

Kentucky Adopts Pregnant Workers Act

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Beginning June 27, 2019, Kentucky employers must provide reasonable accommodations to employees who are limited due to pregnancy, childbirth, and related medical conditions, unless it would impose an undue hardship on the employer to do so.

The Kentucky Pregnant Workers Act amends the Kentucky Civil Rights Act (KCRA) and applies to employers with at least 15 employees within the state in each of at least 20 calendar weeks in the current or preceding calendar year. The Act also applies to any agent of the employer. Governor Matt Bevin signed the Act into law on April 9, 2019.

Under the Act, “related medical conditions” that must be reasonably accommodated, absent undue hardship to the employer, include lactation and the need to express breast milk for a nursing child.

Reasonable Accommodations

The Act provides that an employee may not be required to take leave from work if another reasonable accommodation can be provided.

The Act provides examples of reasonable accommodations an employer may have to provide to an employee who is limited due to her pregnancy, childbirth, or related medical conditions, including:

- More frequent or longer breaks
- Time off to recover from childbirth
- Acquisition/modification of equipment
- Appropriate seating
- Temporary transfer to a different job
- Modified schedules
- Light duty
- Private space, other than a bathroom, to express breast milk

Undue Hardship

In determining whether an undue hardship exists, an employer must consider, among other things, the duration of the requested accommodation and whether the employer has a policy of providing, has provided in the past, or is providing similar accommodations to other employees for any reason. If such a policy or practice exists, then a rebuttable presumption is created that the accommodation does not impose an undue hardship on the employer. This rebuttable presumption is sure to cause chaos for a while, as the statute is very broadly worded.

Interactive Process

The law expressly requires the employer and employee to engage in a timely, good faith, and interactive process to determine effective reasonable accommodations.

Notice

By June 27, employers must post a notice of the new law. In addition, employers must begin providing written notice to new employees upon commencement of employment of their right to be free from discrimination based on pregnancy, childbirth, and related medical conditions, and their right to be reasonably accommodated for such conditions.

By July 27, 2019, employers must provide a similar written notice to current employees.

Compared with Existing Laws

The Kentucky Pregnant Workers Act significantly expands the scope and breadth of what must be provided under existing law. It requires employers to accommodate employees who are *limited* – not only considered disabled as under the Americans with Disabilities Act Amendments Act (ADAAA) or KCRA, or unable to perform an essential function of their job due to a serious health condition as under the Family and Medical Leave Act (FMLA). What does it mean to be “limited?” Who decides whether a pregnant employee is “limited?” These questions remain unanswered.

In addition, employers covered by the Fair Labor Standards Act (FLSA) are required only to provide *non-exempt* employees with lactation breaks (subject to an undue hardship defense for smaller employers) and a private space, other than a bathroom, to express breast milk for up to one year. However, the new Kentucky statute also applies to *exempt* employees and does not limit how long an employer is required to accommodate a nursing mother.

If you have any questions regarding the new Kentucky law or need assistance updating your handbook policies and preparing the required notices, please contact the Jackson Lewis attorney with whom you regularly work.

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