

Illinois Offers Greater Protections for Pregnant Workers

Article By:

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Employers should take note of the newly effective amendment to the Illinois Human Rights Act, which enhances protections for employees affected by pregnancy or childbirth, imposes accommodation requirements on employers, and requires additional notice to be posted in the workplace.

Effective January 1, the Illinois Human Rights Act (IHRA) was amended to expressly prohibit discrimination based on pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth and to impose new workplace accommodation requirements on Illinois employers.^[1]

The amendment, which has come to be known as the Illinois Pregnancy Accommodation Act (IPAA), places Illinois among a growing number of jurisdictions—including California,^[2] Maryland,^[3] New Jersey,^[4] New York City,^[5] and Philadelphia^[6]—that require employers to make workplace accommodations for employee conditions related to pregnancy or childbirth, regardless of whether those employees are “disabled.”

The IPAA’s Accommodation Requirements and Adverse-Action Prohibitions

Unlike its federal counterparts (the Pregnancy Discrimination Act and the Americans with Disabilities Act), the IPAA compels employers to make reasonable workplace accommodations for employees “for any medical or common condition . . . related to pregnancy or childbirth[.]”

The IPAA further prescribes a nonexhaustive list of potential accommodations, including the following:

- Providing more frequent or longer bathroom breaks, water breaks, or rest breaks
- Providing private nonbathroom space for expressing breast milk and breastfeeding and for other specialized seating
- Providing assistance with manual labor, light duty, or temporary reassignment to a less-strenuous or hazardous position or to a vacant position
- Providing an accessible worksite, specialized or modified equipment, job restructuring, or a part-time or modified work schedule

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- Modifying employee examinations, training materials, or policies
 - Providing leave necessitated by pregnancy, childbirth, or medical or common conditions that result from pregnancy or childbirth^[7]

The IPAA amendments require employers to grant requested accommodations “unless the employer can demonstrate that the accommodation would impose an undue hardship on the ordinary operation of the business of the employer.” To that end, the IPAA identifies various factors—such as the accommodation’s nature and cost, the employer’s size and financial resources, and the accommodation’s effect on the employer’s operations—to be considered in the undue hardship analysis. It is the employer’s burden to establish that a requested accommodation imposes an undue hardship.

In addition to its accommodation provisions, the IPAA expressly prohibits (i) adverse action based on the need to create reasonable accommodations, (ii) requiring pregnant employees to accept unrequested accommodations, (iii) requiring leave if another reasonable accommodation can be provided, and (iv) failing to reinstate the employee to an original or equivalent position, pay, seniority, and benefits upon return from leave.

Because the IPAA amends the IHRA, the procedures for filing a charge will be the same as for other alleged violations under the IHRA. Likewise, aggrieved employees are entitled to the same remedies available for other IHRA violations—including injunctive or other equitable relief, compensatory damages, punitive damages, and reasonable attorney fees. Additionally, certain factual scenarios, such as a failure to properly respond to a request for accommodations, may also trigger claims under the Fair Labor Standards Act and/or Title VII.^[8]

The IPAA’s Notice Requirement

The IPAA also requires Illinois employers to post a notice prepared or approved by the Illinois Department of Human Rights in the workplace or include such a notice of rights in their employee handbooks.^[9] Unlike other workplace notices required in Illinois, the IPAA specifically requires that this notice include information pertaining to the filing of a charge.

Moving Forward

For employers with operations in Illinois, the IPAA amendments to the IHRA may signal that now is the time to revisit or revamp employee handbooks and train human resources and benefits employees on the new requirements in this area. Specifically, the amended IHRA will require most Illinois employers to overhaul their reasonable accommodation policies and train human resources professionals and managers regarding when accommodations must be granted for employees affected by any medical or common condition related to pregnancy or childbirth.

[1]. View the amendment [here](#).

[2]. See our December 28, 2012 LawFlash, “New California Disability Regulations to Become Effective December 30,” available [here](#).

[3]. See our July 1, 2013 LawFlash, “Maryland Enacts Three New Employment Laws,” available [here](#).

[4]. See our January 10, 2014 LawFlash, “New Jersey Assembly Passes Pregnancy Discrimination Bill,” available [here](#), and our January 27, 2014

[5]. See our September 27, 2013 LawFlash, “New York City Offers Greater Protections for Pregnant Workers,” available [here](#).

[6]. See our February 10, 2014 LawFlash, “Philadelphia Enacts Pregnancy Accommodation Law,” available [here](#).

[7]. Significantly, some of the potential accommodations reflected in the IPAA amendments—e.g., job reassignment or restructuring—appear to be more extensive than the accommodations generally available to disabled employees under federal law.

[8]. See our June 12, 2013 LawFlash, “New Developments Surrounding Lactation Discrimination,” available [here](#).

[9]. Copies of the Department-approved notice in both English and Spanish are available [here](#).

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