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Illinois Amends the Human Rights Act to Provide Greater Protections Regarding Pregnancy

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On August 26, 2014, Illinois Governor Pat Quinn signed into law House Bill 8 (the amendments), which amends the Illinois Human Rights Act (the Act) to provide greater protections to applicants and employees who are or become pregnant. The Act previously prohibited an employer from discriminating against applicants and employees on the basis of pregnancy. The amendments expand an employer's obligations with regard to accommodating pregnancy, childbirth, and medical or common conditions related to pregnancy or childbirth. The amendments go into effect on January 1, 2015.

The amendments provide that the prohibition on discrimination based upon pregnancy applies to any employer with one or more employees, making it akin to the prohibitions on disability discrimination or sexual harassment under the Act, in contrast to other prohibitions which only apply to employers with 15 or more employees.

Any job applicant or employee—whether part-time, full-time or probationary—who requests a reasonable accommodation in connection with the individual's pregnancy must be provided such reasonable accommodation unless the employer can demonstrate that the accommodation would impose an undue hardship to the ordinary operation of the employer.

While an employer may request documents from the individual's health care provider regarding the need for an accommodation, in a manner similar to a request for an accommodation of a medical disability, the request must be job-related and consistent with business necessity, and limited to the following topics: (a) medical justification for the accommodation; (b) a description of the reasonable accommodation or accommodations requested; (c) the date when such accommodation or accommodations will commence; and (d) the duration of the accommodation or accommodations. It is the employee's or applicant's duty to provide any requested documentation, and the amendment imposes a requirement on the parties to engage in a good faith interactive discussion about potential accommodations.

The amendments provide a lengthy list of examples of reasonable accommodations, including but not limited to more frequent or longer breaks; assistance with manual labor; transfer to light duty or a less strenuous position; acquisition or modification of equipment; reassignment to a vacant position; time off to recover from conditions related to childbirth; and leave necessitated by pregnancy, childbirth, or common conditions relating to pregnancy or childbirth.

The amendments make it clear that it is the employer's burden to prove undue hardship and that the accommodation is "prohibitively expensive or disruptive." There are four general factors in making this determination: (1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility or facilities involved in the provisions of the accommodation, number of employees, effect on expenses and resources, or impact of the accommodation on the operation of the facility; (3) the overall financial resources of the employer and overall size of the business (including number of employees and number, type and location of facilities); and (4) the type of operation or operations of the employer.

Under the amended version of the Act, an employer cannot require an applicant or employee to accept an accommodation when the employee did not request an accommodation or where the employee chooses not to accept the accommodation, nor can the employer require an employee to take leave as an accommodation if the employer can provide another reasonable accommodation. An employer must also reinstate the employee to her original job or an equivalent position with equivalent pay and benefits upon the employee signaling an intent to return or when the need for reasonable accommodation ceases, unless "the employer can demonstrate that the accommodation would impose an undue hardship on the ordinary operation of the business of the employer."

Notwithstanding the additional requirements on an employer to accommodate pregnancy, childbirth, and related medical or common conditions, an employer is still not required to create additional employment for a pregnant employee or applicant, discharge any other employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer has done so to accommodate other classes of employees who need accommodation, such as employees with non-pregnancy-related medical disabilities.

Finally, employers must affirmatively notify applicants and employees of their pregnancy leave and non-discrimination rights by posting a notice prepared by the Illinois Department of Human Rights on the premises, and including such information in any employee handbook. Therefore, Illinois employers should review and modify their handbooks to ensure that such information is contained therein.

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