

**Labor and Employment Law Alert
August 2017**

**MASSACHUSETTS ENACTS
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.

Last month, we alerted you to the legislature's passage of the Pregnant Workers Fairness Act ("PWFA"). On July 27, 2017, Governor Charlie Baker signed the PWFA into law. It takes effect April 1, 2018.

In anticipation of this April 1, 2018 effective date, it will be important for employers to update their policies and employee handbooks to comply with the written notice requirements of the law. Specifically, employers are required to provide written notice to all employees of their rights under the PWFA no later than April 1, 2018. Employers must also provide new employees with written notice of their rights under the PWFA either at or prior to the commencement of their employment. In addition, when an employee notifies an employer of a pregnancy or related medical condition, the employer will have 10 days to provide the employee with written notice regarding the employee's rights under the PWFA.

The PWFA amends Massachusetts' anti-discrimination statute, M.G.L. c. 151B, to include pregnancy and related medical conditions (*e.g.*, breastfeeding) as protected categories. The PWFA applies to employees and prospective employees, and makes it unlawful for employers to discriminate or retaliate against an individual on the basis of a pregnancy or related medical condition.

The PWFA also makes it unlawful for employers to discriminate or retaliate against an individual who requests a reasonable accommodation because of a pregnancy or related medical condition. Employers will be required to engage in a timely and good faith interactive process with individuals who request a reasonable accommodation related to pregnancy, childbirth, or other related condition, and will be required to grant such requests 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 attend to a pregnancy complication or 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.

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Notably, under the PWFA, an employer may not initially require an individual to furnish medical documentation in support of a reasonable accommodation request if the individual is seeking any of the following: (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 an individual to provide medical documentation in support of a request for other accommodations because of a pregnancy or related medical condition.

Following the April 1, 2018 effective date of the law, a claim of discrimination or retaliation 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.

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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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