



New Jersey Now Bans Breastfeeding Discrimination

Insights

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New Jersey Governor Chris Christie began his final week in office by signing 40 bills into law, including an amendment to the New Jersey Law Against Discrimination that immediately bars discrimination against breastfeeding employees. The new law also requires employers to provide such employees with reasonable accommodation. New Jersey employers should take steps to familiarize themselves with the new legal requirements and adjust policies and practices to ensure compliance.

The Basics

Under the amendment, signed into law on January 8 and effective immediately, you may not refuse to hire breastfeeding applicants, and are barred from firing them or otherwise discriminating against them in compensation and other terms, conditions, or privileges of employment on the ground that they are breastfeeding. You are likewise prohibited from treating women employees you know or should know are “affected by breastfeeding” less favorably—for example, with respect to workplace accommodation and leave policies—than employees not so affected but similar in their ability or inability to work.

Accommodations Required

You must also provide breastfeeding employees with reasonable accommodation, unless you can show this would impose an “undue hardship” on your business. The accommodation must include a reasonable break time each day and a private location near the work area (but not a toilet stall) for the employee to express breast milk for her child.

The factors considered in determining whether an accommodation would be an undue hardship include:

- the overall size of your business with respect to the number of employees, number and type of facilities, and size of the budget;
- the type of your operations, including the composition and structure of your workforce;
- the nature and cost of the accommodation, taking into consideration the availability of tax credits, tax deductions, and outside funding; and
- the extent to which the accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

Potentially Broader Coverage Than Federal Law

Since 2010, the federal Fair Labor Standards Act (FLSA) has had similar requirements, but there are some notable differences from New Jersey's new law. For example, the FLSA provision applies only to FLSA-covered employers and non-exempt employees, while the New Jersey law covers all employers and employees in the state. The FLSA provision requires breastfeeding breaks only through the child's first year, but the New Jersey law has no such limitation. And while the FLSA provision's undue hardship exception applies only to employers with fewer than 50 employees, the New Jersey law excuses any employer who can demonstrate undue hardship.

You are obligated to comply with whichever law, federal or state, provides greater protection to an employee in a particular case.

What Should New Jersey Employers Do Now?

You have no time to lose when it comes to complying with New Jersey's requirements, because they take effect immediately. Even if you have incorporated the federal requirements into your policies and practices, managerial training, written policies and handbooks, and overall compliance efforts, all should be reviewed and updated to ensure compliance with New Jersey law.

If you have any questions, please contact any member of our [New Jersey office](#) or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a new 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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