



Colorado Employers Face New Pregnancy Accommodation Law

Insights

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Colorado Governor John Hickenlooper signed new antidiscrimination protections for pregnant applicants and employees into law on June 1. This addition to Colorado's Anti-Discrimination Act (CADA) will soon require employers to provide reasonable accommodations to pregnant applicants and employees upon request, or face discrimination claims if they fail to do so or otherwise discriminate against those making such a request. Here are a series of FAQs to help you better understand the new obligations that will soon be in effect.

Who is protected?

Unlike existing state law and the federal Americans with Disabilities Act (ADA) which only protect individuals with "disabilities," the new law protects individuals with "conditions related to pregnancy, childbirth, or a related condition" without requiring that the conditions be disabling.

What do we need to do if we receive a request?

If an applicant or employee requests an accommodation, you must engage in a timely, good-faith, and interactive process to determine effective, reasonable accommodations and accommodate the individual unless the accommodation would impose an undue hardship.

What are "reasonable accommodations?"

"Reasonable accommodations" are defined in the law by listing examples:

- more frequent or longer break periods;
- more frequent restroom, food, and water breaks;
- acquisition or modification of equipment or seating;
- limitations on lifting;
- temporary transfer to a less strenuous or hazardous position if available, with return to the current position after pregnancy;
- job restructuring;
- light duty, if available;
- assistance with manual labor; or
- modified work schedules.

What undue hardships might exist that would allow us to deny a request?

The law borrows the definition of “undue hardship” used in the ADA. You can deny a request if it requires “an action requiring significant difficulty or expense to the employer.” You are not required to hire new employees, discharge an employee, transfer a more senior employee, or promote another employee not qualified to perform the new job in order to accommodate an individual.

Also, you do not need to create a new position for the employee requesting accommodation unless a light duty position would be provided to “another equivalent employee.” Nor are you required to provide paid leave beyond the leave that is provided to “similarly situated employees.”

The terms “another equivalent employee” and “similarly situated employees” are not yet defined but will likely be interpreted to mean employees in similar job positions, with similar seniority, and similar restrictions on their ability to perform the essential functions of their jobs.

What is prohibited under the law?

Under the new law, you may not take adverse action against an applicant or employee who requests, uses, or needs a reasonable accommodation related to the worker’s pregnancy, physical recovery from childbirth, or a related condition. The law defines “adverse action” as an action a reasonable employee would find “materially adverse such that it might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”

This is the same definition of retaliation for filing a charge of discrimination, and may have been borrowed in order to incorporate the body of law that has developed over what constitutes adverse action in that situation.

The law also prohibits you from requiring applicants or employees to accept an accommodation they have not requested or one they do not need to perform the job’s essential functions. For example, you cannot require employees to take leave if you can provide another reasonable accommodation.

Who is covered by the new law?

The law will apply to employers with one or more employees – in other words, all employers in the state of Colorado.

When will the new law go into effect?

The effective date of the new law is August 10, 2016.

If you have any questions about this new law or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Denver office at 303.218.3650.

This Legal Alert provides an overview of a specific Colorado state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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Susan M. Schaecher

Senior Counsel

303.218.3650

[Email](#)

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