
Massachusetts Pregnant Workers Fairness Act: Due Date Nears

MARCH 30, 2018

As the April 1, 2018 effective date nears, we wanted to take the opportunity to remind Massachusetts employers of their obligations under the new Pregnant Workers Fairness Act (the PWFA), which amends existing Massachusetts law against employment discrimination. PWFA contains explicit requirements with respect to pregnant workers and nursing mothers, including non-discrimination and reasonable accommodation obligations. It also requires employers to provide employees with notice of their rights. Although we encourage employers to review the entirety of the PWFA and the Massachusetts Commission Against Discrimination's (MCAD) guidance on it, here are five key takeaways:

1. Employers cannot discriminate in any way against applicants or employees who are pregnant or experiencing pregnancy-related conditions. This obligation covers the hiring and promotion process, any denial of an employment opportunity, and any and all adverse actions.
2. The statute requires Massachusetts employers to engage in an interactive process with workers who are pregnant and/or experiencing pregnancy-related conditions (including the need to breastfeed), and to provide reasonable accommodations for such employees in the same manner and fashion as is required for disabled workers under federal and state law. Similar to an employer's existing responsibilities under the ADA or Massachusetts Chapter 151B, this means that employers must accommodate pregnancy-related conditions unless doing so would pose an undue hardship on the employer.
3. The MCAD's Guidance for the PWFA provides "some examples" of reasonable accommodations for pregnant workers or workers experiencing pregnancy-related conditions: (1) more frequent or longer breaks; (2) time off; (3) providing equipment or seating; (4) temporary transfer to a less strenuous or hazardous job; (5) job restructuring; (6) light duty; (7) private space for expressing breast milk; (8) assistance with manual labor; and (9) a modified work schedule. As a reminder, this is not an exhaustive list, and other accommodations may be reasonable depending on the circumstances. Conversely,

there may be circumstances where it would be an undue hardship for an employer to provide one of the enumerated accommodations, but employers are encouraged to proceed with caution and seek counsel prior to making such a determination.

4. For certain specific accommodations, an employer is not allowed to require medical documentation. These are: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting no more than 20 pounds; and (iv) private, non-bathroom space for expressing breast milk.
5. Like the federal Family and Medical Leave Act and the Massachusetts Sick Leave law, the PWFA contains a notice obligation. Employers are required to update and circulate their handbooks or otherwise notify employees by April 1, 2018 of their rights under the statute to be free from discrimination, as well as their rights to reasonable accommodations for pregnancy-related conditions. Employers may also choose to use this opportunity to remind employees of their existing policies, procedures and benefits for working mothers and mothers-to-be, including the requirements under the new law.

If you have any questions about updating your policies or otherwise complying with the PWFA, please contact [WilmerHale's Labor and Employment team](#).

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