

Delaware Mandates Pregnancy Accommodations

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Delaware Governor Jack A. Markell (D) has signed into law the Pregnant Workers Fairness Act, S.B. 212, extending workplace protections afforded to pregnant employees, and employees who have recently given birth, to include requiring employers provide reasonable accommodations to such employees.

The new law, signed on September 9, 2014, is effective immediately. Delaware joins a growing number of states, including New York, California and Maryland, requiring employers, when feasible, to provide an accommodation to pregnant employees.

The Act requires employers to make reasonable accommodations for the known limitations of pregnant employees, as long as the accommodation does not constitute an undue hardship for the employer. This is a significant extension of the Pregnancy Discrimination Act (PDA) in that it adopts the reasonable accommodation requirement of the Americans with Disabilities Act (ADA) and applies it to pregnant employees. Employers in Delaware must now make available to pregnant workers the same accommodations or benefits that are available to those with injuries or disabilities. Employers must abide by this new state law in addition to the PDA and ADA.

Accommodations

Under the Delaware law, employers are required to accommodate employees whose ability to work is limited by pregnancy, childbirth, lactation, and related conditions. Accommodations may include providing more frequent or longer breaks, modifying a no-food-or-drink policy, and providing periodic rest, light-duty assignments, temporary transfer to alternative position, a modified work schedule or job responsibilities, and appropriate facilities for expressing breast milk. In considering whether these accommodations would cause the employer an undue hardship, factors such as the nature and cost of the accommodation, the size of the employer's business, and the effect the accommodation would have on business operations should be considered.

Prohibitions

The new Delaware law prohibits employers from denying a job to a pregnant applicant based on the need for workplace accommodations, forcing a pregnant employee to take paid or unpaid leave when a reasonable accommodation that would allow her to continue working is available, and making changes to a pregnant employee's work when not necessary.

Employers should consider taking the following actions to comply with the new Delaware law:

- Review with counsel their policies on reasonable accommodations to ensure compliance;

- Review their policies, practices or contractual agreements with respect to alternative work arrangements, restricted/light duty programs, break periods and prohibiting food or drink; and

- Train managers and supervisors on responding to accommodation requests from pregnant employees.

Jackson Lewis attorneys are available to assist employers in their compliance efforts. If you have questions about this or other workplace issues, please contact Shareholder Stephanie Peet, at stephanie.peet@jacksonlewis.com, or Associate Katharine Thomas Batista, at katharine.thomas@jacksonlewis.com, in our Philadelphia office, (267)

319-7802, or the Jackson Lewis attorney with whom you regularly work.

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