

# Virginia Enacts Pregnancy Antidiscrimination Law Imposing Mandatory Requirements on Employers

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The [labor and employment law revolution](#) in the Commonwealth of Virginia has provided robust protection against unlawful discrimination as well as a comprehensive enforcement scheme. As part of that revolution, the state enacted [Senate Bill 712](#), which amended the Virginia Human Rights Act (VHRA) to require a covered employer to provide reasonable accommodation for the known limitations of an employee related to pregnancy, childbirth, or related medical conditions, unless such an accommodation would impose an undue hardship on the employer.

## Employers Must “Make Reasonable Accommodations to the Known Limitations” of an Employee

The new law went into effect on July 1, 2020, and applies to employers “employing five or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.” The statute provides a nonexhaustive list of reasonable accommodations including:

- “frequent or longer bathroom breaks [and] breaks to express breast milk”;
- “access to a private location other than a bathroom for the expression of breast milk”;
- “acquisition or modification of equipment or access to or modification of employee seating”;
- “a temporary transfer to a less strenuous or hazardous position”;
- “assistance with manual labor”;
- “job restructuring”;
- “a modified work schedule”;
- “light duty assignments”; and
- “leave to recover from childbirth.”

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Each employer must engage in a “timely, good faith interactive process with an employee who has requested an accommodation ... to determine if the requested accommodation is reasonable” or presents an undue hardship. “In determining whether an accommodation would constitute an undue hardship on the employer, the following [must] be considered:

- Hardship on the conduct of the employer’s business, considering the nature of the employer’s operation, including composition and structure of the employer’s workforce;
- The size of the facility where employment occurs; and
- The nature and cost of the accommodations needed.”

A rebuttable presumption that an employer’s determination that an accommodation request does not present an undue hardship is created if “the employer provides or would be required to provide a similar accommodation to other classes of employees.”

## **Notice Requirements and Handbook Provisions**

Under the new law, employers are required to post a conspicuous notice to employees of the law’s key provisions and update employee handbooks by October 29, 2020 (120 days from the effective date of the law). The law requires that the notice and the employee handbook contain information concerning:

- “the prohibition against unlawful discrimination on the basis of pregnancy, childbirth, or related medical conditions”; and
- “an employee’s rights to reasonable accommodation for known limitations related to pregnancy, childbirth, or related medical conditions.”

This information must also be directly provided to any new employees at the commencement of their employment and to any employee within 10 days of such employee’s providing notice to the employer that she is pregnant.

The Virginia Department of Labor and Industry has indicated that it will provide an agency-approved notice prior to the date that notice is required.

## **Key Takeaways**

Covered Virginia employers may want to review their handbooks and policies governing pregnancy leave and reasonable accommodation to ensure compliance with the new law. Virginia employers may also want to train managers and human resources professionals on the requirements of the law and how it interacts with federal laws. Lastly, Virginia employers may want to ensure that all required postings and employee notifications are in place by October 29, 2020.

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