MANDATED NOTICE TO EMPLOYEES

Massachusetts Pregnant Workers Fairness Act

Effective April 1, 2018, Massachusetts has amended and expanded M.G.L. c. 151B, § 4, Massachusetts' anti-discrimination law, by prohibiting pregnancy-related discrimination in the workplace and in hiring. Applicable to employers having six (6) or more employees, the Act sets forth protections for employees who are pregnant and/or experiencing a pregnancy-related condition, "including, but not limited to, lactation or the need to express breast milk for a nursing child."

PROHIBITIONS UNDER THE ACT:

The Act prohibits an employer from:

(a) taking an adverse action against an employee requesting or using a reasonable accommodation, including but not limited to failing to reinstate to an equivalent position with equivalent compensation, benefits and seniority when accommodation for pregnancy or a pregnancy-related condition is no longer needed;
(b) denying an employee an employment opportunity due to the need for reasonable accommodation of pregnancy or a pregnancy-related condition;
(c) requiring a pregnant employee or an employee with a pregnancy-related condition to accept an accommodation that the employee chooses not to accept, if such accommodation is not necessary for the employee to perform essential job functions;
(d) requiring a pregnant employee or an employee with a pregnancy-related condition to take a leave if another reasonable accommodation may be provided, without undue hardship on the employer's program, enterprise or business; and
(e) refusing to hire a candidate for employment because of the candidate's pregnancy or pregnancy-related condition, provided that the candidate is capable of performing essential job functions with or without reasonable accommodation not imposing an undue hardship on the employer's program, enterprise or business.

REASONABLE ACCOMMODATION VERSUS UNDUE HARDSHIP

"Reasonable Accommodation" is defined by the Act as including, but not being limited to:

(a) more frequent, longer paid or unpaid breaks;
(b) time off to attend to a pregnancy complication or recover from childbirth, with or without pay;
(c) acquisition or modification of equipment or seating;
(d) temporary transfer to a less strenuous or less hazardous position;
(e) job restructuring;
(f) light duty;
(g) private, non-bathroom space for lactation/expression;
(h) assistance with manual labor; or
(i) a modified work schedule; provided that an employer shall not be required to discharge or transfer a more senior employee with more seniority or promote an employee not able to perform essential job functions with or without a reasonable accommodation.

Upon a request for an accommodation from an employee or candidate for employment capable of performing essential job functions, the employee/candidate and the employer must "engage in

a timely, good faith and interactive process to determine an effective, reasonable accommodation" to enable the employee or candidate to perform essential job functions.

An employer may deny a request for accommodation if the employer can demonstrate that the requested accommodation would impose an undue hardship, which the Act defines as an action requiring "significant difficulty or expense." Such an analysis turns on:

(1) the nature and cost of an accommodation;
(2) the employer's overall financial resources;
(3) the overall size of the employer's business relative to the number of employees and the number, type and location of facilities; and
(4) the impact of the accommodation on the employer's expenses, resources, or program.

DOCUMENTATION FROM HEALTH CARE PROVIDER

Employers are permitted under the Act to require "appropriate health care provider or rehabilitation professional"[1] documentation regarding the need for or extension of most requested accommodations, with the express exclusion of:

(1) more frequent restroom, food or water breaks;
(2) seating;
(3) limits on lifting more than twenty (20) pounds; and
(4) private, non-bathroom space for expressing breast milk.

An employer may not require medical documentation regarding the need for these enumerated accommodations.

VI. CLAIMS AND REMEDIES

Employees may pursue discrimination claims relating to pregnancy or a pregnancy-related condition, including but not limited to lactation/expression, just as they would any other discrimination claim M.G.L. c. 151B, § 4. Damages, attorneys' fees, costs and injunctive relief are available remedies.

The Act does not "preempt, limit, diminish or otherwise affect" any other laws relating to sex discrimination, pregnancy, or pregnancy-related conditions, including but not limited to lactation/expression, such as G.L. c. 149, § 105D. Employees who believe that they have been discriminated against due to pregnancy or a pregnancy-related condition may file a formal complaint with MCAD within 300 days of the discriminatory conduct. If the conduct violates the federal Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964, a formal complaint may also be filed with the Equal Opportunity Commission within 300 days of the discriminatory conduct.

[1] "Appropriate health care provider or rehabilitation professional" is defined under the Act as including, but not being limited to, "a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health professional authorized to perform specified mental health services."