

## New Jersey Law Against Discrimination Amended to Require Reasonable Accommodation of Pregnancy

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On Inauguration Day, January 21, 2014, Governor Chris Christie signed into law [an amendment](#) ("Amendment") to the New Jersey Law Against Discrimination ("LAD") that adds pregnancy as a protected classification.<sup>1</sup> For purposes of the Amendment, "pregnancy" means "childbirth, or medical conditions related to pregnancy or childbirth, including recovery from childbirth." The Amendment became immediately effective.

Prior to the Amendment, the LAD prohibited discrimination based on gender and disability but did not specifically include pregnancy as a protected class or require reasonable accommodation for pregnant employees if the pregnant employee's condition did not qualify as a disability under federal or state law. By enacting the Amendment, New Jersey has joined Alaska, California, Connecticut, Hawaii, Illinois, Louisiana, and Texas, as well as cities like New York, in prohibiting discrimination against pregnant workers and requiring employers to provide pregnant employees with reasonable accommodation.

The Amendment offers the following examples of reasonable accommodations that an employer may be required to provide to employees for "needs related to the pregnancy":

- bathroom breaks,
- breaks for increased water intake,
- periodic rest,
- assistance with manual labor,

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<sup>1</sup> The Amendment also contains a provision prohibiting employers from retaliating against employees for requesting from any other employee or former employee information pertaining to rate of compensation (including benefits) or the gender, race, ethnicity, military status, or national origin of any employee or former employee. For additional information, please see our blog post titled "[New Jersey Law Against Discrimination Amended to Add Protection for Employee Inquiries Regarding the Compensation of Others](#)."

- job restructuring or modified work schedules, and
- temporary transfers to less strenuous or hazardous work.

The obligation to provide accommodation arises “when the employee, based on the advice of her physician, requests the accommodation, unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer.”

Pregnant employees are now entitled to paid or unpaid leave as a reasonable accommodation, in the same manner as “provided to other employees not affected by pregnancy but similar in their ability or inability to work.” The Amendment does not, however, increase or decrease an employee’s rights to paid or unpaid leave in connection with pregnancy.

Factors to be considered in determining whether an accommodation would impose undue hardship on the operation of an employer’s business include:

- the overall size of the employer’s business with respect to the number of employees, number and type of facilities, and size of budget;
- the type of the employer’s operations, including the composition and structure of the employer’s workforce;
- the nature and cost of the accommodation needed, taking into consideration the availability of tax credits, tax deductions, and outside funding; and
- the extent to which the accommodation would involve the waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

The Amendment also prohibits an employer from penalizing an employee in terms, conditions or privileges of employment for requesting or using an accommodation because of pregnancy.

Additionally, although the Amendment does not include a separate notice or posting requirement with regard to pregnancy discrimination or reasonable accommodation, New Jersey employers are required to post a notice regarding employees’ rights under the LAD. Specifically, New Jersey Division on Civil Rights (“Division”) regulations require employers to display the Division’s official poster in places easily visible to employees and applicants. We anticipate that the Division will shortly amend its official poster to add “pregnancy” to the list of protected classifications.

## **What Employers Should Do Now**

New Jersey employers should ensure compliance with the Amendment by:

- reviewing and revising reasonable accommodation policies and procedures;

- training supervisors and managers on how to handle accommodation requests;
- providing reasonable accommodations to employees affected by pregnancy, childbirth, or related medical conditions, to the extent that they are not already doing so; and
- monitoring the Division's website, and posting the updated poster when it is issued.

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