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New Jersey, New York City Strengthen Protection of Pregnant Employees

By Chris McFadden

Employers doing business in New Jersey should be aware that last month Governor Chris Christie signed into effect a bill that expands protection under New Jersey's Law Against Discrimination ("LAD") to employees who are pregnant, have recently given birth, or have medical conditions related to pregnancy or childbirth. The law, SB 2995, amends the LAD and specifies that employers may not treat such women in a manner "less favorable" than other individuals not affected by pregnancy "but similar in their ability or inability to work."

In addition to adding the term "pregnancy" to the list of protected class statuses, the new law also requires that employers make available reasonable accommodations when requested by covered employees under the advice of the employees' physicians. It expressly prohibits employers from penalizing employees for using accommodations received, including taking time off from work. In addition to leaves of absence, reasonable accommodations may include schedule modification, greater allowance for bathroom breaks and breaks for increased water intake, removal of or assistance with strenuous and other manual tasks, and the ability to sit while working. Similar to the Americans with Disabilities Act, employers would be excused from making accommodations if doing so would cause an undue hardship in the conduct of the employer's business.

There is some question as to how much of an effect the passage of this law actually will have because there are several laws already in effect that offer protection to pregnant employees. For instance, pregnancy discrimination already is unlawful under the federal Pregnancy Discrimination Act ("PDA"), which amended Title VII of the Civil Rights Act of 1964 to include a prohibition against sex discrimination on the basis of pregnancy. However, the PDA, which outlaws discrimination "on the basis of pregnancy, childbirth, or related medical conditions," applies only to employers with at least 15 employees. In contrast, the newly amended state law covers employers of all sizes.

In addition, New Jersey already had its own state law protections for pregnant employees in place. Although the pre-amended LAD did not expressly include pregnancy, it did consider discrimination based on pregnancy, childbirth, or pregnancy-related medical conditions a form of sex discrimination. Further, the federal Family and Medical Leave Act and New Jersey Family Leave Act both require certain employers to provide a set amount of leave to eligible employees in connection with, among other things, the birth or adoption of a child or a person's own serious health condition.

However, the newly amended LAD goes further than those aforementioned laws and expressly provides protections to women who are experiencing normal pregnancies. It also may require that employers treat pregnant women differently as needed, rather than merely the same as other employees. As an example, in a 2005 case, *Gerety v. Atlantic City Hilton Casino*, the New Jersey Supreme Court held that an employer did not violate the LAD by firing a pregnant employee who, under her doctor's instructions, took more time off than allowed by the employer's leave policy, noting that the employer did not have to treat pregnant employees differently than other employees when applying its policies. Under the newly amended LAD, that case could well have a different result, and employers should be cautious about relying on such decisions.

New Jersey is not alone in expanding its anti-discrimination laws to require employees to reasonably accommodate pregnant employees. Effective January 30, 2014, New York City amended its New York City Human Rights Law ("HRL") to prohibit employers with four or more employees from discriminating against employees on the basis of, or refusing to provide reasonable accommodation to employees for, pregnancy, childbirth, or a related medical condition. Similar to New Jersey's SB 2995, the amended HRL requires that an accommodation be provided so long as it does not cause an undue hardship in the conduct of the employer's business. Employers in New York City should also be aware that the newly amended law requires employers to notify all new employees of their new rights under the law at the commencement of employment or, for existing

employees, within 120 days of the law going into effect, which is May 30, 2014. Employers can find a model notice in seven different languages here.

As these new laws are already in effect, employers who are impacted should make sure that their policies reflect the changes brought about by their passage. In addition, employers should advise their supervisors to be aware of these additional obligations and comply with any notice requirements.


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