Legal Update Article

South Carolina Enacts New Pregnancy Accommodation Requirements

By Stephanie E. Satterfield & Andreas N. Satterfield

June 4, 2018

Meet the Authors

Stephanie E. Satterfield

(She/Her)
Principal
(864) 672-8048
Stephanie.Satterfield@jacksonlewis.com

Andreas N. Satterfield

Principal
(864) 232-7000
Andy.Satterfield@jacksonlewis.com

Related Services

Construction
Disability, Leave and Health Management
Energy and Utilities
Entertainment and Media
Financial Services
Government Contractors
Healthcare
Higher Education

The South Carolina Pregnancy Accommodations Act amends the South Carolina Human Affairs Law to require employers with at least 15 employees to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or other related medical conditions (including lactation), unless the employer can demonstrate the accommodation would impose an undue hardship on the operation of the business.

In addition, the Act imposes notice requirements on covered employers effective September 14, 2018, for existing and new employees.

The Act, signed by Governor Henry McMaster on May 17, 2018, is effective immediately. State law already prohibits discrimination "because of sex" and "on the basis of sex."

Reasonable Accommodations

The Act gives specific examples of reasonable accommodations an employer may be required to provide to a covered employee. These include:

- Making existing facilities accessible;
- Providing a private place, other than a bathroom stall, for the purpose of expressing milk (although the employer is not required to construct a permanent, dedicated space for expressing milk);
- Modifying food or drink policies;
- Providing seating or allowing the employee to sit more frequently if the job requires the employee to stand;
- Providing more frequent or longer break periods;
- Providing assistance with manual labor and limits on lifting;
- Temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified;
- Providing job restructuring or light duty, if available;
- Acquiring or modifying equipment or devices necessary for performing essential job functions; and
- Modifying work schedules.

However, the Act does *not* require an employer to do the following (unless the employer does or would do so for other employees or classes of employees needing a reasonable accommodation):

- Hire new employees that the employer would not have hired otherwise;
- Discharge an employee, transfer another employee with more seniority, or promote another employee who is not qualified to perform the new job;
- Create a new position, including light duty position for the employee, unless a

Hospitality
Insurance
Life Sciences
Manufacturing
Real Estate
Retail
Staffing and Independent Workforce
Technology
Transportation and Logistics

light duty position would be provided for another equivalent employee; or
- Compensate an employee for more frequent or longer break periods, unless the employee uses a break period that would otherwise be compensated.

Unlawful Employment Practices

The Act makes it unlawful for an employer to take adverse action against an employee for requesting or using a reasonable accommodation for medical needs arising from pregnancy, childbirth, or other related medical conditions. It is also unlawful to require an employee to take leave under any leave law if another reasonable accommodation can be provided.

In addition, the Act makes it unlawful for the employer to require an applicant for employment or an employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to the pregnancy, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job.

An aggrieved employee may file a charge of discrimination with the South Carolina Human Affairs Commission (SCHAC).

Notice Requirements

The Act requires an employer to provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or other related medical conditions. By September 14, 2018 (120 days after the effective date of the Act), this notice must be given to existing employees and all new employees at the commencement of their employment.

The notice also must be conspicuously posted at the employer's place of business in an area accessible to employees.

The South Carolina Human Affairs Commission, which may promulgate regulations to carry out the Act, is expected to issue a sample notice for employers.

Next Steps

South Carolina employers are responsible for compliance immediately with the Act. Employers should review and, if necessary:

- Update policies and employee handbooks;
- Post and provide notice of the law as required;
- Train appropriate personnel, such as Human Resource professionals and benefits specialists on how to manage accommodation requests; and
- Train supervisors and managers on how to spot and handle accommodation requests and enlist Human Resources' assistance in the interactive process.

We will continue to monitor and report on developments related to the Act. Jackson Lewis attorneys are available to assist employers with questions about the new South Carolina law's requirements and provide compliance assistance.

©2018 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit https://www.jacksonlewis.com.