

Legal Update

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New Illinois Law Protecting Pregnancy: Issues to Consider When Managing Pregnant Employees

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Illinois has amended its Human Rights Act (the “Act”) to include substantial protections for pregnant workers. The [amended Act](#) will take effect on January 1, 2015. It will prohibit employment discrimination based on pregnancy and generally requires employers to provide reasonable accommodations for job applicants and employees affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth. Employers’ legal obligations to accommodate pregnancy and childbirth-related conditions under the amended Act go beyond current federal requirements and the 2014 U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on pregnancy discrimination, which we discussed in our [July, 2014 Legal Update](#). Accordingly, Illinois employers may need to revisit their employment policies, procedures, and practices to ensure compliance with the new Illinois law.

Frequently Asked Questions Regarding Changes to the Act

What does the Act currently prohibit employers from doing?

The Act currently prohibits employment discrimination on the basis of an individual’s race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service.

What will the amended Act prohibit beginning January 1, 2015?

The amended Act specifically prohibits employment discrimination based on pregnancy, in addition to the protected characteristics listed above. This prohibition includes discrimination based on an individual’s pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth.

Which employees are affected by the amended Act?

The amended Act applies to virtually all workers, including job applicants and part-time, full-time, and probationary employees.

Which employers are affected by the amended Act?

All employers must comply with the amended Act. While the Act currently applies to employers with 15 or more Illinois employees (with certain exceptions), the amended Act prohibits “any person employing one or more employees” from engaging in discrimination on the basis of pregnancy. (Emphasis added).

What are the key obligations of employers under the amended Act?

The amended Act has four key requirements. First, an employer may not make hiring or employment decisions based on pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth. For example, an employer may not refuse

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to hire or act with respect to recruitment, hiring, promotion, selection for training, discharge, discipline, or other terms and conditions of employment based on an employee or job applicant's pregnancy.

Second, an employer must treat women affected by pregnancy or childbirth the same as other individuals who are not affected but are similar in their ability or inability to work, for all employment-related purposes.

Third, an employer may be required to make reasonable accommodations for a job applicant's or employee's medical or common conditions related to pregnancy or childbirth. *For additional information regarding reasonable accommodation issues, please see our discussion below.*

Finally, an employer must post, in a conspicuous location on its premises where notices to employees are customarily posted, the Illinois Department of Human Rights' Pregnancy Rights Notice. The Notice summarizes the Act's new requirements and employees' rights under the amended Act, and this information should also be included in any employee handbook. *Please feel free to call or email your regular FVLD contact if you would like a copy of this Notice.*

Employers' Obligations Regarding Pregnancy Accommodations under the Amended Act

In addition to the Act's general prohibition against pregnancy-related discrimination, an employer may need to provide reasonable accommodation(s) for a job applicant or employee who requests a reasonable accommodation for a medical or common condition related to pregnancy or childbirth. Reasonable accommodation(s) may include:

- Time off to recover from conditions related to childbirth;
- Leave necessitated by pregnancy, childbirth, or medical or common conditions resulting from pregnancy or childbirth;
- A part-time or modified work schedule;
- Breaks (*e.g.*, frequent or longer bathroom breaks, breaks for increased water intake, or breaks for periodic rest);
- Private non-bathroom space for expressing breast milk and breastfeeding;
- Provision of an accessible worksite or acquisition or modification of equipment;
- Adjustment or modifications of examinations, training materials, or policies;
- Light duty or assistance with manual labor;
- Temporary transfer to a less strenuous or hazardous position;
- Job restructuring; or
- Reassignment to a vacant position.

Exceptions: Under the amended Act, the employer and employee must engage in a timely, good faith, and meaningful exchange to determine effective reasonable accommodations. An employer is not required, however, (1) to create an additional position that it would not have otherwise created or (2) to



discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so (or would do so) to accommodate other employees. An employer does not have to provide a reasonable accommodation if it can demonstrate that the accommodation would impose an undue hardship on the ordinary operation of the employer's business (*i.e.*, the accommodation is prohibitively expensive or disruptive).

A requested accommodation may qualify as an undue hardship if it is an action that is prohibitively expensive or disruptive in light of the following factors: (1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility involved in providing the reasonable accommodation (*e.g.*, the number of people employed at the facility, the effect on expenses and resources, or the impact on the operation of the facility); (3) the employer's overall financial resources and overall size of the business with respect to the number of employees and the number, type, and location of its facilities; and (4) the type of operation(s) of the employer. If the employer provides, or would be required to provide, a similar accommodation to similarly situated employees, that would create a rebuttable presumption that the accommodation is not an undue hardship on the employer.

Requests for Medical Documentation: An employer may require that the employee provide documentation from a healthcare provider regarding the need for accommodation to the same extent that documentation is requested for conditions related to disabilities. The employer's request must be job-related and consistent with business necessity. The amended Act provides that an employer may require the following information: the medical justification for the requested accommodation(s); a description of the reasonable accommodation(s) that are medically advisable; the date that the reasonable accommodation(s) became medically advisable; and the probable duration of the reasonable accommodation(s).

Forced Accommodation and Leave-Related Issues: An employer may not require a job applicant or employee affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth, to accept an accommodation when one was not requested and the applicant or employee chooses not to accept the employer's accommodation. Further, an employer may not require an employee to take leave if another reasonable accommodation can be provided. Once an employee has indicated her intent to return to work or when her need for reasonable accommodation ceases, an employer must reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other applicable service credits, unless the accommodation would impose an undue hardship on the employer.

No Retaliation: An employer may not retaliate against a qualified job applicant or employee because the individual needs, requests, attempts to request, uses, or attempts to use a reasonable accommodation for any medical or common conditions related to pregnancy or childbirth. In short, an employer may not deny employment opportunities or benefits, or take other adverse actions, against a job applicant or an employee based on the employer's need to make reasonable accommodations for the applicant's or employee's medical or common conditions related to pregnancy or childbirth.

Conclusion

Illinois employers should prepare for compliance with the new law and consult with their legal counsel regarding revisions and updates to existing policies and procedures affecting pregnant employees, such as the FMLA, leave, disability, benefits, and anti-discrimination policies. Illinois employers may also want to consider providing training for managers and employees in supervisory roles regarding their obligations to pregnant employees and job applicants who may request reasonable

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accommodation(s). For additional suggested best practices for employers, please see our [July, 2014 Legal Update](#) on pregnancy discrimination.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com, Cecilia Sub 312.701.6841 csub@fvldlaw.com, or your regular FVLD contact.

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