reasonable accommodation, including by failing to reinstate the employee to the original employment status or to an equivalent position with equivalent pay and benefits when the need for accommodation ceases;
- deny an employment opportunity to an employee based on the need to make a reasonable accommodation;
- require an employee to accept an accommodation that the employee chooses not to accept if that accommodation is

- unnecessary to enable the employee to perform the essential functions of the job;
- require an employee to take a leave of absence if another reasonable accommodation may be provided without undue hardship; and
- refuse to hire a person who is pregnant, so long as the person is capable of performing the essential functions of the position with a reasonable accommodation and that accommodation would not impose an undue hardship.

## Undue Hardship

An employer can only deny an accommodation if it can prove the accommodation would impose an undue hardship. An “undue hardship” requires establishing significant difficulty or expense considering: the nature and cost of the needed accommodation; the overall financial resources of the employer; the overall size of the business with respect to the number of employees and the number, type, and location of its facilities; and the effect on expenses and resources or any other impact of the accommodation on the employer’s program, enterprise, or business.

## Interactive Process Required

Once an employee requests an accommodation, the employer must engage in a timely, good faith, and interactive process to determine an effective, reasonable accommodation to enable the employee to perform the essential functions of the job. An employer may require documentation about the need for an accommodation from an appropriate health care or rehabilitation professional. However, an employer may not require documentation concerning more frequent restroom, food, or water breaks; seating; limits on lifting over 20 pounds; or private non-bathroom space for expressing breast milk.

## Employee Notice Required

An employer must provide employees with written notice of the right to be free from discrimination in relation to pregnancy or a condition related to the employee’s pregnancy and the right to reasonable accommodations. The notice must be provided in a handbook or other means of notice to all employees including new employees at or before beginning employment, and an employee who notifies the employer of a pregnancy or condition related to the employee’s pregnancy within 10 days of such notification.

## Conclusion

The Pregnant Workers Fairness Act is part of the Massachusetts anti-discrimination laws. As such, it provides uncapped compensatory and punitive damages and reasonable attorney’s fees for violations. Employers should review their policies and practices to ensure they comply with these new requirements. Contact your Vorys lawyer if you have questions about equal employment opportunity laws.