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Labor and Employment Alert: South Carolina Enacts the Pregnancy Accommodations Act

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On May 17, 2018, South Carolina's Pregnancy Accommodations Act became effective. The state enacted the law "to combat pregnancy discrimination, promote public health, and ensure full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related medical conditions." To those ends, the act provides anti-discrimination protections, requires reasonable accommodations, and requires notification to employees of their rights.

South Carolina law already prohibits discrimination "because of sex" and "on the basis of sex." The act expressly includes within those terms pregnancy, childbirth, and related medical conditions, including lactation. Women affected by pregnancy, childbirth or related medical conditions "must be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs."

The act makes it an unlawful employment practice for employers to fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant or an employee, unless doing so would impose an undue hardship on the employer. A "reasonable accommodation" may include: making existing facilities readily accessible to and usable by individuals with medical needs arising from pregnancy, childbirth or related medical conditions; more frequent or longer break period or bathroom breaks; providing a private place, other than a bathroom stall for the purpose of expressing milk; modifying food or drink policy; providing seating or allowing the employee to sit more frequently if the job requires the employee to stand; providing assistance with manual labor and limits on lifting; temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified; providing job restructuring or light duty, if available; acquiring or modifying equipment or devices necessary for performing essential job functions; modifying work schedules.

Unless the employer would do so for other employees who need a reasonable accommodation, employers are not required to hire new employees it would not have otherwise hired; discharge an employee, transfer another employee with more seniority, or promote another employee who is not qualified to perform the new job; create a new position, including a light duty position for the employee, unless a light duty position would be provided for another equivalent employee; or compensate an employee for more frequent or longer break periods, unless the break period would otherwise be compensated.

The Pregnancy Accommodations Act further makes it an unlawful employment practice:

- to deny employment opportunities to an applicant or employee, if the denial is based on the need to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth or related medical conditions of an applicant for employment or an employee;
- to require an applicant or employee affected by pregnancy, childbirth or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, or if the accommodation is unnecessary to perform the essential duties of her job;
- to require an employee to take leave under any leave law or employer policy if another reasonable accommodation can be provided; or
- to take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation.

Employers are required to provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth or related medical conditions, to new employees at the commencement of employment, and existing employees beginning September 14, 2018 and post this notice in an area accessible to employees.

Employers should review their policies and procedures to ensure they comport with the Pregnancy Accommodations Act. Contact your Vorys lawyer if you have questions about EEO laws.