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New Jersey Expressly Protects Pregnancy, Requires Reasonable Accommodation

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On January 21, 2014, Governor Chris Christie signed S2995 to amend New Jersey's Law Against Discrimination (LAD) by expanding protections against discrimination for employees affected by pregnancy. The amendment, which is similar to a recent New York law and other state laws, takes effect immediately.

In addition to making pregnancy a protected characteristic under the LAD, the amendment expressly requires that an employer provide reasonable accommodation to an employee based upon pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, including recovery from childbirth (hereinafter, "pregnancy-related conditions"), when the employee requests the accommodation based on the advice of her physician. The amendment also prohibits an employer from penalizing an employee for requesting or using an accommodation.

Reasonable accommodations under the new law include (but are not necessarily limited to) bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work.

Despite these protections, employers can refuse to provide a pregnant employee with a reasonable accommodation if it would constitute an undue hardship. To assess whether a request imposes such hardship, the amendment sets forth the following factors:

- the overall size of the employer's business (including the number of employees, number and type of facilities, and budget size);
- the type of the employer's operations (including the composition and structure of the employer's 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 waiving an essential job requirement (as opposed to a tangential or nonbusiness necessity requirement).[1]

With respect to remedies, the amendment affords aggrieved employees a full range of legal and equitable relief, including compensatory and punitive damages, reinstatement, and attorney's fees.

Takeaway

It is worth noting that Title VII of the Civil Rights Act of 1964, as amended, already prohibits discrimination based on pregnancy. Moreover, New Jersey courts have interpreted the LAD to prohibit employers from discriminating against employees on account of pregnancy as gender-based discrimination. And, employees suffering from pregnancy-related medical conditions may qualify for disability protection and accommodation under the LAD or the Americans with Disabilities Act. The amendment, however, provides new protections to pregnant employees by expanding the circumstances for which accommodations might be required. Given this development, employers in New Jersey should revisit their personnel policies and procedures on pregnancy and make any necessary changes.

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If you have any questions or concerns regarding the amendment, please contact your Proskauer lawyer.

[1] The New Jersey Administrative Code lays out the same factors to determine whether accommodation of a disability imposes an undue hardship. N.J.A.C. 13:13-2.5(b)(3).

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