



# Massachusetts Finalizes New Pregnancy Workplace Law: What to Expect When Your Employees Are Expecting

Insights

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Massachusetts just joined 21 other states and the District of Columbia by enacting a comprehensive pregnancy workplace law with unanimous support from the legislature, employee advocates, and the Massachusetts business community. Today, Governor Charlie Baker signed the Pregnant Workers Fairness Act (PWFA), which will take effect (appropriately enough) in about nine months – on April 1, 2018.

At its heart, the PWFA 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 the Commonwealth’s anti-discrimination act, but the law goes further than that – it also requires employers to provide reasonable accommodations when appropriate. Massachusetts employers will need to prepare for some changes to their policies and practices in order to comply with this new law.

## What To Expect

The PWFA will make it illegal for an employer to deny a reasonable accommodation for an employee’s pregnancy, or any condition related to her pregnancy, including lactation or the need to express breast milk. It also bars retaliation against an employee who requests or uses such accommodation. Likewise, employers cannot deny any employment opportunity, such as promotions, transfers, etc. or refuse to hire a pregnant applicant on account of the pregnancy.

Several examples of potential reasonable accommodations are provided in the PWFA:

- more frequent or longer paid or unpaid breaks;
- time off to recover from childbirth with or without pay;
- acquisition or modification of equipment or seating;
- temporary transfer to a less strenuous or hazardous position;
- job restructuring;
- light duty work;
- private non-bathroom space for expressing breast milk;
- assistance with manual labor; and

- a modified work schedule.

Upon notice from an employee that she is pregnant and seeking an accommodation, you must engage in an interactive process to determine an effective and reasonable accommodation for the employee. Only where an accommodation would cause you an undue hardship may you deny the accommodation request. It is your burden to prove that an undue hardship exists, and the PWFA includes five factors that will be considered when making such a determination: the nature and cost of the accommodation; the financial resources of the employer; the number of employees; the number, type, and location of the employer's facilities; and the effect on expenses and resources on the employer's business.

### **Isn't Pregnancy Discrimination Already Illegal?**

Although both state and federal law prohibit the discrimination "because of or on the basis of pregnancy," those laws only require that pregnant women be treated "the same for all employment-related purposes." They do not provide for any accommodations if such workplace modifications are not provided for similarly situated male employees. Likewise, while the federal Americans with Disabilities Act (ADA) already covers pregnancy-related disabilities such as gestational diabetes, pregnancy alone is not considered a disability under the federal law unless it causes a physical or mental impairment that substantially limits one or more major life activities. The new Massachusetts law will take it a step further.

### **How Should Businesses Respond?**

In anticipation of the law's effective date, which will be here before you know it, you should prepare to take the following steps to make sure you stay on the right side of the law:

- You should avoid questioning employees and job applicants about their marital status, family planning, or pregnancy. This is not new – these types of questions could already lead to discrimination claims under Title VII and existing state anti-discrimination laws, but this advice is worth repeating given the new focus that will soon be on pregnancy discrimination issues.
- You must be prepared to participate in the interactive process in good faith. You should train your managers and your HR staff on compliance with the PWFA.
- You should update your handbook and policies to comply with the law's new requirements; for example, the PWFA requires that you provide notice to your employees of their right to be free from pregnancy discrimination by January 1, 2018. You should likewise consider implementing a policy to comply with the law's notice and medical documentation requirements.
- The law also requires you to distribute revised handbooks and policies to all new employees at the beginning of their employment or before they begin, and again to an employee within 10 days' notification to you that she is pregnant or has a condition related to pregnancy.

### **When Is The New Law "Due"?**

Like a newborn itself, the PWFA will take effect on April 1, 2018, approximately nine months from its enactment. Massachusetts employers are encouraged to be on the lookout for guidance from the

enactment. Massachusetts employers are encouraged to be on the lookout for guidance from the Massachusetts Commission Against Discrimination, and to review their handbooks and policies in advance of this deadline.

If you have any questions about this new law, please contact any attorney in the Boston office of Fisher Phillips at 617.722.0044.

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

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**Joshua D. Nadreau**  
Regional Managing Partner and Vice Chair, Labor Relations Group  
617.722.0044  
[Email](#)

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