

MA Pregnant Workers Fairness Act Goes Into Effect April 1, 2018

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As 2017 starts to wind down, Massachusetts employers should start reviewing and revising their employment policies and practices so they are prepared for the Massachusetts Pregnant Workers Fairness Act (PWFA), which goes into effect on April 1, 2018 and requires employers with six or more employees to provide written notice to their employees of their right to be free from pregnancy discrimination.

The PWFA amends the state's anti-discrimination statute, M.G.L. Chapter 151B, Section 4, to make pregnancy or a condition related to pregnancy a protected class. While state and federal law already require pregnant women to be treated the same as other employees for all employment-related purposes, the PWFA goes further by requiring employers to provide reasonable accommodations, such as job restructuring, time off, private non-bathroom space for expressing breast milk, and frequent or longer breaks, to employees because of their pregnancy or pregnancy-related condition. Employers and employees requesting accommodations must engage in a timely, good faith, interactive process to determine an effective, reasonable accommodation. While employers may require documentation from an appropriate health care or rehabilitation professional for the need for a requested accommodation, they may not require documentation for the following accommodations: more frequent food or water breaks, seating, limits on lifting more than 20 pounds, and non-bathroom space for expressing breast milk. Employers cannot retaliate against any employee who requests or uses an accommodation under the statute.

Employers may deny an accommodation by demonstrating that an undue hardship exists as a result of the nature and cost of the accommodation; the employer's overall financial resources; the employer's total number of employees and the number, type and location of the employer's facilities; and/or the effect of the accommodation on the employer's expenses and resources.

The PWFA also requires employers to provide written notice in a handbook, pamphlet or other means to all employees, including new employees, of their right to be free from discrimination related to pregnancy or a related condition. Importantly, the notice must be given again to an employee within 10 days of the employee notifying the employer of her pregnancy or a condition related to the pregnancy.

The Massachusetts Commission Against Discrimination (MCAD), which is tasked with enforcing Chapter 151B, should be issuing guidance on the statute before April. In the meantime, employers should review their existing policies and revise them as needed to ensure they comply with the PWFA, as well as train hiring managers and other supervisors on the new protections provided by the law, including the need to provide an employee with notice of her PWFA rights within 10 days after she notifies the employer she is pregnant or has a condition related to her pregnancy.

Authors



Gauri P. Punjabi, Associate