

Client Alert

Massachusetts, Connecticut and San Francisco Expand Protections for Pregnant Workers

Three jurisdictions will expand protections for workers due to pregnancy and related conditions, including lactation or the need to express breast milk for a nursing child. The Massachusetts Legislature passed a bill that is expected to be signed by the Governor and become effective on April 1, 2018. Connecticut recently enacted “An Act Concerning Pregnant Women in the Workplace,” effective October 1, 2017. And in June San Francisco passed an ordinance that, once signed by the Mayor, will become effective on January 1, 2018.

Massachusetts Pregnant Workers Fairness Act

Massachusetts already recognizes pregnancy discrimination as a form of sex discrimination. The Pregnant Workers Fairness Act (the “Act”) will codify this precedent, clarifying that employers cannot take adverse employment actions or otherwise discriminate against employees on the basis of pregnancy or a related condition.

State and federal disability laws typically do not cover employees with healthy pregnancies. The Act expands existing precedent to require Massachusetts employers to provide reasonable accommodations to employees for pregnancy or related conditions, similar to those accommodations provided to disabled employees. Reasonable accommodations may include: (i) more frequent or longer breaks; (ii) time off to recover from childbirth; (iii) acquisition or modification of equipment or seating; (iv) temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty; (vii) private, non-bathroom space for expressing breast milk; (viii) assistance with manual labor; or (ix) modified work schedules.

As with state and federal disability laws, employers must engage in the interactive process to identify which accommodation(s), if any, would enable the employee to perform the essential functions of the job. The Act makes it illegal for employers to deny a reasonable accommodation or refuse to hire a candidate requesting an accommodation, unless doing so would constitute an undue hardship, which is defined as a “significant difficulty and expense.” In assessing undue hardship, the courts will consider the nature and cost of the requested accommodation and the employer’s financial resources.

Connecticut Act Concerning Pregnant Women in the Workplace

Connecticut’s law also requires employers to provide reasonable accommodations to pregnant employees or applicants, unless doing so constitutes an undue hardship. The law defines reasonable accommodation to include (i) permitting employees to sit while working; (ii) more frequent or longer breaks; (iii) periodic rest; (iv) assistance with manual labor; (v) job restructuring; (vi) light duty assignments; (vii) modified work schedules; (viii) temporary transfer to less strenuous or hazardous



work; (ix) time off to recover from childbirth; and (x) break time and appropriate facilities to express breastmilk.

San Francisco Ordinance Regarding Lactation in the Workplace

San Francisco's ordinance will impose certain requirements upon San Francisco employers with respect to lactation in the workplace. While Federal law already requires most employers to provide breaks and a space for lactation, beginning in January 2018, San Francisco employers will be subject to additional minimum standards with respect to lactation spaces in the workplace. Employers must provide a lactation space (other than a bathroom) that is safe, clean, and free from toxic or otherwise hazardous substances. The space must include a surface for placing a breast pump or other personal items, seating, an electrical outlet, and a nearby sink and refrigerator. Employers will also be required to implement a lactation policy outlining the process by which an employee may make a request for lactation accommodation. The law further requires that tenant improvements in buildings designed for certain uses include lactation rooms and outlines lactation accommodation best practices.

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