

Massachusetts Pregnant Workers Fairness Act Update: Commission Guidance and Q&As Available

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The Massachusetts Commission Against Discrimination (MCAD) on February 28, 2018, issued questions and answers (Q&A) to provide additional interpretive information about the Massachusetts Pregnant Workers Fairness Act (PWFA). This updates the MCAD's [January guidance](#). The PWFA becomes effective on April 1, 2018.

PWFA amends G.L. c. 151B expressly to cover pregnancy as a protected characteristic. The Act generally prohibits discrimination on the basis of pregnancy or conditions related to pregnancy; requires employers to provide reasonable accommodations for pregnant workers; and further forbids employers from retaliating against pregnant employees who request reasonable accommodations.

The Act also requires that employers notify employees of their rights under the Act on or before April 1, 2018, at hire thereafter, and within 10 days of an employee's notice to the employer of pregnancy. (For more on the Act, see our article, [Massachusetts Strengthens Protections for Pregnant Workers.](#))

The MCAD's Q&As and guidance generally reiterate the plain language of the law. They also provide additional interpretive information regarding reasonable accommodations and breastfeeding and lactation practices. Finally, the MCAD provides sample language for purposes of the Act's notice requirement.

Reasonable Accommodations

In the Q&As, the MCAD provides information on the employer's obligation to engage in a good faith interactive process once an employee notifies the employer that she requires a pregnancy-related accommodation.

The MCAD advises that an employee must notify the employer in some way regarding her need for an accommodation, but does not provide details regarding the substance of the employee's notice obligation. The MCAD indicates that such notice need not be in writing.

Upon request for an accommodation, an employer is required to communicate in a timely, good faith manner with the employee to determine what reasonable accommodations related to the pregnancy or pregnancy-related conditions may be appropriate. The Q&As specifically require discussion(s) between the employee and the employer with respect to the requested accommodation.

Breastfeeding and Lactation

The Q&As also address questions regarding breastfeeding and lactation. For example, the MCAD emphasizes the requirement that employers conduct individualized assessments, and advises that "employers should be aware that every employee has individualized needs, which may vary month to month or even day to day."

The MCAD further states that employers should accommodate the employee's needs

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unless the accommodation results in an undue hardship.

The MCAD recommends that breaks for breastfeeding and expressing breast milk should be approximately 15-20 minutes in duration, with additional time for the employee to get to and from the designated breastfeeding and lactation space and to set up and break down equipment.

The MCAD indicates that breaks to breastfeed or express breast milk may be paid or unpaid. That said, if employers provide paid breaks for other reasons, an employee requiring a lactation break also must be allowed to use those paid breaks to breastfeed or express breast milk.

The MCAD makes clear that employers are not required to provide a space designated for breastfeeding or for expressing breast milk unless and until an employee requires such space. If, however, there is an employee who needs to breastfeed or express milk while at work, the employer is required to provide a private, non-bathroom space large enough to comfortably express breast milk or breastfeed. This space can be an employee's private office if she has one. The guidance also states that the space should contain electric outlets for pumps, surfaces such as a table, and seating.

Notice Requirement

Finally, the Act requires that on or before April 1, 2018, employers should circulate a notice "in a handbook, pamphlet or by other means to its employees of the right to be free from discrimination in relation to pregnancy or a condition related to pregnancy, including but not limited to lactation or the need to express breast milk for a nursing child" The Act also requires that such notice be provided to new employees hired on or after April 1 and within 10 days of an employee's notice to the employer that she is pregnant.

The Commission's website indicates that the MCAD guidance document published there may be used to fulfill the employer's notice requirement.

Next Steps

As the Act requires, employers should provide notice to employees regarding their rights under the new law as discussed above. Employers also would be well-served to review their policies, practices, and communications as they relate to hiring, discrimination, accommodation, leave, and lactation so that appropriate notices are provided at hire and upon learning of an employee's pregnancy or need for accommodation. As is the case with other compliance and employee-relations matters, employers should consider training Human Resource professional and managers on their responsibilities under the new law.

If you have questions or concerns about the new Massachusetts law, do not hesitate to contact your Jackson Lewis attorney or the authors of this article.

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