



## District of Columbia Increases Protections for Pregnant Workers

Date: 12.17.2014

---

A new District of Columbia law will require employers to provide reasonable accommodations to employees affected by pregnancy, childbirth, breastfeeding, and related medical conditions and prohibit employers from requiring an employee to take leave if it is possible for the employee to continue working with reasonable accommodation.

The Protecting Pregnant Workers Fairness Act of 2014 (“PPWFA” or “Act”) is expected to take effect in early-January, after a 30-day congressional review period and publication in the District of Columbia Register. Although pregnancy-related medical conditions already are covered by the District of Columbia Human Rights Act (“DCHRA”), the District of Columbia Family Medical Leave Act (“DCFMLA”), and the Pregnancy Discrimination Act (“PDA”), as well as other federal laws, the new Act affirmatively provides for accommodation of pregnant workers. According to the committee report, the Act strives to “fill in statutory gaps, eliminate pregnancy discrimination, and promote the economic security and health of pregnant workers.”

### Existing Law

Under the DCHRA and the PDA, employers must treat women who are temporarily unable to perform their jobs because of a pregnancy- or childbirth-related medical condition the same way it treats other temporarily disabled employees. However, there is significant debate as to whether similar treatment includes reasonable accommodation of the pregnant employee, such as light duty or job-protected leave. (For example, see our article, [EEOC Releases Demanding New Pregnancy Discrimination Guidance](#).) Additionally, the DCFMLA provides employees up to 16 weeks of medical leave, including for pregnancy-related conditions, in a 24-month period.

### Employers Covered by New Law

The PPWFA covers all employers in the District of Columbia, regardless of size. It provides that employees needing accommodation related to pregnancy, such as limited time on their feet and frequent restroom breaks, also are entitled to those accommodations under the PPWFA.

Employers also must post a notice of employee rights under the PPWFA in a conspicuous place, in English and Spanish, and provide employees with written notice of their PPWFA rights upon hire or within 120 days of the PPWFA’s effective date.

### Reasonable Accommodations

Unless an employer can show that doing so would cause an undue hardship (significant difficulty or expense to the business), the PPWFA requires employers to engage in a good faith and timely interactive process to determine reasonable accommodations for an employee affected by pregnancy, childbirth, or related medical conditions. The interactive process is required when an employee requests a reasonable accommodation or “otherwise needs” one. An employer may require medical certification if the employer has the same certification requirement for temporarily disabled employees.

Examples of reasonable accommodations include:

more frequent or longer breaks,

time off to recover from childbirth,  
equipment modification,  
light duty, and  
having the employee refrain from heavy lifting.

The Act does not define “light duty.” The burden is on the employer to prove that a reasonable accommodation will cause undue hardship.

## Additional Prohibitions

The new Act also provides that an employer may not:

Refuse to make a reasonable accommodation without a showing of undue hardship;

Take an adverse action against an employee who requests or uses a reasonable accommodation. This includes failing to reinstate an employee who returns to work after taking time off because of pregnancy, childbirth, or a related medical condition. Employers must return the employee to her original job or to an equivalent position;

Deny employment opportunities to employees or applicants who require a reasonable accommodation under the Act;

Require an employee affected by pregnancy, childbirth, or related medical condition to accept an accommodation that the employee does not need to perform her duties; or

Require an employee to take leave if the employer can provide a reasonable accommodation instead.

## Enforcement

An employee who believes her employer has violated her rights under the PPWFA and seeks redress for that violation must file a complaint with the D.C. Department of Employment Services (“DOES”). Although DOES has not yet established administrative procedures for handling PPWFA complaints, the Act requires that DOES implement procedures similar to those used by the Office of Human Rights, the office that handles discrimination complaints under the DCHRA (i.e., investigation, dispute resolution and mediation, determination of probable cause, and a hearing before DOES should probable cause be found during the investigation).

If DOES determines that an employer has violated any part of the PPWFA, it may require the employer to provide affirmative remedies, such as back payment of wages resulting from the violation and reinstatement of the aggrieved employee. DOES also may order the employer to pay a penalty of up to \$500 for each day and for each employee as to whom the employer has violated the Act. It also may revoke or suspend the employer’s permits and licenses until the violation is corrected. Employers are subject to additional civil penalties for willful violations of the PPWFA; failing to post the notice of rights also results in civil penalties.

Additionally, unlike the DCHRA, it appears that an employee may file a lawsuit under the PPWFA against an employer only after first exhausting his or her administrative remedies. The PPWFA is silent on how long after an alleged violation an employee has to bring a private action against her employer, so D.C. Code § 12-301(8)’s three-year statute of limitations likely will apply to the PPWFA.

## What Should District of Columbia Employers Do?

The PPWFA is expected to take effect on January 6, 2015. Regulations implementing the Act, including procedures for an employer to prove undue hardship, are required within 60 days of the effective date (but experience counsels it will take much longer).

To prepare for and comply with the new Act, employers should consider the following steps:

Ensure that their equal employment opportunity (EEO) and reasonable accommodation policies cover pregnancy, childbirth, breastfeeding, and related medical conditions;

Update employee handbooks, and/or new hire forms provided to employees, to provide notice as required by the new Act;

Post a notice of employee rights that complies with the PPWFA upon its effective date. It is not clear whether DOES will issue a standard poster;

Analyze reasonable accommodation practices and capabilities, such as light duty and alternative work arrangements;

Establish procedures for handling reasonable accommodation requests under the PPWFA; and

Train managers and supervisors regarding procedures for identifying and responding to reasonable accommodation requests from pregnant employees.

Jackson Lewis attorneys are available to assist employers with questions about the new law's requirements and provide compliance assistance.

---

© 2014 Jackson Lewis P.C. This Update is provided for informational purposes only. It is not intended as legal advice nor does it create an attorney/client relationship between Jackson Lewis LLP and any readers or recipients. Readers should consult counsel of their own choosing to discuss how these matters relate to their individual circumstances. Reproduction in whole or in part is prohibited without the express written consent of Jackson Lewis P.C.

This Update may be considered attorney advertising in some states. Furthermore, prior results do not guarantee a similar outcome.

Jackson Lewis P.C. represents management exclusively in workplace law and related litigation. Our attorneys are available to assist employers in their compliance efforts and to represent employers in matters before state and federal courts and administrative agencies. For more information, please contact the attorney(s) listed or the Jackson Lewis attorney with whom you regularly work.

## practices

Disability, Leave and Health Management

---

## contact

Alta M. Ray

Teresa Burke Wright

jackson lewis p.c. © 2014