

Massachusetts Pregnant Workers Fairness Act Expected to Become Law

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On July 19, 2017, the Massachusetts legislature enacted the Pregnant Workers Fairness Act (PWFA), and the bill is now before Governor Baker who is expected to sign it into law. The Massachusetts' employment discrimination statute, M.G.L. c. 151B, already prohibits pregnancy discrimination, but the PWFA significantly broadens those existing prohibitions bringing the statute more in line with Federal statutes that prohibit pregnancy discrimination, such as the Americans with Disabilities Act, the Fair Labor Standards Act and the Pregnancy Discrimination Act. The PWFA amends the Massachusetts' employment discrimination statute by clarifying that pregnancy, or conditions related to pregnancy, are protected categories. The PWFA also extends specific additional protections to employees who are pregnant or have a condition related to pregnancy. Under the PWFA, conditions related to pregnancy include, but are not limited to, lactation, or the need to express breast milk for a nursing child. The law is slated to go into effect April 1, 2018.

The PWFA extends an employer's obligation to offer reasonable accommodations to employees who are pregnant, or who have pregnancy related conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship. In addition, the PWFA prohibits employers from retaliating against employees who have requested or used a reasonable accommodation, or denying an employment opportunity to an employee based on the employer's need to make a reasonable accommodation. Employers are also prohibited from forcing an employee to accept an accommodation that is not necessary to enable the employee to perform the essential functions of the job. Similarly, the PWFA specifically bars employers from requiring an employee to take a leave of absence if another reasonable accommodation may be provided without undue hardship.

Employers will also be barred from rejecting a candidate for employment based on the candidate's pregnancy or a condition related to the candidate's pregnancy, so long as the candidate is able to perform the essential functions of the job with a reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship.

The PWFA also inserts into c. 151B several specifically recognized forms of "reasonable accommodations," including: (1) more frequent or longer paid or unpaid breaks; (2) time off to attend to a pregnancy complication or recover from childbirth with or without pay; (3) acquisition or modification of equipment or seating; (4) temporary transfer to a less strenuous or hazardous position; (5) job restructuring; (6) light duty; (7) private non-bathroom space for expressing breast milk; (8) assistance with manual labor; and (9) modified work schedules.

Employers will also be required to engage in the interactive process with employees or prospective employees. As part of the interactive process, employers may generally request documentation from an appropriate healthcare or rehabilitation professional to support the employee's request for a reasonable accommodation, as well as documentation to support a request for an extension of a previously agreed-to accommodation. That said, employers are specifically barred from requiring documentation to support an employee's request for (1) more frequent restroom, food and water breaks; (2) seating; (3) limits on lifting over 20 pounds; and (4) private, non-bathroom space for expressing breast milk.

Finally, employers will be required to provide all employees with written notice of their rights under the PWFA, including the right to reasonable accommodations, whether by updating their employee handbook, providing a pamphlet, or by other means of written notice. Employers must also specifically provide written notice to (1) new employees, at or prior to the commencement of employment;

and (2) employees who notify the employer of a pregnancy or a condition related to the employee's pregnancy, not more than ten days after such notification. Employers will be required to satisfy the written notice obligation to all employees on or before April 1, 2018.

Employers should consider promptly training supervisors on the new requirements under the PWFA. Employers should also promptly update the discrimination policy in their employee handbooks or prepare a pregnancy discrimination pamphlet which satisfies the written notification requirements of the PWFA.

For more information or guidance complying with these updates, please contact Scott Casher (cashers@whiteandwilliams.com; 914.487.7343), Victoria Fuller (fullerv@whiteandwilliams.com; 617.748.5211) or another member of our Labor and Employment Group.

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