



## **THE NEW MA PREGNANT WORKERS FAIRNESS ACT (PWFA) – ITS NO APRIL FOOLS**

The questions have started coming into the office: “My client is asking about some new pregnancy discrimination law in MA. I haven’t heard anything. Do you know what they are talking about?” Yes, I do and now you will too.

### **THE PREGNANT WORKERS FAIRNESS ACT (THE “PWFA”) IN A NUTSHELL**

- The PWFA amends current MA law prohibiting discrimination in employment, enforced by the Massachusetts Commission Against Discrimination (MCAD)
- It is effective April 1, 2018 (Yes, April 1)
- It expressly prohibits employment discrimination on the basis of pregnancy and pregnancy-related conditions (including lactation)
- It requires employers to notify current employees of the PWFA by April 1, 2018 and at other times for new hires and for pregnant employees

### **REQUIREMENTS OF THE PWFA**

Under the PWFA, Employers:

- Cannot discriminate against employees due to pregnancy or a condition related to pregnancy
- Cannot refuse to hire a person on account of pregnancy or a pregnancy-related condition, if the person can perform the essential functions of the position with a reasonable accommodation
- Must grant employees a “reasonable accommodation” for pregnancy or condition related to pregnancy, unless it would impose an “undue hardship” on the employer
- Cannot make an employee accept a particular accommodation if another reasonable accommodation would allow the employee to perform the essential functions of the job

- Cannot require an employee to take a leave if another reasonable accommodation may be provided without undue hardship
- Cannot deny an employment opportunity or take adverse (negative) action because of the employee's request for or use of a reasonable accommodation

## COMMUNICATION AND NOTICES

Once accommodation is requested, employers must communicate with the employee in a timely, good faith manner, using an interactive process (i.e., no one size fits all employees at all times), in order to determine what accommodation may be needed by the employee.

Employers must provide written notice to employees of their rights under the PWFA no later than April 1, 2018, and not more than 10 days after employer's notification

- of a newly hired employee, or
- by an employee who notifies the employer of a pregnancy or a pregnancy-related condition

Notice can be by handbook, pamphlet, or other means of notice

The PWFA does not require that the employee's request for an accommodation be made in any particular fashion, i.e., orally vs. in writing

## BREAKING FOR MILK

Employers must allow employees to breastfeed or express milk as often as they need to do so, absent undue hardship

- PWFA does not specify or limit the frequency of breaks or the length of breaks to breastfeed or express milk
- U.S HHS guidelines suggest a break length of: 15 to 20 minutes plus transit time plus time to set up and break down equipment
- Breaks may either be paid or unpaid and must be consistent with the employer's break policies for other employees generally
- Employers must not reduce the pay or benefits of an employee who takes breaks to breastfeed or express milk if an employer generally allows its employees to take breaks without loss of pay or benefits

## SPACES FOR BREAKING

Employers must provide a private, non-bathroom space to express milk or to breastfeed. The space must:

- Be free from intrusion and physically convenient
- Be comfortable and include seating
- Contain sufficient electrical outlets for breast pumps
- Contain tables or other surfaces to hold breast pumps and other needed items

An employee may continue working while she breastfeeds or expresses milk rather than taking an unpaid break **IF** the employee has a private, non-bathroom space in which to work, and is able to work while breastfeeding or expressing milk

## EMPLOYERS MAY ASK FOR DOCUMENTATION IN SOME CASES

Employers can generally require documentation from a healthcare professional that explains what accommodation the employee needs.

Employers cannot require documentation for the following:

- more frequent restroom, food, or water breaks
- private, non-bathroom space for breastfeeding or expressing milk
- Seating
- limits on lifting more than 20 pounds

## DEFINITIONS

A condition related to pregnancy can occur during or after pregnancy. Examples include morning sickness, lactation, or the need to express breast milk.

- For example: if a pregnant employee needs to start her workday later than her usual start time due to morning sickness, the PWFA may apply

An undue hardship is an action requiring significant difficulty or expense on the part of the employer

A reasonable accommodation is a modification or adjustment that allows an employee to perform the “essential functions” of the employee’s position. Examples:

- more frequent or longer breaks
- time off
- providing equipment or seating
- temporary transfer to a less strenuous or hazardous job
- job restructuring
- light duty
- private space for expressing breast milk
- assistance with manual labor
- modified work schedule

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The new MA PWFA is broader than similar federal law requirements under the ADA (relating only to pregnancy as a disability) and under the FLSA (requiring a private room to nurse/express milk for up to one year). In such cases the PWFA’s more generous terms will apply. Employers should familiarize themselves with this new MA requirement and consider corresponding changes to policies and procedures and training for company personnel involved in leave administration.

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