Colorado to Join Growing Number of States with Pregnancy Accommodation Obligations

Labor & Employment Law Update

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The Colorado state legislature recently passed House Bill 16-1438 requiring employers to engage in an interactive process to assess potential reasonable accommodations for pregnant employees and applicants for health conditions related to pregnancy and childbirth.

If Colorado's governor signs this bill into law, Colorado will join a growing group of states that have passed similar legislation, including Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Utah, West Virginia, and the District of Columbia. These state laws require employers to accommodate medical conditions and limitations stemming from pregnancy that may not separately qualify as a disability.

Key Points of State Pregnancy Accommodation Laws

Each of the state laws include an undue hardship exception, meaning that employers do not need to provide the pregnancy accommodations if doing so would impose significant difficulty or expense. Most of the state laws provide that an employer may require that the pregnant employee produce medical documentation, including advice from a health care provider, regarding the requested accommodation. Many of the state laws require accommodation of conditions related to not only pregnancy, but also childbirth recovery and nursing. The statutes provide several examples of reasonable accommodations that employers may need to provide for pregnant employees, including:

- Frequent or longer bathroom breaks
- Breaks for increased water or food intake
- Breaks for periodic rest
- Obtaining or modifying equipment or seating
- Assistance with manual labor
- Temporary transfer to a less strenuous or hazardous position, if available (with return to position after pregnancy)

- A part-time or modified work schedule
- Leave – though most laws explicitly provide that an employer cannot force a pregnant employee to accept leave where alternative accommodations exist

Nearly all of the state statutes expressly prohibit retaliating against any employee who requests a reasonable accommodation for pregnancy-related conditions.

Relation to Current Federal Law

These state laws impose broader obligations on accommodating pregnant employees than what is currently required under federal law. Under federal law, employers must treat pregnancy-related disabilities the same as they would any other disability; however, they do not need to accommodate other conditions or needs stemming from a normal, healthy pregnancy if it does not qualify as a disability under the Americans with Disabilities Act ("ADA"), as amended by the Americans with Disabilities Act Amendments Act ("ADAAA").

Notably, while employers may not need to offer non-disabled pregnant employees with accommodations under the ADA, denying pregnant employees' requested accommodations may also give rise to liability under Title VII's disparate treatment provision, which the Pregnancy Discrimination Act amended to prohibit discrimination "on the basis of pregnancy, childbirth, or related medical condition." 42 U.S.C. § 2000e(k). Denying a certain accommodation to pregnant employees but providing similar accommodations to other categories of employees – such as employees with on-the-job injuries or ADA disabilities – may allow pregnant employees to allege a discrimination claim that they are treated less favorably than other groups of employees. Because of the varied – and sometimes conflicting – state and federal obligations surrounding accommodating pregnant employees, employers are encouraged to discuss such requests with legal counsel.