Guidance for Illinois Employers on New Law Requiring Accommodation to Pregnant Employees and Applicants

Introduction

Effective January 1, 2015, the Illinois Human Rights Act (the "Act") is amended to expand protections for workers and applicants related to pregnancy, childbirth and related conditions. Although the Act specifically provided for protections for pregnancy, childbirth and related conditions, the amendments now explicitly detail an employer's obligation to consider an employee's request for reasonable accommodations. The Act applies to Illinois employers of all sizes and protects full-time, part-time and probationary employees.

Failure to provide reasonable accommodations is a civil rights violation under the Act, unless the employer is able demonstrate that the accommodations will result in an "undue hardship" on the employer's ordinary business operations.

Although the Pregnancy Discrimination Act ("PDA") and the Americans with Disabilities Act ("ADA") protect pregnant employees, in many respects the amended Human Rights Act imposes different and greater obligations on employers than these and other federal laws. For example, while the PDA prohibits discrimination based on pregnancy as it relates to any aspect of employment, including hiring, firing, job assignments, promotions, and any other term or condition of employment, the PDA has not been interpreted by most courts to impose an affirmative obligation to provide accommodations to pregnant workers where no such accommodations are afforded to employees with other temporarily disabling conditions.

Summary of the New Law

Reasonable Accommodation

The Act now requires employers to provide reasonable accommodations to employees and job applicants for any medical or common condition related to pregnancy or childbirth, unless the employer is able to demonstrate that providing the accommodations would result in an undue hardship on the employer's normal business operations. In addition, the Act prohibits an employer from failing to hire or otherwise retaliating against an employee or applicant for requesting such accommodations. An employer and employee are required to engage in a "timely, good faith, and meaningful exchange to determine effective reasonable accommodations."

Reasonable accommodations are defined as modifications or adjustments to the job application process, work environment, or circumstances under which a position is customarily performed. The Act also includes a non-exhaustive list of reasonable accommodations that an employer should consider, including: more frequent or longer bathroom breaks; increased water or periodic rest breaks; private non-bathroom space for expressing breast milk and breastfeeding; seating assistance; assistance with manual labor; light duty; temporary transfer to a less strenuous or non-hazardous position; acquisition or modification of equipment; reassignment to vacant positions; part-time or modified work schedule; appropriate adjustment or modifications of examinations or training materials; assignment to a vacant position; leave required by the employee's pregnancy, childbirth or related conditions (which can be greater than the leave provided for under the Family Medical Leave Act); or providing time off to recover from childbirth.

Employers are not required to create additional employment positions that the employer otherwise would not have created or discharge or transfer another employee or promote an unqualified employee. An employer is prohibited from requiring that an employee or applicant accept an accommodation she did not request or from requiring that an employee or applicant accept the employer's requested accommodation.

Under the amended law, employers will be able to require an employee to provide medical certification to support the requested accommodation to the same extent that a certification is required for conditions related to a disability.

Undue Hardship

"Undue hardship" is deemed to exist whenever an action that is "prohibitively expensive or disruptive." Undue hardship will also be evaluated in the context of the employer's operations and relationship of the employer's facility to its overall operations.

The new law requires employers to reinstate an employee affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth to her original job or to an equivalent position, unless the employer can demonstrate that doing so would impose an undue hardship.

What Employers Must Do Now

An employer is required to inform employees of the new rights by posting, in a visible location, a notice provided by the Illinois Department of Human Rights. The Illinois Department of Human Rights has made the new notice available on its website: https://www2.illinois.gov/dhr/Publications/Pages/PregnancyRightsNoticeRequirement.aspx.

In addition, employee handbook and policy manuals should be reviewed and revised accordingly. Finally, managers and supervisors should be appropriately trained on procedures for responding to accommodation requests from pregnant employees.

We are available to assist with this and other employment law matters. If you have questions about the new requirements or need assistance, please contact Tim Nelson at (312) 755-3149 or the Aronberg Goldgehn attorney with whom you regularly work.