

Labor and Employment Law Alert
July 2017

**MASSACHUSETTS LEGISLATURE UNANIMOUSLY PASSES
THE PREGNANT WORKERS FAIRNESS ACT**

For a discussion of these and other legal issues, please visit our website at www.mhtl.com. To receive legal updates via e-mail, contact information@mhtl.com.

On June 29, 2017, the Senate unanimously voted to pass the Massachusetts Pregnant Workers Fairness Act (S.2093). This bill will be sent to Governor Charlie Baker to be signed after being reconciled with the House version of the bill (H.3680) that passed in May 2017.

The Pregnant Workers Fairness Act (“PWFA”) will amend Massachusetts’ anti-discrimination statute, M.G.L. c. 151B, to include pregnancy and related medical conditions (e.g., breastfeeding) as protected categories. The PWFA will make it unlawful for employers to discriminate or retaliate against an employee, or prospective employee, on the basis of a pregnancy or related medical conditions. The PWFA will also make it unlawful for employers to discriminate or retaliate against an employee, or prospective employee, on the basis of the individual’s request for a reasonable accommodation because of a pregnancy or related medical condition. Employers will be required to grant an employee’s request for a reasonable accommodation related to pregnancy, childbirth, or other related conditions so long as doing so will not cause an undue hardship to the employer.

Reasonable accommodations under the PWFA may include, among other things: (i) more frequent or longer breaks (with or without pay); (ii) time off to recover from childbirth (with or without pay); (iii) acquisition or modification of equipment or seating; (iv) temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty; (vii) private non-bathroom space for expressing breast milk; (viii) assistance with manual labor; or (ix) a modified work schedule.

Notably, under the PWFA, an employer may not require an employee, or prospective employee, to furnish medical documentation in support of a reasonable accommodation request if the individual is seeking any of the following reasonable accommodations: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting over 20 pounds; or (iv) private non-bathroom space for expressing breast milk. An employer may, however, require that the employee, or prospective employee, furnish medical documentation in support of a request for other reasonable accommodations because of the individual’s pregnancy or related medical condition.

The PWFA will require employers to provide written notice to their employees of the right to be free from discrimination in relation to pregnancy or a condition related to pregnancy. The notice shall be provided in a handbook or other means of notice to all employees.

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The PWFA, if signed into law, will take effect on April 1, 2018. After that time, an employee's, or prospective employee's, claim of discrimination on the basis of a pregnancy or related medical condition will fall under Massachusetts' anti-discrimination statute, M.G.L. c. 151B, and will be treated like all other discrimination or retaliation claims under M.G.L. c. 151B.

We will continue to monitor the development of the PWFA, and will issue an updated labor and employment law alert when it is signed into law by Governor Charlie Baker.

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If you have any questions about this issue, please contact Katherine A. Hesse, Michelle De Oliveira or the attorney responsible for your account, or call (617) 479-5000.

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