

LABOR & EMPLOYMENT

ALERT

PHILADELPHIA FAIR PRACTICES ORDINANCE AMENDMENT ADDS PROTECTIONS AGAINST PREGNANCY DISCRIMINATION

By Franz Español

The City of Philadelphia has bolstered its stance against pregnancy-related employment discrimination by amending the Philadelphia Fair Practice Ordinance. The amendment, which Mayor Michael Nutter signed into law on January 20, 2014, prohibits discrimination on the basis of pregnancy, childbirth or a pregnancy-related medical condition. Further, employers are required to provide reasonable workplace accommodations for employees who have needs related to pregnancy, childbirth or a pregnancy-related medical condition. This obligation to provide a reasonable accommodation only applies if: (1) the employee requests a pregnancy-related workplace accommodation; and (2) the employee's request is not unduly burdensome on the employer.

Generally, the reasonable accommodation must allow the employee to perform the essential functions of the job. The amendment provides the following non-exhaustive list of reasonable accommodations that should be made available to protected employees: restroom breaks, periodic rest for those who stand for long periods of time, assistance with manual labor, leave for a period of disability arising from childbirth, reassignment to a vacant position and job restructuring.

The right to an accommodation is not limitless. In particular, employers are not required to provide a pregnancy-related accommodation if the accommodation poses an undue hardship (i.e., if the accommodation is financially impracticable or

significantly impedes the employer's business). The amendment outlines four factors to consider in assessing whether the employer meets the undue hardship test:

1. The nature and cost of the employee's requested accommodations;
2. The overall resources of the employee's worksite (or other facilities involved in providing the employee's requested accommodations) and the impact of the accommodations on the worksite;
3. The employer's overall financial resources; and
4. The type of operation or operations of the employer, including the structure of its workforce.

The amendment also imposes a notice provision that requires employers to notify all new and existing employees of their right to be free from pregnancy-related discrimination and their right to reasonable accommodations related to pregnancy, childbirth and related medical conditions within 90 days of the effective date of the amendment. The Philadelphia Commission on Human Relations is charged with publishing the notice; however, as of February 7, 2014, the notice had not been released. Employers may satisfy the notice provision by posting the Commission-published-notice in a conspicuous place that is accessible to employees.

What Should Philadelphia Employers Do?

Avoiding unlawful discrimination is a must. According to the Center for American Progress, unlawful workplace discrimination cost businesses nationwide an estimated \$64 billion in 2012. Accordingly, employers doing business in Philadelphia should:

- Prohibit discrimination on the basis of pregnancy, childbirth or pregnancy-related medical conditions, and revise employee handbooks and related policies to reflect the same.

- Train employees on pregnancy-related discrimination.
- Enforce non-discrimination policies through timely investigation and remediation procedures.
- Consult the Philadelphia Commission on Human Relations [website](#) for the notice of employee rights relating to pregnancy discrimination and post the notice by April 20, 2014.

For more information about this Alert, please contact Franz K. Español at 215.299.1937 or fespanol@foxrothschild.com, or any member of Fox Rothschild's Labor and Employment Department.



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