

Minnesota Women's Economic Security Act Signed into Law

By Gina K. Janeiro

May 13, 2014

Minnesota Governor Mark Dayton has signed the Women's Economic Security Act ("Act") into law. The Act is a major piece of legislation aimed at improving working conditions for women that will have a significant impact on Minnesota businesses. A combination of at least nine different bills, the Act is intended to reduce the gender pay gap and to provide greater workplace protections for pregnant women and nursing mothers, among other things.

Key aspects of the Act include the following:

- 1. The Act adds a protected class under the Minnesota Human Rights Act, Minn. Stat. Section 363A, et seq.* (Effective May 12, 2014) The Act expands the list of protected classes under the Minnesota Human Rights Act to include "familial status." "Familial status" means "the condition of one or more minors being domiciled with (1) their parent or parents or the minor's legal guardian or (2) the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The term also includes any person who is pregnant or in the process of securing legal custody of a minor.
- 2. Pregnancy and parenting leave under state law is expanded to 12 weeks.* (Effective August 1, 2014) The Act doubles allowable unpaid leave under the Minnesota Parental Leave Act from 6 weeks to 12 weeks and allows employees to use leave for pregnancy-related needs.
- 3. Additional protections for pregnant and nursing women.* The Act allows employees to bring a civil action to enforce their right to express breast milk during unpaid break times (effective August 1, 2014). In addition, employers with at least 22 employees are required to provide reasonable minor accommodations (e.g., water, food, and a stool) or a reasonable, temporary position transfer for pregnant workers (effective May 12, 2014).
- 4. Wage disclosure protection.* (Effective August 1, 2014) The Act creates a new Section 181.172 of the Minnesota Statutes, to prohibit an employer from requiring non-disclosure by an employee of his or her wages as a condition of employment or to take any adverse employment action against an employee for disclosing or discussing the employee's own wages or another employee's wages, which have been disclosed voluntarily. In addition, employers with employee handbooks must include a notice to employees of their rights and remedies under Section 181.172.
- 5. Expanded allowances for sick leave.* (Effective August 1, 2014) The Act allows employees to use existing earned sick leave under certain circumstances related to sexual assault, domestic violence, and stalking. It also allows grandparents to use existing earned sick leave to care for an ill or injured grandchild.
- 6. Protections imposed for victims of stalking and sexual assault.* (Effective October 5, 2014) The Act expands eligibility for unemployment benefits to victims of stalking and sexual assault.
- 7. Certification for state contracts.* (Effective August 1, 2014) The Act requires businesses with more than 50 employees seeking state contracts worth more than \$500,000 to certify their compliance with existing equal pay laws.
- 8. Funding for women and high-wage, high-demand, non-traditional jobs grant program and to promote women entrepreneurs and women-owned businesses.* (Effective July 1, 2014) The Act allocates money to establish a program to increase the number of women in high-wage, high-demand non-traditional occupations. It also appropriates \$500,000 for grants to Women Venture and the Women's Business Center of Northeastern Minnesota to facilitate and promote the creation of women-owned businesses in Minnesota.

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Next Steps for Minnesota Employers

Employers in Minnesota should take the following actions to ensure compliance with the new law:

1. *Update workplace policies and employee handbooks regarding unpaid leave and sick leave.* Even employers that are not covered by the federal Family and Medical Leave Act (FMLA) must now grant an unpaid leave of absence to an employee who is: (1) a biological or adoptive parent in conjunction with the birth or adoption of a child; or (2) a female employee for prenatal care, or incapacity due to pregnancy, childbirth or related health conditions. The leave is determined by the employee, but it must not exceed 12 weeks, unless agreed to by the employer.

Further, an employee also may use personal sick leave for absences due to an illness to or injury of the employee's mother-in-law, father-in-law, and grandchild (which includes step, biological, adopted, and foster grandchild), in addition to the employee's child, adult child, spouse, sibling, parent, grandparent, or stepparent.

An employee also may use personal sick leave for safety leave, whether or not the employee's employer allows use of sick leave for that purpose, for such reasonable periods of time as may be necessary. Safety leave means leave for the purpose of receiving assistance because of sexual assault, domestic abuse, or stalking, whether on behalf of the employee or employee's relatives as defined above.

2. *Offer reasonable accommodations for health conditions related to pregnancy or childbirth.*

Reasonable accommodations must be offered to an employee if she so requests, with the advice of her licensed health care provider or certified doula, unless the employer demonstrates it would impose an undue hardship on the operation of the employer's business. Such accommodations may include: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. Retaliation against an employee for requesting or obtaining such an accommodation is prohibited.

For nursing mothers, an employer must make reasonable efforts to provide a room or other location, other than a bathroom, within close proximity to the work area that is shielded from view and free from intrusion and that includes access to an electrical outlet. Retaliation against an employee for asserting rights under this section is prohibited.

3. *Avoid discrimination based on caregiver or parent status.* The law adds "familial status" to the list of protected classes under the Minnesota Human Rights Act. Employers are generally prohibited from discriminating against pregnant women and parents with children under the age 18 at home and should not be asking applicants whether they have children or care for children at home.

4. *Be aware that employees are entitled to voluntarily disclose and discuss their wages, and update employee handbooks to include notice to employees of rights and remedies under Section 181.172.*

Employers may not require non-disclosure of an employee's wages as a condition of employment, require an employee to sign a waiver which purports to deny an employee the right to disclose the employee's wages, or take any adverse employment action against an employee for disclosing the employee's own wages voluntarily. Employers with employee handbooks must include a notice of employees' rights and remedies under Section 181.172.

5. *Certify compliance with the Equal Pay Act.* Employers seeking state contracts in excess of \$500,000 must certify to the commissioner of administration their compliance with the federal Equal Pay Act.

Please contact the Jackson Lewis attorney with whom you regularly work with any questions about the possible wide-ranging effects of the Act on workplace practices and policies.

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