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New York City Law Requires Employers to Provide Reasonable Accommodation of Pregnancy, Childbirth or Related Conditions

On October 2, 2013, Mayor Bloomberg signed into law the NYC Pregnant Workers Fairness Act, which obligates employers in New York City to provide reasonable accommodation of an employee's pregnancy, childbirth or related medical condition. The new law amends the City Human Rights Law to make it an unlawful discriminatory practice for an employer to refuse to accommodate the needs of a pregnant employee if such accommodation will allow her to perform the essential requirements of her job and does not result in an undue hardship for the employer. Individuals who believe they have been denied a reasonable accommodation are entitled to file a complaint with the New York City Commission on Human Rights or to file a civil complaint seeking compensatory and punitive damages. The law takes effect on January 30, 2014. **The Commission issued a new notice, which employers must provide to new hires starting January 30, 2014, and to existing employees by May 30, 2014. The notice can be found by clicking here: http://www.nyc.gov/html/cchr/html/publications/pregnancy-employment-poster.shtml**

Duty to Accommodate Pregnancy, Childbirth and Related Conditions

The new law prohibits employers with at least four (4) employees (counting independent contractors), employment agencies, and their agents from discriminating against employees by failing to accommodate the needs of an employee for her pregnancy, childbirth, or related medical condition so that she may perform her essential job functions. The employer must have known or should have known of the pregnancy, childbirth or related medical condition for there to be an obligation to accommodate. The City Council provided examples of potential reasonable accommodations in its statement of legislative intent, including bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor.

Similar to statutes requiring accommodation of disabled workers, employers need not make every requested accommodation. The new law states that an employer has an affirmative defense to a claim of discrimination under the Human Rights Law if the employee could not, with reasonable accommodation, satisfy the essential requisites of her job. Moreover, an employer need not make an accommodation if doing so would be overly burdensome. "Reasonable accommodation" for purposes of the NYC Pregnant Workers Fairness Act is defined in the same manner as for other sections of the Human Rights Law in that the term "reasonable accommodation" means an accommodation that shall not cause "undue hardship" to the employer. Accordingly, an employer may deny a request to accommodate a pregnancy-related condition if it determines, after weighing various factors set forth in the statute, that granting the accommodation would create an undue hardship in the conduct of its business. Although the law does not specifically address an employer's right to request medical documentation in support of an accommodation request, presumably, employers may insist an employee provide such documentation as is the case under disability discrimination laws.

Employers are specifically required to notify employees in writing of their rights under the new law. The Commission issued a poster for employers to use. The law does not require that employers post the notice, but mandates they give the notice to new employees upon hire starting January 30, 2014, and to existing employees by May 30, 2014.

Is The Law Really New?

The City Human Rights Law, as well as the New York State Human Rights Act and the federal Pregnancy Discrimination Act, already protected employees from being discriminated against due to pregnancy. However, those laws did not include the duty to accommodate pregnancy, childbirth or pregnancy-related conditions so that an employee can perform her job duties. They required only that pregnant employees be treated no differently than non-pregnant employees. Furthermore, the federal Americans with Disability Act (ADA) generally does not require employers to offer individuals reasonable accommodation due to pregnancy, except in limited circumstances where the pregnant employee's condition rises to the level of a "disability" as defined in the ADA.[1] The NYC Pregnant Workers Fairness Act creates an affirmative duty to accommodate pregnancy, childbirth and related conditions, even those not severe enough to qualify the employee as "disabled".

Best Practices for Employers

To remain in compliance with the new law, employers should:

- inform staff members about the new law as required using the Commission on Human Rights notice;
- reconsider work rules that negatively impact pregnant employees;
- review policies and practices with respect to requesting and making reasonable accommodations and revise them to include a process for accommodation of pregnancy and childbirth;
- train managers and supervisors regarding procedures for responding to accommodation requests from pregnant employees.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

[1] The Equal Employment Opportunity Commission has stated that while pregnancy alone is not a "disability," certain conditions resulting from pregnancy may qualify as "disabilities" under the ADA entitling an employee to accommodation. Examples of such conditions include gestational diabetes and preeclampsia.