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Philadelphia Latest to Protect Pregnancy, Require Reasonable Accommodation

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Philadelphia recently amended the city's fair practices ordinance to expand the protections against discrimination for employees based on pregnancy, childbirth, or a related medical condition. The amendment, which is similar to recent laws passed in New York and New Jersey, took effect on January 20, 2014.

The amendment explicitly classifies discrimination based on pregnancy, childbirth, or a related medical condition as sex-based discrimination. It also expressly requires that an employer provide reasonable accommodation to an employee based upon pregnancy, childbirth, or a related medical condition, when the employee makes such a request. In addition, the amendment prohibits employers from retaliating or otherwise discriminating against employees for exercising their rights under the law.

Reasonable accommodations under the amendment include (but are not necessarily limited to) restroom breaks, periodic rest for those who stand for long periods of time, assistance with manual labor, leave for a period of disability arising from childbirth, reassignment to a vacant position, and job restructuring.

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

- the nature and cost of the accommodation;
- the overall financial resources of the employer's facility (or facilities) involved in the accommodation (including the number of employees at the facility, the effect on expenses and resources, or any other impact of the accommodation on employer operations);

the overall financial resources of the employer (including the number of employees and the number, type, and location of its facilities); and

- the type of operation or operations of the employer (including the composition, structure, and functions of the workforce, as well as the geographic separateness or the administrative or fiscal relationship of the facility (or facilities) to the employer).

Employers also must provide a written notice (in a form and manner to be determined by the Philadelphia Commission on Human Relations) of the right to be free from discrimination on the basis of pregnancy, childbirth, or a related condition to all new and existing employees by April 20, 2014. The Ordinance further provides that employers *may* post the notice in an area accessible to employees. In addition, the Commission is tasked with devising training programs to inform employers and the public of the rights and obligations under the amendment.

Also note that should the employer commit an "unlawful employment practice," aggrieved employees may seek a full range of legal and equitable relief, including compensatory and punitive damages, reinstatement, and attorney's fees.

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To comply with the law, employers in Philadelphia should train managers on how to reasonably accommodate women based on pregnancy, childbirth or a related medical condition, and should take steps to satisfy the new notice obligations by April 20, 2014. If you have any questions or concerns regarding the amendment, please contact your Proskauer lawyer.

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