Legal Update Article

Tennessee Pregnant Workers Fairness Act

June 29, 2020

Related Services

Disability, Leave and Health Management

The "Tennessee Pregnant Workers Fairness Act" (Senate Bill 2520) requires every employer with at least 15 employees to make a reasonable accommodation for an employee's or prospective employee's medical needs arising from pregnancy, childbirth, or related medical conditions, unless such accommodation would impose an undue hardship on business operations. The new law goes into effect on October 1, 2020.

Tennessee Governor Bill Lee signed Senate Bill 2520 into law on June 22, 2020.

The Tennessee Commissioner of Labor and Workforce Development will enforce the new law and may immediately begin promulgating rules for its effectuation on October 1st.

In the meantime, the legislature has made clear that no covered employee can be required to take leave because of medical needs arising from pregnancy, childbirth, or related medical conditions if another reasonable accommodation would be possible. Further, an employer may not take any adverse action against the employee for requesting or using a reasonable accommodation under these circumstances, including, but not limited to, counting an absence related to pregnancy under a no-fault attendance policy.

If medical certifications are required of other employees needing an accommodation, then the employer may require an employee with a pregnancy- or childbirth-related medical condition also to provide certification from a healthcare professional to support any request for temporary transfer, job restructuring, light duty, or absence from work. However, the employer's duty to engage in a good faith interactive process regarding possible accommodation begins immediately, even while the employee is in the process of obtaining the requested certification; no adverse action can be taken during this time.

The law specifically states that it does not provide protections greater than those afforded to other employees who might require reasonable accommodation. If the employer would not otherwise hire or promote the employee due to lack of qualification, for instance, it is not required to hire or promote the employee because the employee is pregnant or affected by any other condition related to pregnancy or childbirth. If a light duty position would not be provided to another, non-pregnant "equivalent" employee, a new position does not have to be created for the pregnant employee. Additional or extended breaks taken as part of an accommodation do not have to be paid if other employees are not entitled to similar paid breaks. In addition, no employer is required to construct a permanent space dedicated to the sole purpose of expressing breast milk.

Any person adversely affected by a violation of these provisions may bring an action in accordance with the Uniform Administrative Procedures Act or may go directly to chancery or circuit court. Possible relief includes back pay, compensatory damages, prejudgment interest, reasonable attorney fees, and any other appropriate legal or equitable relief.

Next Steps

Employers should review their policies, practices, and communications as they relate to hiring, discrimination, accommodation, and leave 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 professionals and managers on their responsibilities under the new law.

Jackson Lewis attorneys are available to answer inquiries regarding the new law and assist employers in their compliance efforts.