A new state law that becomes effective October 1, 2017, expands existing legal protections for pregnant employees under federal and state laws and will require employers to pay closer attention to the ways in which they treat pregnant workers. Under current standards, federal law prohibits employers from discriminating against employees due to pregnancy while Connecticut law requires employers to do more, affording employees job protection during any reasonable leave of absence due to pregnancy and the right to transfer to a more suitable position during the pregnancy. The new law, titled “An Act Concerning Pregnant Women in the Workplace,” goes further by imposing on Connecticut employers an explicit duty to provide pregnant employees with “reasonable accommodations” in the workplace.

Most employers are familiar with the concept of reasonable accommodation from the Americans with Disabilities Act (ADA), but under the ADA normal pregnancy does not qualify as a “disability” triggering an employer’s duty to provide reasonable accommodations. In 2014, the U.S. Supreme Court held that employers that provide accommodations to non-pregnant employees must provide pregnant employees similar accommodations. However, until now, there has been no free-standing requirement for employers to accommodate an employee’s pregnancy.

The new Connecticut law defines “reasonable accommodation” in the pregnancy context to mean, among other (unspecified) things:

- Being permitted to sit while working;
- More frequent or longer breaks;
- Periodic rest;
- Assistance with manual labor;
- Job restructuring;
- Light duty assignments;
- Modified work schedules;
- Temporary transfers to less strenuous or hazardous work;
- Time off to recover from childbirth;
- Breaktime and appropriate facilities for expressing breast milk.

The new Connecticut statute does not explicitly state that a reasonable accommodation is one that is needed to allow the employee to perform her job. This is a potentially significant difference from the standard used under the ADA. While it is likely that courts will incorporate most of the several decades of reasonable accommodation interpretation into this new law, employers will face some challenges as the contours of reasonable accommodation become more clear.

The new law also requires employers to provide written notice to employees of their rights under the law. Employers must provide such notice to current employees within 120 days after October 1, 2017, to new employees on hiring, and to any employee who announces her pregnancy within 10 days of such notification. The law allows employers to satisfy these requirements by posting a notice of the rights of pregnant employees in a prominent location and in both English and Spanish.

Connecticut law continues to require employers to grant a “reasonable” leave of absence for disability caused by pregnancy, even if the employee has no available time under the federal and state Family and Medical Leave Acts. However, the new law makes clear that an employer may not force an employee to take leave if there is a reasonable accommodation that would allow her to perform the essential functions of her job.

In most situations, the new duty to accommodate will be relatively easy to follow and creates no problems for employers. Employers should consider revising their policies to provide for an interactive process so that the employer can consult with the employee to jointly determine which accommodations make the most sense in a given situation, similar to the policies that many employers have concerning the accommodation of disabilities in the workplace. Any new legal requirement brings with it the possibility of confusion that can quickly escalate into legal problems, and this new mandate is no exception. We anticipate that over the next several years, the contours of the law will be clarified as the courts
weigh in on the statutory language and facts of situations as they arise. Connecticut employers should, therefore, tread carefully when dealing with pregnant employees and make sound business decisions in compliance with the law.

If you would like additional information on this topic, please contact a member of the Labor & Employment Practice Group linked here or your lawyer at McCarter & English, LLP.

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