

Baby Bump to Pregnant Employee Rights: Massachusetts Enacts Pregnant Workers Fairness Act

3 min read

Aug 3, 2017

In another effort to take aim at disparate treatment of women in the workforce, Massachusetts Governor Charlie Baker signed into law the Massachusetts Pregnant Workers Fairness Act on July 27, 2017. The new law takes effect on April 1, 2018.

The Act requires Massachusetts employers to provide pregnant women and new mothers with “reasonable accommodations” for their pregnancies and any conditions related to their pregnancies. The new Massachusetts law expands existing protections and provides express instructions on the types of accommodations employers are required to provide.

The law specifically prohibits employers from engaging in the following practices:

- denying a reasonable accommodation for an employee’s pregnancy or any condition related to the pregnancy, including, but not limited to, lactation, or the need to express breast milk for a nursing child;
- taking adverse action against an employee who requests or uses a reasonable accommodation;
- denying an employment opportunity to an employee, if such denial is based on the need of the employer to make a reasonable accommodation;
- requiring an employee affected by pregnancy or requiring said employee . . . to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of the job;
- requiring an employee to take a leave of absence if another reasonable accommodation may be provided; and
- refusing to hire a person who is pregnant because of the pregnancy or condition related to the pregnancy, provided that such person is capable of performing the essential functions of the position.

The new law includes the several other key provisions. First, it identifies a non-exhaustive list of “reasonable accommodations:”

- more frequent or longer paid or unpaid breaks

- time off to recover from childbirth with or without pay;
- acquisition or modification of equipment or seating;
- temporary transfer to a less strenuous or hazardous position;
- job restructuring;
- light duty work;
- private non-bathroom space for expressing breast milk;
- assistance with manual labor; or
- modified work schedules.

The law further provides that, an employer is not required to discharge any other employee, transfer any other employee with more seniority, or promote any employee who is not able to perform the essential functions of the job in order to provide the reasonable accommodations listed above. Furthermore, an employer is not required to provide a reasonable accommodation if the employer can prove the accommodation would create an “undue hardship” for the employer. “Undue hardship” is defined as an action requiring significant difficulty or expense. In assessing what constitutes an undue hardship, the following factors should be considered:

- the nature and cost of the accommodation needed;
- the overall financial resources of the employer;
- the overall size of the business of the employer;
- the number, type and location of its facilities; and
- the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

In connection with determining an effective reasonable accommodation, the employer and employee shall engage in a timely, good faith and interactive process. An employer may require that documentation about the need for a reasonable accommodation come from an appropriate health care or rehabilitation professional. However, an employer may not require documentation for accommodations including: more frequent restroom, food and water breaks; seating; and limits on lifting over 20 pounds.

Finally, employers are required to provide written notice of the right to be free from discrimination in relation to pregnancy or a condition related to the employee’s pregnancy. Notice shall be distributed by an employer in a handbook or other means to: new employees at the commencement of employment; existing employees on or before January 1, 2018; and an employee who notifies the employer of a pregnancy or a condition related to a pregnancy within 10 days of such notification.

What Employers Should Do and Know

1. Employers must revise handbooks to include written notice of the right to be free from discrimination in relation to pregnancy or a condition related to the employee’s pregnancy or create alternative material to be

distributed.

2. Employers must provide a revised handbook or handout to current employees on or before January 1, 2018 and any new employees at the commencement of their employment.

Finally, employers should be aware violations of the new law will expose them to back-pay and front-pay damages, punitive damages, emotional distress damages and the claimant's attorneys' fees under M.G.L. Chapter 151B.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

Undue Hardship, Discrimination, Massachusetts, Pregnancy Discrimination, Reasonable Accommodation, Pregnant Worker Protections, M.G.L. Chapter 151B, Massachusetts Pregnant Workers Fairness Act