Employers Must Remember Their Obligations under the Massachusetts Pregnant Workers Fairness Act

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The Massachusetts Pregnant Workers Fairness Act (the "Act"), which went into effect on April 1, 2018, amended Massachusetts General Law c. 151B to include "pregnancy or a condition related to pregnancy, including, but not limited to, lactation, or the need to express breast milk for a nursing child" as a protected classification.

The Act also covers employers' obligations to employees who are pregnant or lactating and the protections such employees are entitled to receive. Below are key elements of the Act that employers are well-advised to keep in mind to ensure compliance. Although the Act has been in effect for nearly five years, it is likely employers may have lost sight of their obligation to provide timely notice to new employees of the Act's provisions, as well as to employees who become pregnant.

Notification

- Employers must provide written notice to employees of the right to be free from discrimination due to pregnancy or pregnancy-related conditions, including the right to reasonable accommodations for conditions related to pregnancy, in a handbook, pamphlet, or other means of notice.
- Employers must also provide written notice of employees' rights under the Act: (1) to new employees at or prior to the start of employment; and (2) to an employee who notifies the employer of a pregnancy or a

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pregnancy-related condition, no more than 10 days after such notification.

Reasonable Accommodations

- Employers must provide covered employees and prospective employees reasonable accommodations for their pregnancy or pregnancy-related condition, provided that the employee or prospective employee is otherwise capable of performing the essential functions of the job, and the accommodation does not impose an undue hardship.
- When an employee requests an accommodation, the employer must engage in a timely interactive process with the employee to determine whether an effective, reasonable accommodation exists.
- Reasonable accommodations may include: (1) more frequent or longer paid or unpaid breaks; (2) paid or unpaid time off to recover from childbirth; (3) acquisition or modification of equipment or additional seating; (4) temporary transfer to a less strenuous or hazardous position; (5) job restructuring; (6) light duty work; (7) providing a private, non-bathroom, space for expressing milk; (8) assistance with manual labor; and (9) modified work schedules.
- Employers may request medical documentation to support a request for accommodation, except that employers **cannot** require documentation from requesting employees to support accommodations for more frequent restroom breaks, food accommodations, additional water breaks, seating accommodations, and limits on lifting over 20 pounds.

Other Key Provisions of the Act

- Employers with six (6) or more employees are covered by the Act.
- The Act applies to both employees and prospective employees.
- Employers cannot retaliate against an employee for requesting an accommodation.
- Employers must reinstate employees to their original employment status or equivalent position with equivalent pay and accumulated seniority when the need for reasonable accommodations ceases.

- Employers cannot require employees to accept an accommodation that the employee chooses not to accept, if that accommodation is unnecessary to enable the employee to perform the essential functions of the job.

Please contact a member of our Labor, Employment and Employee Benefits Group if you have any questions about your organization's obligations under the Act, including the drafting and implementation of the necessary employee notice or policy.

