

Massachusetts House Passes Bill to Expand Protections for Pregnant Workers

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Last week, the Massachusetts House of Representatives unanimously passed the Massachusetts Pregnant Workers Fairness Act (H.3680). If the bill becomes law, it will expand employment protections for pregnant workers in Massachusetts, most significantly by requiring that Massachusetts employers provide pregnant workers with reasonable accommodations.

Massachusetts already prohibits discrimination against pregnant employees, as Massachusetts courts have recognized that pregnancy discrimination is a form of sex discrimination prohibited by Massachusetts's anti-discrimination statute, Chapter 151B. The Act would codify this existing precedent.

Yet, the Act goes further, requiring that employers provide "reasonable accommodations" to pregnant employees and employees with pregnancy-related conditions similar to those that are required to be provided to disabled employees under federal and state law, such as longer or more frequent breaks or light duty work. An employer would be required to engage in an interactive process with the employee to determine the specific reasonable accommodation appropriate in a given situation. As with the Americans with Disabilities Act, to be entitled to a reasonable accommodation, employees must be capable of performing the essential functions of the job, with or without a reasonable accommodation.

Moreover, the Act provides that the employer does not have to provide a reasonable accommodation that would impose an undue hardship on its business. The employer bears the burden of proving undue hardship, which the Act defines as something "requiring significant difficulty or expense."

The Act imposes additional restrictions on employers. While employers would be allowed to require that employees provide medical documentation to support the need for an accommodation, they would not be allowed to require medical documentation when the employee requests increased breaks, seating, and/or limits on lifting more than 20 pounds. Additionally, an employer could not impose an accommodation on a pregnant worker where the accommodation is not necessary for the employee to perform the essential function her job. An employer also could not require an employee to take a leave of absence as an accommodation if another reasonable accommodation exists. The Act also prohibits employers from retaliating against employees or applicants who request or use a reasonable accommodation.

The Act would also impose new notification requirements on employers. The most significant of these requirements would be the requirement that an employer provide an employee notice of her rights under the Act within ten days of the employee notifying the employer of her pregnancy.

The unanimous passage of the Act by the House and reports coming out of Beacon Hill suggest that there is broad support to expand protections for pregnant workers in Massachusetts. Accordingly, it is expected that the Act or a similar version of the Act will pass the Massachusetts Senate and be signed into law by Governor Charlie Baker, likely later this year.

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