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CLIENT ALERT

THE NEW REASONABLE ACCOMMODATIONS FOR DISABILITIES DUE TO PREGNANCY ACT – WHAT MARYLAND EMPLOYERS NEED TO KNOW

By: Marc R. Engel, Esq.

In a decision that could have wide ranging ramifications for employers in Maryland, Governor Martin O'Malley recently signed the Reasonable Accommodations for Disabilities Due to Pregnancy Act (the Act). The Act, which is scheduled to take effect on October 1, 2013, amends Maryland's Fair Employment Practices Act to require employers, unless they can establish that it would cause them an undue hardship, to provide pregnant employees who are temporarily disabled with a variety of accommodations, including the following:

- changing the employee's job duties;
- relocating the employee's work area;
- transferring the employee to a less hazardous and strenuous position;
- providing mechanical or electrical aids;
- changing the employee's work hours; or
- providing leave.

The Act defines an employer as a "person" (i) that has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; and (ii) an agent of a "person".

The Act specifically provides that a job transfer to a less strenuous or hazardous position may be required if (a) the employer has a practice, policy or collective bargaining agreement to permit such transfers in the case of other temporary disabilities, or (b) even in the absence of such a policy, practice, or collective bargaining agreement, the employee's health care provider recommends that the employee be transferred and the employer can accomplish the transfer without (i) creating a new job position; (ii) discharging another employee; (iii) transferring another employee with more seniority than the pregnant employee; or (iv) promoting a qualified employee to perform the job.



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Of particular concern to employers should be the fact that the Act appears to go beyond the requirements with the Americans With Disabilities Act (ADA) in that it contemplates accommodations that may have the effect of eliminating the essential functions of a position, rather (as is the case under the ADA) than permitting the employee to accomplish the essential functions of the job in a different manner.

The Act also requires employers to expressly (i) to include in their Employee Handbooks language explaining the rights of a pregnant employee to a reasonable accommodation under applicable law and (ii) to post a notice in a common location.

Like the ADA, the Act also requires Maryland employers to engage in an interactive dialogue with employees. The Act authorizes employers to require that employees provide a health care provider certification regarding the employee's temporary disability which includes (i) the dates that the reasonable accommodation became medically advised; (ii) the probable duration of the accommodation; and (iii) a statement explaining the medical advisability of the accommodation.

Undeniably, the Maryland legislature is sending a strong message to Maryland employers that they must reasonably accommodate employee disabilities caused, or contributed by, pregnancy. Although the full ramifications of the Act are unknown, it is reasonable to assume that the Act will create additional legal risk and exposure for employers that fail to take proactive steps in advance of October 1, 2013. Smart executives and their business advisors are well advised to do the following:

1. train supervisors and managers on the Act;
2. post a notice advising employees of their rights under the Act;
3. create appropriate language to include in an Employee Handbook that satisfies the statutory requirements;
4. seek appropriate medical certifications in circumstances where an accommodation has been requested; and
5. educate supervisors on the need (i) to treat accommodation requests seriously and in a timely manner; (ii) to obtain the advice of human resource professionals and counsel where appropriate; and (iii) to effectively and lawfully engage in the interactive process required by the Act.



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