



LEGAL ALERT: THE PROTECTING PREGNANT WORKERS FAIRNESS ACT OF 2014

Introduction

On March 3, 2015, the Protecting Pregnant Workers Fairness Act of 2014 (the “Act”) went into effect in the District of Columbia, providing new legal protections to employees whose ability to perform their jobs is affected by pregnancy, childbirth, related medical conditions, or breastfeeding.

Among the new act’s key provisions are a requirement that employers provide reasonable accommodations to workers with pregnancy-related conditions. The Act also prohibits an employer from requiring an employee take a leave of absence if the employer can provide a reasonable accommodation to the employee.

Under the Act, the D.C. Government is required to issue implementing regulations within 60 days of the Act’s effective date.

What are an Employer’s Obligations?

The Act covers all employers in the District of Columbia, regardless of size. Under the new legislation, employers must take affirmative steps to accommodate employees facing pregnancy-related restrictions on their ability to work, and are also expressly prohibited from taking certain actions in

regard to those employees. The new law seeks to fill in gaps in existing D.C. and federal laws, which mandate that employers may not treat pregnant employees differently from other employees, but do not require reasonable accommodations.

Reasonable Accommodation

Employers must now offer reasonable accommodation to employees whose ability to perform their job is restricted by pregnancy, childbirth, pregnancy- or childbirth-related medical conditions, or breastfeeding. Such accommodation may include:

- Permitting pregnant or breastfeeding employees to take longer and more frequent breaks;
- Giving employees who have recently given birth time off to recover;
- Providing modified seating or equipment;
- Having the employee refrain from heavy lifting;
- Relocating the employee’s work area;
- Temporarily transferring an employee to a less strenuous or hazardous position; and
- Providing private, non-bathroom space for expressing breast milk.

The law requires that employers engage in a “timely and interactive process” with employees who request “or otherwise need” a reasonable accommodation in order to determine what type of accommodation is needed. Employers may require workers requesting accommodations to provide a detailed certification from a health-care provider that includes:

- A statement of the employee’s medical condition that describes the medical advisability of the accommodation;
- The date by which the employee will need the accommodation; and
- The length of time for which the accommodation will be needed.

The employer must provide the accommodation unless the employer can prove that the accommodation would create an “undue hardship” for the employer.

“Undue Hardship” Defined

The Act defines “undue hardship” as any action that causes significant difficulty in the operation of the employer’s business or significant expense on the employer’s behalf when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation.

- For example, a very small business in which three employees work in a single, small public area might successfully argue that a requirement to provide a private room for a breastfeeding employee would pose an undue hardship because of the expense and difficulty of locating and renting additional space to provide such a room. In contrast, a large company with ample private space

would likely not meet the “undue hardship” standard in such case.

Additional Prohibitions

In addition to the prohibition against denying a reasonable accommodation request except where undue hardship can be established, employers are also prohibited from:

- Retaliating against an employee who requests or uses a reasonable accommodation, including by failing to reinstate the employee to the employee’s original job (or an equivalent job with equivalent pay, accumulated seniority and retirement, benefits, and other applicable service credits) once the need for the accommodation ends;
- Denying employment opportunities to an employee or job applicant if the denial is based on the need of the employer to make reasonable accommodations to known limitations relating to pregnancy, childbirth, related medical conditions, or breastfeeding;
- Requiring an employee to accept an accommodation that the employee does not need; or
- Requiring an employee to take leave if a reasonable accommodation can be provided.

Notice of Rights

Employers are required to post a notice of employees’ rights under the Act in both English and Spanish in a conspicuous workplace location. Additionally, employers must provide new employees with written notice of their rights under the Act at the time of hiring, and must provide existing employees with notice of their rights within

120 days of the law's effective date. Employees who inform their employer of their pregnancy must be provided with the notice within 10 days of the notification. Any employee who does not speak Spanish or English must receive an accurate written translation of the notice.

How is the Act Enforced?

Employees seeking redress under the Act must file a complaint with the Department of Employment Services (DOES), which will establish administrative procedures for handling complaints. The procedures will include an investigation of the complaint and an attempt to resolve it first through conference or mediation or, if this is unsuccessful, through a DOES hearing. Determinations made through DOES may be appealed through the Office of Administrative Hearings. Aggrieved employees may also file a civil action.

What are the Penalties for Failure to Comply?

Both DOES and the courts may order a range of remedies if an employer is found to be in violation of the Act, including:

- Back pay for lost wages;
- Reinstatement of the employee to his/her original position;
- Reasonable attorneys' fees and related costs; and
- Penalties for willful violations.

DOES may also assess civil penalties for non-willful violations of the Act and can revoke or suspend the business license of an employer that violates the Act.

What Steps Should I Take as an Employer?

Employers should take the following actions to ensure compliance with the Act:

- 1) Amend employment policies to provide that employees can seek reasonable accommodations to deal with pregnancy, childbirth, related medical conditions, and breastfeeding;
- 2) Create notices to inform employees, and post and distribute as appropriate (it is not yet clear when DOES will issue a standard poster);
- 3) Develop procedures for handling requests for reasonable accommodation;
- 4) Analyze the workplace to establish possible accommodations in advance; and
- 5) Educate and train managers and supervisors on how best to identify and respond to reasonable accommodation requests.

Additional Resources

- [Protecting Pregnant Workers Fairness Act of 2014](#)

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