

New NYC rules for accommodating pregnant employees take effect

Amendments to the New York City Human Rights Law (NYCHRL) require reasonable accommodations for pregnant employees and will change the way employers handle even normal, routine pregnancies.

Beginning Jan. 30, most employers with employees working in New York City will be required to provide reasonable accommodations for pregnant employees. Under the new law, New York City employers with four or more employees must provide reasonable accommodations needed due to pregnancy, childbirth, or related medical conditions, provided that the pregnancy or condition “is known or should have been known” to the employer.

In other words, as long as the employee has announced her pregnancy or her condition is obvious, employers will be obliged to make accommodations.

Required accommodations

The law states that accommodations may include “bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things.”

Accommodations need not be provided if they would pose an “undue hardship.” Factors in determining undue hardship include the nature and cost of the accommodation, the

nature of the facility and the finances of the business.

Letting workers know

The law also contains a notice requirement. Covered employers must notify employees of the right to be free from pregnancy discrimination. The notice must be given to all new and existing employees. The New York City Commission on Human Rights is expected to issue more specific guidance on the notice requirements.

The new law allows employees to file complaints with the commission or proceed directly to court.

How the law expands protections

It is fair to say that the New York City law broadens protections for pregnant workers beyond the scope of the Pregnancy Discrimination Act, the ADA and the New York Human Rights Law.

Typically, those other laws have not been interpreted to require employers to accommodate a normal, healthy pregnancy. Instead, the right to an accommodation is usually triggered only upon identification of a particularized need or complicating medical condition, or at the point when the pregnancy becomes disabling (often immediately before and after birth).

The effect of the New York City law is to put a normal, healthy pregnancy on par with a disability for the purpose of workplace accommodations.

Employers with operations in New York City are advised to review their policies and procedures concerning pregnancy and to educate supervisors and managers regarding the scope of these new protections. If you haven't done so already, now is the time to put those training programs together.

ACA requires milk expression accommodation

As long as employers are reviewing pregnancy accommodation, now might be a good time to think about what happens after the employee delivers the child and returns to work. Although it has been the law for several years now, many employers still don't know that they are required to provide new mothers who want to express milk with a place to do so, along with regular break time to facilitate milk collection.

The requirement is part of the Affordable Care Act health care reform law and amends the Fair Labor Standards Act (FLSA). Therefore, it applies to employees elsewhere in the state, not just New York City.

According to U.S. Department of Labor guidance, employers must “provide reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk.”

Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.”

Employers must provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk—as well as the duration of each break—will likely vary from employee to employee.

A bathroom, even if private, is not a permissible location. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient, provided it is shielded from view, and free from any intrusion from co-workers and the public.

Finally, the breaks must be uninterrupted and free from work obligations. Break time should be paid if the employee uses breaks the employer already provides and pays for during the workday. However, if the breaks are longer or more frequent, they can be unpaid for hourly workers.

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