Insight

IN-DEPTH DISCUSSION

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Washington's New Healthy Starts Act Requires Employers to Provide Reasonable Accommodations to Pregnant Workers Absent the Showing of a Disability

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Washington's legislature recently passed a new Healthy Starts Act[1] (the "Act"),1 which places significant obligations on Washington employers with respect to pregnant employees. These new obligations are not otherwise required under the Washington Law Against Discrimination ("WLAD") or the Americans with Disabilities Act ("ADA"). The Act, which became effective July 23, 2017, requires Washington employers with 15 or more employees to reasonably accommodate pregnant employees regardless of a disability, provides a list of such accommodations to be considered, and places specific prohibitions upon employers with respect to such accommodations.

The Act expands the obligations of covered employers under existing law, where a pregnancy-related disability must first be established before accommodations may be required. By eliminating this requirement, the Act applies to all of a covered employer's pregnant employees, regardless of whether the employees are suffering from a pregnancy-related disability as defined under the WLAD, ADA, or otherwise.

New Accommodations Required for Pregnant Employees

The Act specifies nine accommodations a Washington employer may need to provide to a pregnant employee. With respect to four of them, the Act restricts an employer's ability to (a) request a written certification from a healthcare provider; or (b) claim providing the accommodation would place an undue hardship on the business.

Under the Act, with respect to the following accommodations, an employer may not request written certification from a healthcare provider

1 The Healthy Starts Acts was presented in Senate Bill 5835. The reasonable accommodation portion of the bill will be codified in RCW 43.10.

regarding the need for the accommodation and cannot claim undue hardship to avoid providing these accommodations. In other words, a Washington employer must provide the below accommodations if requested by a pregnant employee:

1. Providing more frequent, longer, or flexible restroom breaks;
2. Modifying a no food or drink policy;
3. Providing seating or allowing the employee to sit more frequently if her job requires her to stand; and
4. Limiting lifting to 17 pounds or less.

With respect to the remaining five accommodations enumerated in the Act, an employer may request written certification from a health care provider regarding the need for the accommodation and may claim that providing such accommodation is an "undue hardship" (i.e., that providing such accommodation would require significant difficulty or expense to the employer's business):

5. Job restructuring, including a part-time or modified work schedule, job reassignment to a vacant position, or providing or modifying equipment, devices, or an employee's work station;
6. Providing for a temporary transfer to a less strenuous or less hazardous position;
7. Providing assistance with manual labor;
8. Scheduling flexibility for prenatal visits; and
9. Any further accommodations the employee may request, which an employer must give reasonable consideration, taking into account any Department of Labor & Industries or other medical documents provided by the employee.

Specific Employer Prohibitions Under the Act

Additionally, the Act prohibits employers from:

1. Denying a reasonable accommodation unless they can show undue hardship (with respect to potential accommodations 5-9 listed above);
2. Taking adverse action against an employee for requesting an accommodation;
3. Denying employment opportunities because of a request for an accommodation; and
4. Requiring an employee take leave if another reasonable accommodation can be made instead.

However, the Act makes clear that an employer need not create a new position it would not have otherwise created as an accommodation. Also, an employer need not discharge, transfer, or promote any employee as an accommodation.

Employees' Rights under the Act

The Act provides employees with the ability to file a civil lawsuit against employers for alleged violations, and to seek monetary damages, attorneys' fees, and other remedies authorized under state or federal law. Employees may also file a complaint with the Attorney General's Office, which has the authority to investigate, enforce, and conciliate under the Act.

State and Federal Accommodation Laws Remain in Place

The new accommodation requirements under the Act are in addition to existing accommodation requirements under federal and state law. Under the WLAD, employers with eight or more employees may be required to provide reasonable accommodation to workers with a known disability, which can include

pregnancy-related medical conditions. Similarly, under the ADA, employers with 15 or more employees may be required to provide reasonable accommodations to employees with a pregnancy-related medical condition that qualifies as a disability under the ADA.

Conclusion

Covered employers should comply with the Act's new pregnancy-accommodation requirements, since failure to do so may result in a lawsuit filed by a covered employee or an investigation by the Attorney General's Office, both of which may lead to an award of monetary damages, including attorneys' fees.