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New York City Human Rights Law Expanded to Require Employers to Reasonably Accommodate Pregnant Employees

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On October 2, 2013, following a unanimous New York City Council vote, Mayor Michael Bloomberg signed a bill amending the New York City Human Rights Law ("NYCHRL") to require most New York City employers to reasonably accommodate pregnant workers. Effective January 30, 2014 (120 days after signing), the new law, which amends the Administrative Code of the City of New York, prohibits employers from discriminating against employees on the basis of pregnancy, childbirth, or a related medical condition. While the NYCHRL already prohibits discrimination based on gender and disability, the new law is significant because it expands coverage to all pregnant employees, regardless of whether a pregnant employee's condition would qualify as a disability under federal, state, or city law.

Coverage

The NYCHRL applies to New York City employers (including employment agencies) with four or more employees (including independent contractors who are "natural persons"[1] and not themselves employers).

Prohibited Actions

The new law prohibits employers from refusing to provide a reasonable accommodation to an employee due to her pregnancy, childbirth, or related medical condition, provided that such employee's pregnancy, childbirth, or related medical condition is known (or should have been known) by the employer. Under the NYCHRL, a "reasonable accommodation" is defined as "an accommodation that shall not cause undue hardship in the conduct of the [business]." The reasonable accommodation must allow the employee to perform the "essential requisites" of the job.

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[1] A "natural person," in this context, is an independent contractor who does not employ others than himself or herself.

The new law provides specific examples of reasonable accommodations, which may include the following, among other things:

- 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.

Employers may also wish to consider providing flexible schedules and time off for medical appointments as reasonable accommodations.

Exceptions

Although the new law prohibits employers from refusing to provide a reasonable accommodation to a pregnant employee, an employer need not accommodate a pregnant employee if it proves that the accommodation would cause an "undue hardship." There are several factors that an employer may consider in determining if the requested accommodation is an "undue hardship":

- the nature and cost of the accommodation;
- the overall financial resources of the facility or facilities involved in the request;
- the number of persons employed at such facility;
- the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- the overall financial resources of the employer;
- the overall size of the business of the employer with respect to the number of employees and the number, type, and location of its facilities;
- the type of operation of the covered entity, including composition, structure, and functions of the workforce; and
- the geographic separateness, administrative, or fiscal relationship of the facility in question.

Additionally, employers may raise an affirmative defense to any claim brought by an employee, where the need for reasonable accommodation is placed in issue, that the employee, even with a reasonable accommodation, could not satisfy the essential requisites of the job.

Notice Requirements

Employers will be required to provide employees with written notice regarding the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, in a form and manner to be determined by the New York City Commission on Human Rights ("Commission"), the entity which enforces the NYCHRL. While the Commission has not yet released a model written notice, such written notice must be provided to all new employees upon commencement of employment, as well as to existing employees within 120 days after the effective date of the new law. The new law also suggests that employers conspicuously post the notice in the workplace. Further, the Commission will also be developing courses of instruction and ongoing public education efforts to inform employers, employees, and job applicants about their rights and responsibilities under the new law.

Enforcement

An employee alleging a violation of the new law may either bring a complaint with the Commission or proceed directly in court.

Differences from Other Laws Prohibiting Pregnancy Discrimination

By expressly requiring employers to provide reasonable accommodations to pregnant women, as well as those who suffer medical conditions related to pregnancy and childbirth, regardless of whether the condition is considered a "disability" under applicable law, the new law provides broader protections than existing federal law (the Pregnancy Discrimination Act ("PDA") and Americans with Disabilities Act ("ADA")) and New York State law (the NYS Human Rights Law). The new law does not make pregnancy a disability, but allows reasonable accommodations in the same manner as those required because of a disability under the NYCHRL.

To be clear, neither the PDA nor the ADA requires accommodations based on pregnancy absent an accompanying disability. The PDA prohibits employers from discriminating on the basis of pregnancy. Under the ADA, pregnancy itself is not a disability, so no reasonable accommodation is required for a pregnant employee. However, if complications arise from a pregnancy causing a physical impairment, the ADA's reasonable accommodations provisions may apply.

Several states outside of New York have already passed similar laws expressly requiring employers to reasonably accommodate pregnant employees, including Alaska, California, Connecticut, Hawaii, Louisiana, Maryland, and Texas, while other

proposed laws are pending in the New York State Legislature and U.S. Congress. Indeed, Maryland's new pregnancy discrimination law takes a step further than other jurisdictions—requiring employers to explore "all possible means of providing the reasonable accommodation," including the possibility of changing job duties completely. In comparison, the NYCHRL requires the employee to remain able to perform the essential requisites of the job. Additionally, unlike the NYCHRL amendment, the Maryland law considers pregnancy a "disability" for purposes of requiring accommodation.

What Employers Should Do Now

New York City employers should review their procedures and practices to ensure compliance with the NYCHRL, as amended. This may include:

- providing reasonable accommodation to employees due to pregnancy, childbirth, or related medical conditions, to the extent that they are not already doing so;
- monitoring the status of the issuance of the Commissioner's model written notice to be distributed to employees;
- if the model written notice is not provided prior to January 30, 2014, preparing a notice to distribute to employees;
- reviewing and updating reasonable accommodation policies and procedures; and
- training managers on how to handle accommodation requests.

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