

Employment Practices Liability

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Connecticut Updates Anti-Pregnancy Discrimination Law

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Following the U.S. Supreme Court's decision in *Young v. UPS*, it is well-known that pregnancy discrimination is prohibited by federal anti-discrimination laws because it constitutes discrimination on the basis of sex. Additionally, under federal law, employers must make accommodations for pregnant women if they make accommodations for other similarly situated non-pregnant employees and there is no legitimate non-discriminatory reason for refusing the accommodation of the pregnant employee.

More recently, Connecticut's General Assembly amended the Connecticut Fair Employment Practice Act to expressly require Connecticut employers to provide reasonable accommodations to pregnant employees. The statute previously prohibited employers from: 1) terminating an employee on the basis of pregnancy, 2) refusing an employee a reasonable leave of absence for a disability resulting from pregnancy, 3) denying a pregnant employee disability compensation or other disability benefits, or 4) refusing to reinstate the employee to her original job or to an equivalent position. Public Act 17-118, An Act Concerning Pregnant Women in the Workplace, amended the statute to clarify that it is now a violation of state law to:

- Limit, segregate or classify a pregnant employee in a way that would deprive her of employment opportunities during her pregnancy;
- Discriminate against an employee or job seeker on the basis of her pregnancy in the terms or conditions of her employment;
- Fail or refuse to make a reasonable accommodation for an employee or job seeker due to her pregnancy, unless the employer can demonstrate that such accommodation would impose an undue hardship on such employer;
- Deny employment opportunities to an employee or job seeker if such denial is due to the employee's request for a reasonable accommodation due to her pregnancy;
- Force a pregnant employee or job seeker to accept a reasonable accommodation if such employee or person seeking employment (i) does not have a known limitation related to her pregnancy, or (ii) does not require a reasonable accommodation to perform the essential duties related to her employment;
- Require a pregnant employee to take a leave of absence if a reasonable accommodation can be provided in lieu of such leave; and
- Retaliate against a pregnant employee in the terms, conditions or privileges of her employment based upon such employee's request for a reasonable accommodation.

Notably, "reasonable accommodation" was not previously defined by the CFEPA; however, the recent amendment clarifies that a reasonable accommodation includes, but is not limited to, "being permitted to sit while working, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth or break time and appropriate facilities for expressing breast milk."

However, like the Americans with Disabilities Act (ADA), the statutory amendment does not require employers to make an accommodation that poses an undue hardship. "Undue hardship" is defined as "an action requiring significant difficulty or expense when considered in light of factors such as (A) the nature and cost of the accommodation; (B) the overall financial resources of the employer; (C) the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and (D) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer." These factors are substantially similar to the factors used to consider whether an accommodation constitutes an undue hardship under the ADA.

The law's protections do not cease after the mother gives birth to the child and pregnancy ends. Under the statute, "pregnancy" is defined as "pregnancy, childbirth or a related condition, including, but not limited to, lactation." Recently, a federal district court judge, in relying on the recent amendments to the CFEPA, held that that Title VII and the CFEPA protects a nursing mother's ability to engage in nursing-related activity, including expressing milk while at work.

In light of the recent amendments to the CFEPA, employers should continue to apply employment policies and make personnel decisions without regard to any protected class, including pregnancy. Furthermore, employers should provide reasonable accommodations to pregnant employees if one is necessary, but employers should refrain from requiring pregnant employees to accept a reasonable accommodation or leave of absence when one is not necessary. Although the statute does not expressly require employers to engage in a good faith interactive process to determine whether a reasonable accommodation is necessary and can be made, it is recommended that employers undergo this process to make such determination. Furthermore, employers may consider revising their handbooks to include a policy that outlines rights of employees to request a reasonable accommodation for pregnancy related conditions and for physical and mental disabilities. Finally, employers are obligated by statute to provide written notice to employees of their non-discrimination rights as it relates to pregnancy. Employers may satisfy this requirement by posting the poster published by the Connecticut Department of Labor, which is available at: http://www.ctdol.state.ct.us/gendocs/labor_posters.htm.

Cindy Cieslak is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including discrimination, harassment, and wage and hour issues. If you have questions about this legal update, please contact Rose Kallor, LLP at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Carolyn Field, CIRMA Communications Supervisor at cfield@ccm-ct.org.

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