

Massachusetts Pregnant Workers Fairness Act Goes Into Effect on April 1, 2018

The Bottom Line

- *With the MPWFA's April 1, 2018 effective date quickly approaching, Massachusetts employers should review and revise their handbook policies, onboarding notices and HR practices to ensure that they comply with the law's notice obligations and requirements to provide reasonable accommodations for pregnancy-related conditions, including nursing breaks and nursing break rooms.*

On April 1, 2018, the Massachusetts Pregnant Workers Fairness Act (MPWFA) will go into effect, requiring that Massachusetts employers provide, among other things, reasonable accommodations for pregnancy-related conditions.

The MPWFA follows the trend of many other jurisdictions requiring employers to provide reasonable accommodations for pregnancy-related conditions, including (but not limited to) New York City, California (including San Francisco), Colorado, Delaware, District of Columbia, Illinois and Maryland.

Massachusetts employers should be aware of the following provisions required by the MPWFA.

Conditions Relating to Pregnancy

Employers are prohibited from discriminating against employees on the basis of their pregnancy or on the basis of conditions relating to pregnancy that occur both during and after pregnancy, such as morning sickness or the need to express milk for a nursing child.

Reasonable Accommodations

Employers must grant reasonable accommodations for pregnancy or pregnancy-related conditions unless doing so would impose an undue hardship on the employer. Once an employee notifies an employer of a need for a reasonable accommodation, the employer must engage in a timely, good faith interactive process to determine what the reasonable accommodation may be.

Examples of potential reasonable accommodations may include:

- more frequent or longer breaks,
- modified work schedules,
- assistance with manual labor,
- providing equipment or seating, and
- time off to recover from childbirth.

Documentation

While employers are generally permitted to request documentation from a healthcare professional that explains what accommodations the employee needs, they are prohibited from requiring documentation for an employee's need for any of the following:

- more frequent restroom, food or water breaks;
- seating;
- limits on lifting more than 20 pounds; and
- private, non-bathroom space for expressing breast milk.

Nursing Breaks

Employers must allow employees to take breaks (either paid or unpaid) to express milk, absent undue hardship. The number and frequency of such breaks should be determined on an individual basis. Additionally, once an employer is on notice that an employee will need to take nursing breaks, they must “promptly” prepare and provide a private, non-bathroom space for the employee to express milk, which should be free from intrusion by others and convenient enough so that traveling to and from the space does not materially impact the employee's break time. The space should also include seating, electrical outlets for breast pumps and tables or other surfaces to hold breast pumps.

Notice Requirement

Employers must provide written notice to employees of their rights under the MPWFA no later than April 1, 2018. Additionally, employers will have to provide written notice regarding MPWFA rights to all new employees at the time of hire, as well as within 10 days of an employee notifying the employer of their pregnancy or pregnancy-related condition.

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