

NEW PROTECTION FOR PREGNANT EMPLOYEES

For decades, the Rhode Island Fair Employment Practices Act has protected pregnant employees from termination or other adverse job action on account of pregnancy. Now, the Rhode Island General Assembly has taken pregnancy protection in the workplace to a new level, treating normal pregnancy more like a disability under the Americans with Disabilities Act and requiring employers to reasonably accommodate pregnancy, childbirth, and pregnancy-related conditions. Under the new law, an employer with four (4) or more employees must reasonably accommodate a pregnant employee, if she so requests, unless the employer can prove that doing so would pose an undue hardship, defined as an accommodation “requiring significant difficulty or expense.” An employer may also not require a pregnant employee to take leave if another reasonable accommodation can be provided. Certain accommodations will be presumed reasonable if the employer would provide them for other employees, including employees with work-related injuries and other disabilities. Examples of reasonable accommodations include:

- more frequent or longer breaks;
- time off to recover from childbirth;
- different or modified equipment;
- modifications in seating;
- temporary transfer to a less strenuous position;
- job restructuring;
- light duty;
- break time and private non-bathroom space for expressing breast milk;
- assistance with manual labor; and
- a modified work schedule.

While an employer may not deny a pregnant employee employment opportunities to avoid accommodating her pregnancy, the employer’s obligation to offer reasonable accommodation does have its limits. An employer is not required to create a new job or to terminate or transfer another employee to create a vacant position for a pregnant employee unless the employer would have done so for employees with work-related injuries or other disabilities. An employer also has no obligation to offer a promotion to an unqualified employee.

Businesses should take note that liability under the new law goes beyond the employer and extends to managers, supervisors and co-workers, who must take care not to affect a pregnant employee's job duties or working conditions in a manner that would violate the employee's statutory rights.

The new law, which took effect June 25, 2015, applies beyond pregnancy to childbirth and related conditions such as lactation and the need to express breast milk, thereby adding the obligation to grant a "reasonable accommodation" to an existing Rhode Island law that already required employers to accommodate nursing employees.

By October 22, 2015, covered employers must provide written notice, including a notice posted in a conspicuous place in the workplace, of the right to be free from pregnancy-related discrimination and to request pregnancy-related reasonable accommodations. (See the attached form of notice recently published by the Rhode Island Commission for Human Rights, which employers would be wise to have employees sign and date upon receipt.) Notice must be given to new employees when they begin work, to those already employed by October 22, 2015, and within ten (10) days of when an employee informs her employer that she is pregnant.

Finally, with the objective of protecting the pregnant employee who wishes to continue to work through her pregnancy with little or no change in her job duties, the new law also prohibits an employer from forcing a pregnant employee to take leave or to accept some other accommodation if she does not wish to do so – a provision which appears at the end of the new statute and may be tough to square with the earlier provision that an employer may not require an employee to take leave *if another reasonable accommodation can be provided*. This aspect of the law is likely to make for some challenging workplace scenarios for human resource professionals as they attempt to strike a balance between the employer's business needs and a pregnant employee's expectations. Hopefully, the new law will achieve the dual objectives of allowing pregnant employees to continue to work and support their families, while also protecting the employer's interest in maintaining a productive, efficient, safe, and properly-staffed workplace. If you have any questions on how these rules may apply to you, please contact us at (401) 274-7200 or lsilveira@apslaw.com

**NOTICE OF RIGHT TO BE FREE FROM DISCRIMINATION
BECAUSE OF PREGNANCY, CHILDBIRTH AND RELATED CONDITIONS**

State law protects employees and applicants from discrimination based on pregnancy, childbirth and related conditions. Federal law provides similar protections.

Employees and applicants have the right under state law to request a reasonable accommodation for conditions related to pregnancy, childbirth and related conditions such as the need to express breast milk for a nursing child. This workplace may not:

- refuse to grant you the reasonable accommodation unless it would create an undue hardship on this employer's enterprise, business or program;
- require you to take a leave if another reasonable accommodation can be granted; or
- deny you employment opportunities based on a refusal to provide a reasonable accommodation.

If you want to request a reasonable accommodation, or if you have been discriminated against based on pregnancy, childbirth or related condition, please contact one of the following staff members:

Name

Name

Phone Number

Phone Number

Email address

Email address

Address

Address

If you have been the victim of discrimination based on pregnancy, childbirth or related conditions and/or denial of a reasonable accommodation, contact:

**Rhode Island Commission for Human Rights
180 Westminster Street, 3rd Floor
Providence, RI 02903
(401) 222-2661
TTY: 401-222-2664
www.richr.ri.gov**