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New York City Expressly Requires Reasonable Accommodation of Pregnant Employees, Adds Notice Obligations

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On October 2, 2013, New York City Mayor Michael Bloomberg signed Int. No. 974-2012A to amend the New York City Human Rights Law (NYCHRL) by expanding protections against discrimination for pregnant employees. The NYCHRL,[1] as construed by the courts, already prohibits discrimination based on pregnancy and related conditions as gender-based discrimination. And, although certain pregnancy-related medical conditions must be accommodated as a disability under existing NYCHRL, the amendment now more broadly requires that employers[2] provide a reasonable accommodation to an employee based on the needs of her pregnancy, childbirth or a related medical condition (hereinafter, "pregnancy and related conditions").[3] The amendment takes effect on **January 30, 2014**.

The amendment defines the term "reasonable accommodation" as an accommodation that does not cause the employer an "undue hardship." The employer bears the burden of proving an undue hardship, and, to assess whether a request imposes such a hardship, the amendment recommends a multifaceted evaluation that includes the following four factors:

- the nature and cost of the accommodation;
- the overall financial resources of the facility or facilities involved in the request, the number of persons employed at the facility, the effect on expenses and resources, or any other impact of the accommodation on the operation of the facility;
- the overall financial resources of the employer and size of the business (with respect to 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; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

Employers must provide a written notice (in a form and manner to be determined by the New York City Commission on Human Rights (NYCCHR)) of the right to be free from discrimination on the basis of pregnancy or a related condition. Although the NYCCHR has not yet released the form of notice, employers will have to distribute it to new employees at the start of employment, and to existing employees within 120 days of the effective date of the new law. The amendment encourages, but does not require, employers to post the notice in a conspicuous place. In addition, the NYCCHR is tasked with devising training programs to inform employers and the public of the rights and obligations recognized by the amendment.

An employee aggrieved by an act of discrimination in violation of the amendment has a private right of action against her employer that could result in significant liability, including punitive damages and attorneys' fees under the expansive penalty provisions of the existing NYCHRL.

Takeaway

Although the definition of "reasonable accommodation" has yet to be tested under the new law, it is clear that New York City employers will be expected to facilitate the healthy pregnancies of their employees. As the legislative findings indicate, employers should be prepared to accommodate (to the extent not done already) such requests as increased bathroom breaks; leave for a period of disability arising from childbirth; breaks to facilitate increased water intake; periodic rest for those who stand for long periods of time; and assistance with manual labor.

Given the generous remedies available to aggrieved employees under the NYCHRL, the stakes are high. Employers in New York City should revisit their policies and procedures and make any necessary changes. Employers also need to ensure that they comply with the notice requirements of the amendment. If you have any questions or concerns regarding the amendment, please contact your Proskauer lawyer. [1] In addition, Title VII of the Civil Rights Act of 1964, as amended, expressly prohibits discrimination based on pregnancy. The New York State Human Rights Law also has been construed by courts to forbid such discrimination. If ultimately passed, Governor Cuomo's "Women's Equality Act" would create protections at the State level that parallel the City amendment; however, that proposed law stalled in the New York State Legislature in June of this year.

[2] The NYCHRL defines "employer" as having four or more employees. Individuals employed as independent contractors who are not themselves employers also are counted as employees under the law.

[3] For the protections to be triggered, the pregnancy or related condition must be known by or should have been known by the employer. It is an affirmative defense in favor of an employer that the employee, even with reasonable accommodation, could not satisfy the essential requisites of her job.

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