

Colorado Expands Pregnancy Discrimination Law

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Colorado Governor John Hickenlooper has signed into law a bill that makes it an unfair employment practice if an employer fails to provide reasonable accommodations to a job applicant or an employee for conditions related to pregnancy or childbirth.

Amending the Colorado Anti-Discrimination Act, the bi-partisan bill (House Bill 16-1438) provides greater protections for pregnant employees than those provided under federal law. The new law applies to most employers, regardless of size, and requires accommodations for conditions related to pregnancy or childbirth that may qualify as disabilities under the Americans with Disabilities Act.

All Colorado employers must comply with the new law, which goes into effect on August 10, 2016.

Requirements

Under the new law, employers must provide reasonable accommodations to applicants and employees for health conditions related to pregnancy or the physical recovery from childbirth if the applicant or employee requests such accommodations.

The law also requires employers to engage in an *interactive process* with employees who request accommodations. The interactive process must be timely and conducted in good-faith to determine “effective, reasonable accommodations.”

The employer may require the applicant or employee to provide a note from her health care provider stating the need for a reasonable accommodation.

Examples of reasonable accommodations include the following:

- More frequent or longer break periods;
- More frequent restroom, food, and water breaks;
- Acquisition or modification of equipment or seating;
- Limitations on lifting;
- Temporary transfer to a less strenuous or hazardous position;
- Job restructuring;
- Light duty;
- Assistance with manual labor; and
- Modified work schedules.

An employer cannot require a pregnant applicant or employee to accept an accommodation that the applicant or employee has not requested and it cannot require an employee to take leave if the employer can provide another reasonable accommodation. This supports the legislative intent of keeping pregnant women employed so that they can generate income for their families.

Undue Hardship

Employers, however, are not required to provide accommodations that impose any “undue hardship” to the employer’s business.

Factors considered in determining undue hardship include:

- the nature and cost of the accommodation;
- the overall financial resources of the employer;
- the overall size of the employer’s business; and
- the effect on the expenses, resources, or operations of the employer.

Employers also are not required to hire new employees, discharge employees, transfer employees with more seniority, promote unqualified employees, or create new positions.

However, if an employer provides an accommodation to another class of employees, but fails to provide a similar accommodation to pregnant employees, the law *presumes* the accommodation does not impose an

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Practices

Disability, Leave and Health Management

undue hardship.

Retaliation Prohibited

Employers may not retaliate against employees who request or use a reasonable accommodation related to pregnancy, childbirth, or a related condition.

The definition of “adverse action” includes “any action where a reasonable employee would have found the action materially adverse, such that it might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” The new law arguably covers a broader range of adverse employment actions than federal law.

Moreover, employers may not deny employment opportunities to an employee based on the need to make a reasonable accommodation.

Notice

Beginning August 10, 2016, employers must provide *new employees* written notice of employees' right to be free from discriminatory or unfair employment practices at the start of employment.

Employers must provide *current employees* with written notice of their rights under the new law by December 8, 2016.

As with other discrimination and employment safety laws, employers must post the required notice in a conspicuous place in the employer's place of business. The law does not provide specific guidance on the content or language of the required notice.

Colorado employers should update their policies and prepare written notifications for new and current employees now. If you have any questions about this bill, please contact Jackson Lewis for assistance.

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