Illinois Issues Required Employer Posting and Fact Sheet under Pregnancy Accommodations Law

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Beginning January 1, 2015, the Illinois Human Rights Act ("IHRA") will offer additional protections for pregnant women in the workplace and additional responsibilities for employers with respect to their pregnant workers. On or before that date, employers must post information about the new protections in a conspicuous location and include that information in their employee handbooks, if any.

The Illinois Department of Human Rights published the required notice and a two-page fact sheet detailing the requirements of the new law. These documents can be found in English and Spanish on the Department's website. Employers may post the notice in English and Spanish, but they may not post the Spanish version in lieu of the English version.

Requirements

Under the new law, an employer must post in a conspicuous location, and include in any employee handbook that the employer maintains, the Department's notice summarizing the requirements of the new law and providing information relating to the filing of a charge with the Department, including the right to be free from discrimination and the right to certain reasonable accommodations.

The new Illinois law (consistent with current federal law) adds pregnancy to the IHRA's list of classes protected against discrimination. (The IHRA also covers race, color, religion, sex, and national origin, among other characteristics.) It defines "pregnancy" as "pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth."

Different and arguably greater obligations on businesses are imposed under the Illinois law than under federal laws, such as the Pregnancy Discrimination Act ("PDA") and the Americans with Disabilities Act ("ADA"), even after passage of the ADA Amendments Act ("ADAAA").

The new law requires employers to provide reasonable accommodations to employees (and job applicants) for any medical or common condition related to pregnancy or childbirth and makes it unlawful to fail to hire or otherwise retaliate against an employee or applicant for requesting such accommodations.

If an employer demonstrates the accommodation would impose an undue hardship on the "ordinary operation of the business of the employer," however, the employer need not provide the requested accommodation. "Undue hardship" is an action that is "prohibitively expensive or disruptive."

The new law defines reasonable accommodations as modifications or adjustments to the job application process, work environment, or circumstances under which a position is customarily performed. It provides a non-exclusive list of examples of reasonable accommodations, including:

- More frequent or longer bathroom breaks;
- Breaks for increased water intake;

- Breaks for periodic rest;
- Private non-bathroom space for expressing breast milk and breastfeeding;
- Seating accommodations;
- Assistance with manual labor;
- Light duty;
- Temporary transfer to a less strenuous or non-hazardous position;
- Acquisition or modification of equipment;
- Job restructuring;
- Part-time or modified work schedule;
- Appropriate adjustment or modifications of examinations or training materials;
- Assignment to a vacant position; or
- Providing leave.

The law specifies that employers are not required to create additional employment positions that the employer otherwise would not have created, unless the employer does so or would do so for other classes of employees who needed accommodations. Similar to the ADA, the new law mandates that both the employer and employee engage in a "timely, good faith, and meaningful exchange to determine effective reasonable accommodations."

The law prohibits employers from requiring that an employee or applicant accept an accommodation she did not request or from requiring that an employee or applicant accept the employer's accommodation.

Medical Certification

Under the new law, employers may require an employee to provide a certification from the employee's health care provider concerning the need for the requested reasonable accommodation to the "same extent" a certification is required for other conditions related to a disability. However, the law then states that an employer may require only the following information be included in a medical certification:

the medical justification for the requested accommodation(s);

a description of the reasonable accommodation(s) medically advisable;

the date the accommodation(s) became advisable; and

the probable duration of the reasonable accommodation(s).

Reinstatement

The new law requires employers to reinstate an employee affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth to her original job or to an equivalent position, unless the employer can demonstrate that doing so would impose an undue hardship.

What Should Illinois Employers Do?

Employers should:

- Post the new required poster/notice.
- Ensure compliance with the new law's handbook notice requirement.
- Review their policies, practices, and contractual agreements with respect to alternative work arrangements and restricted/light duty programs.

- Avoid “workers’ compensation light duty-only programs” that might exclude employees who are pregnant, or who have a medical condition related or commonly related to pregnancy or childbirth.

Other actions Illinois employers should consider:

- Reviewing with counsel their policies on reasonable accommodation;
- Reconsidering their policies and practices about obtaining medical certification; and
- Training managers and supervisors on procedures for responding to accommodation requests from pregnant employees.

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

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