

New Illinois Law Will Require Pregnancy Accommodations Starting January 1, 2015

Article By:

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Illinois employers with one or more employees should start preparing for the fact that they will need to provide **reasonable accommodations** to **pregnant employees and new mothers** – including leaves of absence - under a new law that will go into effect on January 1, 2015. Notice posting will be required and employers also may need to revise employee handbooks or policy manuals in anticipation of the effective date of the new law.

The Illinois governor recently signed into law a set of expansive amendments to the Illinois Human Rights Act that will allow women to request reasonable accommodations in the workplace for medical and other common conditions related to pregnancy or childbirth.

The law indicates that women of childbearing age make up about 54 percent of workers in Illinois, and thus the legislation is expected to have a widespread impact on employers large and small. In particular, employers of all sizes will now have to consider leave as an accommodation for pregnant workers and those who have given birth regardless of whether the individual would qualify for leave under the Family and Medical Leave Act.

While the federal FMLA provides up to 12 weeks of leave and job restoration rights to eligible employees who work at employers with 50 or more employees and who have worked at least 1,250 hours in the preceding 12 months, the Illinois pregnancy accommodation law contains no such eligibility requirements. The Illinois law also does not specify the length of time an individual can be out on leave, although employers can request medical certification as to the expected duration of the leave.

The reasonable accommodation provision in the law includes a list of possible accommodations such as more frequent restroom breaks and rest breaks, assistance with lifting, light duty, part-time or modified work schedules, and leaves of absence. Full-time, part-time, and probationary employees are covered.

Employers will be able to require an employee to provide medical certification to support the need for a requested accommodation. Employers will have the burden to prove that a reasonable accommodation would impose an “undue hardship” on the business. Moreover, “undue hardship” is defined in the law as an action that is “prohibitively expensive or disruptive” when considered in light

of (1) the nature and costs of the accommodation, (2) the overall financial resources of the facility (or facilities) involved in the provision of the reasonable accommodation, the number of employees at the facility, the effect on expenses of the facility, or other impact on the facility, (3) the overall financial resources of the employer with respect to the number of employees and number, type, and location of its facilities, and (4) the type of operations of the employer.

Of note is that the new law creates a “rebuttable presumption” that an accommodation would not impose an undue hardship if the employer provides or would be required to provide a similar accommodation to similarly situated employees.

In addition, employers cannot require a pregnant employee to accept an accommodation that the employee did not request. Employers also will not be able to require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided. Pregnant employees and those who have given birth will have reinstatement rights upon notifying the employer of intent to return to work or when the need for the reasonable accommodation ceases.

The Act as amended makes clear that employers cannot retaliate against an individual who has “requested, attempted to request, used or attempted to use” a reasonable accommodation for pregnancy or childbirth.

The amendments to the Act include a requirement for employers to post a notice and include information in employee handbooks regarding the right to use a reasonable accommodation for pregnancy or childbirth. The required documentation for notice posting is expected to be made available on the Illinois Department of Human Rights web site.

For Illinois employers, the new law adds one more layer of complexity to the analysis of accommodations for pregnant employees beyond existing laws such as the FMLA, the Americans with Disabilities Act, and the federal Pregnancy Discrimination Act.

The text of the new law can be found [here](#).

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