

MASSACHUSETTS ESTABLISHES NEW PROTECTIONS FOR PREGNANT WORKERS

Date: 7 August 2017

Labor, Employment and Workplace Safety

By: Mark D. Pomfret, Kristi A. Nickodem

Massachusetts Governor Charlie Baker recently signed into law the Massachusetts Pregnant Workers Fairness Act ("MPWFA"), an act which expands the protection of Massachusetts's anti-discrimination statute to cover pregnancy and pregnancy-related conditions. Although the MPWFA will not take effect until April 1, 2018, it is important for employers in the Commonwealth to understand the scope of the law and to prepare to implement the MPWFA's new requirements.

The MPWFA prohibits employers from discriminating against, failing to hire, or terminating a woman because of her pregnancy or a condition related to her pregnancy. Under the new law, employers will be required to provide a reasonable accommodation for an employee's pregnancy and pregnancy-related conditions unless the employer can demonstrate that the employee's requested accommodation would pose an undue hardship to the employer. Additionally, employers are prohibited under the MPWFA from requiring an employee to take leave for a pregnancy or pregnancy-related condition if some other reasonable accommodation can be provided without undue hardship to the employer.

The MPWFA requires employers to engage in a timely, good faith interactive process with the employee to determine an effective reasonable accommodation. When an employee makes a request for a reasonable accommodation related to pregnancy, the employer may require documentation from an appropriate health care provider or rehabilitation professional except in certain designated situations. Specifically, an employer may not require documentation for the following accommodations: (1) more frequent restroom, food, or water breaks; (2) seating; (3) limits on lifting over 20 pounds; or (4) private non-bathroom space for expressing breast milk. In addition, the law prohibits employers from requiring a job applicant or employee to accept an accommodation related to pregnancy that the applicant or employee chooses not to accept.

The MPWFA also provides specific examples of reasonable accommodations that may be utilized, including (1) more frequent or longer paid or unpaid breaks; (2) paid or unpaid time off to attend to a pregnancy complication or to recover from childbirth; (3) acquisition or modification of equipment or seating; (4) temporary transfer to a less strenuous or hazardous position; (5) job restructuring; (6) light duty; (7) private non-bathroom space for expressing breast milk; (8) assistance with manual labor; or (9) a modified work schedule.

On or before April 1, 2018, employers must provide written notice to their existing employees of the right to reasonable accommodation for conditions related to pregnancy and the right to be free from discrimination on the basis of pregnancy and pregnancy-related conditions, including lactation. This notice must be provided to new employees at or prior to the commencement of employment. If any employee notifies her employer of her pregnancy or pregnancy-related condition, the employer must provide a copy of this notice within ten (10) days.

Employers should prepare for the MPWFA by revising existing handbook provisions regarding anti-discrimination and retaliation to specifically include protections for pregnancy and pregnancy-related conditions and by ensuring that a private non-bathroom space is available in the workplace for expressing breast milk. Furthermore, employers should review current policies and procedures to evaluate what reasonable accommodations can be made for pregnancy and pregnancy-related conditions, including additional breaks, adjusted seating, leave time, and modified work schedules.

While it remains unclear whether Massachusetts will provide accompanying regulations or further guidance regarding the MPWFA, there is no doubt that the statute itself will necessitate changes for virtually all employers in the Commonwealth.

KEY CONTACTS



MARK D. POMFRET
PARTNER
BOSTON
+1.617.261.3147
MARK.POMFRET@KLGATES.COM



KRISTI A. NICKODEM
ASSOCIATE
RALEIGH
+1.919.831.7054
KRISTI.NICKODEM@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.