

## Newly Passed “Pregnant Workers Fairness Act” Requires Employers to Take Additional Steps

On July 27, 2017, Governor Charlie Baker signed the Massachusetts Pregnant Workers Fairness Act (“MPWFA”), which expands legal protections for employees who are pregnant or experiencing related health conditions. The new law will amend the existing Massachusetts anti-discrimination statute, M.G.L. c. 151B, by prohibiting workplace discrimination based on pregnancy and requiring employers to accommodate conditions related to pregnancy.

### What you need to know:

**The MPWFA covers all employers who have at least six employees and goes into effect on April 1, 2018.**

Pregnant employees already have certain protections under current state and federal law, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Massachusetts Parental Leave Law, and Massachusetts General Law Chapter 151B (“Chapter 151B”). The MPWFA expands these protections by requiring almost all employers to provide reasonable accommodations for pregnancy and related conditions, such as nursing, to any worker who requests them.

When an employee or prospective employee requests an accommodation, the employer is required to “engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation.” The act sets forth a non-exhaustive list of reasonable accommodations, including:

- more frequent or longer breaks;
- time off for recovering from childbirth or attending to pregnancy complications (paid or unpaid);
- modification of equipment or seating;
- private non-bathroom space for expressing breast milk;
- temporary transfer to a less strenuous position;
- job restructuring;
- light duty work;
- assistance with manual labor; and
- a modified work schedule.

Employers may not deny an accommodation unless providing for it would cause an undue hardship to the business. This is a narrow exception and the employer bears the burden of demonstrating that the proposed action would require “significant difficulty or expense.” Some factors considered in making an undue hardship determination include the nature and cost of the accommodation, the financial resources of the employer, and the overall size of the business, taking into account the number of employees and the number, type, and location of the facilities. In addition, employers will no longer be permitted to require documentation from a health care professional regarding certain common requests, such as more frequent restroom, food, and water breaks, limits on lifting more than twenty pounds, and providing seating and private non-bathroom space for expressing breast milk. Employers may request documentation for other types of accommodation or for extensions of accommodations beyond those originally agreed upon.

The MPWFA makes it unlawful for employers to discriminate against pregnant employees or potential hires. More specifically, employers cannot: take any adverse action against employees who request reasonable accommodations; refuse to hire employees who are able to perform the essential functions of the job with reasonable accommodation; or require employees to take pregnancy leave or accept any unwanted accommodations. In addition, the act expressly adds “pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child” to the list of protected classes under Chapter 151B, which makes discrimination or retaliation against certain groups of people unlawful. As a result, violators of the MPWFA are subject to all of the remedies provided under Chapter 151B: injunctive relief, actual and punitive damages, and attorneys’ fees and costs.

Finally, employers are required to distribute a written notice of employees' rights under the MPWFA, including the right to reasonable accommodations and the right to be free from discrimination based on pregnancy or related conditions. This notice should be contained in a handbook or pamphlet and must be distributed to all employees no later than April 1, 2018. Employers must also provide notice to all new employees at the time of hire, as well as to any employees that become pregnant within ten days of being notified of the pregnancy or related condition.

### What you need to do:

Employers should be prepared to engage in an interactive process to determine effective reasonable accommodations in a timely manner. This will likely require additional training for human resources, management, and recruiting personnel on how to properly handle accommodation requests made by existing employees and potential new hires. These managers should be familiar with the anti-discrimination mandate, as well as examples of reasonable accommodations.

Employers should update their employee handbooks and other documents that describe firm policies to include notice of employees' rights under the MPWFA and be prepared to distribute these materials to all employees no later than April 1, 2018. Employers should also educate their human resources personnel regarding the MPWFA's ongoing notice requirements for new hires and pregnant employees. Finally, employers should review, and if necessary, update their firm policies concerning leave, attendance, and breaks to ensure they are compliant with the MPWFA.

### For More Information

If you have any questions regarding compliance with the new requirements, please contact:

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