

Louisiana Enacts Workplace Protections for Employees Disabled due to Pregnancy and Limits the Use of Criminal Background Checks in Hiring

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Louisiana employers should be aware of two new laws which went into effect on August 1, 2021. The first, Act 393, provides for reasonable accommodations of employees who become temporarily disabled due to certain pregnancy-related medical conditions. It amends Louisiana Revised Statutes §§ 23:341 and 23:342 and enacts § 23:341.1, which apply to employers who employ more than 25 employees within the State of Louisiana.

These changes include incorporating definitions within the statutes which provide clarity to employment-related terms, such as “reasonable accommodation” or “undue hardship.” Examples of reasonable accommodations are provided in the statutes, which include but are not limited to: (i) making existing facilities accessible and usable; (ii) providing scheduled and more frequent or longer break periods; (iii) providing a private place for the purpose of expressing breast milk; (iv) providing assistance with manual labor and limits on lifting; and (v) temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified. See La. R.S. 23:341.1(B)(2).

Louisiana Revised Statute 23:342 already provided that a “reasonable period of time” meant the “period during which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions,” provided such period does not exceed four months. Under changes to the statute, a “reasonable period of time” is now formally defined as six (6) weeks. The employee is entitled to utilize any accrued annual leave during this period of time, for which the period cannot exceed four months.

Additionally, Louisiana Revised Statute 23:342 was amended to provide clarity as to other unlawful employment practices, now including conduct towards a job applicant and not just an existing employee. An employer may not (i) fail or refuse to make reasonable accommodations for an applicant or employee with covered limitations, unless the employer can demonstrate that the accommodation would impose an undue hardship; (ii) deny employment opportunities to a job applicant or existing employee, if the denial is based on the need of the employer to make

reasonable accommodations; (iii) require an applicant or existing employee affected by pregnancy, childbirth, or related medical conditions, to accept an accommodation that the individual chooses not to accept; (iv) require an employee with covered limitations to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided; and (v) take adverse action against an employee with covered limitations for requesting or using a reasonable accommodation.

Finally, the statute requires employers to provide written notice to new and existing employees of the right to be free from discrimination based on medical needs arising from pregnancy, childbirth, or related medical conditions known to the employer, and to post written notice of same at their place of business in an area that is accessible to employees. See La. R.S. 23:342(C).

The second significant change to Title 23 which went into effect on August 1, 2021 is the newly enacted Louisiana Revised Statute 23:291.2, which prohibits employers from discriminating based on criminal history records obtained in the course of a background check when making a hiring decision. If a charge did not result in a conviction, then employers should “not request or consider an arrest record or charge.” La. R.S. 23:291.2(A).

Louisiana Revised Statute 23:291.2 provides that when an employer is considering other types of criminal history records, the employer must make an “individual assessment” on whether the criminal history record of an applicant has a “direct and adverse relationship with the specific duties of the job that may justify denying the applicant the position.” When making this individual assessment, an employer “must consider all of the following”: (1) the nature and gravity of the offense or conduct; (2) the time that has elapsed since the offense, conduct, or conviction; and (3) the nature of the job sought. La. R.S. 23:291.2(B). Additionally, if an applicant makes a written request, an employer must “make available to the applicant any background check information used during the hiring process.” La. R.S. 23:291.2(C).

Given these recently enacted changes, employers should review their workplace policies and practices to ensure compliance with these new requirements.

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