

Oregon Enacts Pregnancy Accommodations Law

By

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Beginning January 1, 2020, Oregon employers must provide reasonable accommodations to employees and job applicants who have limitations related to pregnancy, unless doing so would impose an undue hardship. The new law applies to employers with at least six employees.

The [Employer Accommodation for Pregnancy Act](#) amends Oregon's civil rights code and its mandate extends to medical conditions related to pregnancy, including childbirth and lactation. The Act also expands protections against pregnancy-related discrimination by making it unlawful for an employer to deny employment to an applicant based upon the need to make a reasonable accommodation; take adverse action against an employee for inquiring about, requesting, or using a reasonable accommodation; require an employee to accept unnecessary reasonable accommodations; or use leave provided under the Family and Medical Leave Act (FMLA) instead of a reasonable accommodation.

In addition to providing reasonable accommodations, employers must provide a written notification of the Employer Accommodation for Pregnancy Act to new hires at the time of hire and within 180 days of the Act's effective date (*i.e.*, by June 29, 2020) to all existing employees. Such written notification also must be provided within 10 days to an employee who has informed her employer of a pregnancy.

Finally, employers must post signs in a conspicuous and accessible location on their premises informing their employees of the protections under the Act.

Reasonable Accommodations

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

- Acquisition or modification of equipment or devices;
- More frequent or longer break periods or periodic rest;
- Assistance with manual labor; or
- Modification of work schedules or job assignments.

Undue Hardship

The Act considers a reasonable accommodation constitutes an undue hardship if it requires "significant difficulty or expense." In determining whether significant difficulty or expense exists, an employer must consider the nature and cost of the accommodation, the financial resources and size of the facility providing the accommodation, the financial resources and size of the employer, and the type of operations conducted by the employer.

Violations

Aggrieved employees may bring civil actions against their employers. Employees also may file complaints with the Oregon Bureau of Labor and Industries.

Compared with Existing Laws

The Act significantly expands what must be provided under existing law by requiring employers to accommodate employees who have pregnancy-related limitations. It remains to be seen how broadly Oregon courts interpret the term “limitations” used in the Act. Currently, the Act goes beyond protections for those who are considered disabled, as under the Americans with Disabilities Act Amendments Act (ADAAA) or under existing Oregon laws, or those who are unable to perform an essential function of their job due to a serious health condition, as under the FMLA.

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 following the birth of a child. The new Oregon law, however, also applies to exempt employees and does not limit how long an employer is required to accommodate a nursing mother.

Please contact a Jackson Lewis attorney with any questions related to the new Oregon law, accommodations policies and practices, and other workplace issues.

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