



NEW JERSEY EXPANDS PROTECTIONS FOR PREGNANT EMPLOYEES; Recently Signed Law Specifies Employer Requirements

Client Advisories

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New Jersey employers will have to provide employees who are pregnant or who are new mothers with specific protections under legislation signed by Governor Chris Christie on January 20, 2014. The law amends the New Jersey Law Against Discrimination (NJLAD) by expressly adding “pregnancy” as a protected category against which employers may not discriminate. However, the bigger impact is the law’s specific reasonable accommodations that employers must now give to a female employee who “the employer knows, or should know, is affected by pregnancy,” or who has recently given birth.

The inclusion of “pregnancy” within the NJLAD’s list of protected categories is not startling. Whether under federal or state law, employers have already had a duty to not discriminate against pregnant employees, under a variety of legal theories. This new law confirms that pregnant employees are protected, and employers must not discriminate against them. It also provides the same anti-discrimination protections to employees who are recovering from childbirth.

Yet, the new law goes much further and specifically lists the types of accommodations that employers must consider for female employees it knows, or should know, are pregnant, or are recovering from childbirth. Examples of the accommodations that must be considered are bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual tasks, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work. Critically, employers are required to make such accommodations when an employee requests them -- however, once the request is made based on the advice of a physician, the employer in most cases must provide the requested accommodations.

With a physician’s note, the only way an employer can avoid having to provide the accommodations is if the employer can show that the accommodations would impose an “undue hardship” on its business operations. This

is typically a very high burden under the law, and is not easy for employers to meet. Some of the factors to consider in this “undue burden” analysis are the overall size of the business; the size of the budget; the nature and costs of the accommodation; and the extent to which the accommodation would involve waiving essential requirements of a job as opposed to a tangential or non-business necessity requirement.

This new law goes beyond protections extended to disabled employees. In the context of disability laws, such as the NJLAD and the federal Americans with Disabilities Act, employers must consider providing reasonable accommodations; yet, those accommodations only have to be granted if the employee is still able to perform the essential functions of her job. This new law requires accommodations to make a pregnant employee or new mother more comfortable in the workplace or which are otherwise designed to protect the employee’s health, so long as they are requested on the advice of a physician. And, by listing specific accommodations, employers will be hard-pressed to argue that the accommodations in the statute are unreasonable, which is typically an argument that can be made with other disabled employees. Given this significant change, New Jersey employers should review their policies on reasonable accommodations and ensure that their Human Resources and other managers are properly trained on the new accommodation requirements created by this law.

Archer’s Labor & Employment Law Group provides training as well as review and revision of policies and manuals related to the full range of personnel laws and issues.

If you have any questions about this advisory or other labor and employment matter, please contact any member of Archer’s **Labor & Employment Law Group** in Haddonfield, N.J., at (856) 795-2121, in Flemington, N.J., at (908) 788-9700, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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