



Pregnancy Accommodation Legislation - A Patchwork Employers Must Carefully Monitor

Insights

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Is Pennsylvania going to join the ranks of states and municipalities requiring employers to provide reasonable accommodations to pregnant employees? Senate Bill 1209, which was recently introduced and referred to committee, is intended to do precisely that; a similar piece of legislation has been introduced in the Pennsylvania House of Representatives. Under the proposed Senate bill, employers with “four or more” employees in Pennsylvania would be required to provide “[a]n accommodation for as long as necessary to enable an employee to continue working despite limitations due to pregnancy, childbirth or related medical conditions that does not present an undue hardship. . . .” The example accommodations identified in the proposed Senate bill range from “[p]roviding a chair” or “access to drinking water” to “[t]emporary job restructuring” or a “modified work schedule.” At this time, there is some uncertainty over whether the pregnancy accommodation bill introduced in the Pennsylvania Senate will be passed and signed into law.

While the fate of the pregnancy accommodation bill in Pennsylvania is less than clear, it demonstrates a growing legislative trend at the state and local level. Both New York City and Philadelphia, for example, have passed and are in the process of implementing pregnancy accommodation laws. In addition to the accommodation obligation, the law in Philadelphia also includes a notification component requiring employers to either provide written notice to employees about the protections under the law or conspicuously post the notice at the employer’s place of business in an area accessible to employees. Outside the local level, in New Jersey Governor Christie recently signed into law legislation that added pregnancy to the list of protected categories under the state’s anti-discrimination law, and obligates employers to provide reasonable accommodations to pregnant women and those who suffer from medical conditions relating to pregnancy and childbirth. As the above demonstrates, in only a small portion of the northeast corridor, one state and two very large cities have enacted pregnancy accommodation laws. Employers should continue to expect to see similar legislation being introduced and passed at the state and local level.

The driving force behind pregnancy accommodation laws is filling a perceived gap that currently exists under federal law. The Americans with Disabilities Act contains an accommodation requirement, but not all pregnant women are “disabled” as that term is defined under the ADA and the related regulations. Likewise, the Pregnancy Discrimination Act precludes discrimination in the workforce against pregnant women, but does not include an accommodation component. The end

...protection against pregnant women, but does not include an accommodation component. The end result is that employers, under federal law, currently are not in all instances required to provide accommodations to pregnant employees. Rather than waiting for Congress to legislatively fix this gap (legislation has been introduced at the federal level, but has not yet received significant traction), states and municipalities have taken it upon themselves to do so. The end result is a patchwork of laws at the state and local level imposing differing accommodation obligations on employers. While many of the accommodations typically identified under the various versions of the pregnancy accommodation laws, such as providing access to drinking water or a chair, are commonsense things, a few others, temporary job restructuring for example, are a bit more burdensome for employers. The lesson for employers is that they should stay on top of this legislative trend, and consider preemptively changing their internal employment policies to provide accommodations to pregnant employees to avoid the tripwires created by the inconsistent landscape of pregnancy accommodation laws.