

Nebraska to Require Reasonable Accommodations for Pregnant Workers

By Chad P. Richter

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Aligning Nebraska with a small, but growing, number of states that have legislated additional protections for pregnant individuals in the workplace, Nebraska Governor Pete Ricketts has signed an amendment (L.B. 627) to the Nebraska Fair Employment Practice Act (“NFEPA”) requiring reasonable accommodations for pregnant individuals with “known physical limitations.”

This new law, signed April 13, 2015, will take effect in September, three months following adjournment of the 104th legislative session, which is currently scheduled to conclude on June 5, 2015.

According to the law’s “Introducer’s Statement of Intent,” this legislation is designed:

- To clarify and solidify workplace protections for pregnant workers;
- To define reasonable accommodations for pregnant workers; and
- To provide workplace protections for pregnant workers similar to those already provided to workers with disabilities.

Reasonable Accommodations

The new law adopts an expansive definition of the duty to accommodate pregnant individuals, limited only by the employer’s ability to demonstrate that a requested accommodation would “require great difficulty or expense” (i.e., would impose an “undue hardship” as that term is applied and defined in the disability context):

Reasonable accommodation, with respect to pregnancy, childbirth, or related medical conditions, shall include *acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light-duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for breast-feeding or expressing breast milk.*

Sec. 48-1102 (11), as amended (emphasis added).

The new law also adds a new definitional section, Section 48-1102(18):

Individual who is pregnant, who has given birth, or who has a related medical condition shall mean an individual with a *known limitation* who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds, desires, or may be temporarily assigned to. Consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(Emphasis added.)

Discriminatory Practices

The new law makes it an unlawful employment practice to:

Discriminate against an individual who is pregnant, who has given birth, or who has a related medical condition in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

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Finally, it amends the statute to make the prohibited discriminatory practices applicable to individuals with disabilities also applicable in large part to employees with childbearing-related medical conditions. Section 48-1107.02, subsec. 2(a)-(j) (new). In the context of an individual who is pregnant, who has given birth, or who has a related medical condition, an employer must provide reasonable accommodations to the “known physical limitations” of such individuals. Apparently, a showing of medical incapacity or impairment is required to invoke statutory protection only where an individual has requested an accommodation for a “related medical condition.” In addition, new Subsection (2)(i) makes it a discriminatory employment practice to require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee. Finally, new Subsection (2)(j) makes it a discriminatory employment practice to take adverse action against an employee for requesting or using a reasonable accommodation related to the pregnancy, childbirth, or related medical conditions of such employee.

Implications

For the first time in Nebraska, covered employers will be required to provide reasonable accommodations to pregnant workers who have “known physical limitations.” While employers are familiar with the duty to provide reasonable accommodations for disabled workers, the scope of that duty will be far broader as applied to pregnant workers. Most significantly, a request for an accommodation need not be based on medical need; rather, a pregnant worker need only show a “known physical limitation” to justify her request for an accommodation. That minimal showing will obligate an employer to provide the requested accommodation, unless the employer can demonstrate doing so would create an undue hardship (i.e., significant difficulty or expense) upon the employer. Case law construing the requisite showing of undue hardship under the federal Americans with Disabilities Act and comparable provisions of the NFEPA will be instructive.

In addition, the types of accommodations required for pregnancy workers under the new law are far broader than those mandated for disabled workers. For example, absent undue hardship, employers will be required to provide assistance with manual labor, light-duty assignments, and temporary transfers to less strenuous or hazardous work.

Please contact a Jackson Lewis if you have any questions about the new Nebraska law or other workplace issue.

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