New Jersey Ups The Ante On Employers Who Discriminate Against Pregnant Employees

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Since 1975, the New Jersey Law Against Discrimination has shielded employees of "protected classes" from discrimination in the hiring, firing and terms/conditions of employment. The phrase "protected class" encompasses many characteristics, including but not limited to age, race, national origin, sexual orientation, religion and other categories. On January 21, 2014, Governor Chris Christie signed legislation expanding the protections afforded to pregnant women. The legislation is known as the ***Pregnant Workers Fairness Act***. The ramifications for employers are far reaching and cannot be ignored.

Employers are required to make reasonable accommodations for employees who are pregnant, encountering medical conditions surrounding pregnancy/childbirth and for the recovery from childbirth. Employers may not punish an employee or treat that pregnant employee any differently than any other employee, including an employee with a disability unrelated to pregnancy and childbirth. Reasonable accommodation requests may include any of the following:

1. Breaks;

2. Job modifications;

3. Modified work schedules;

4. The opportunity and location to express breast milk;

5. Assistance with manual labor.

As with any request for an accommodation, it must be reasonable. Any accommodation request that would result in an undue burden to the employer is not mandated by the Act. Of course, the question becomes what is reasonable. The legislature has stated that it is a fact-sensitive analysis based on the following factors:

1. The size of the employer;

2. Type of operations;

3. Costs of the accommodation;

4. The extent which an accommodation would result in the waiver of essential functions of the job.

The Act does not provide for any additional leave entitlement. However, under applicable circumstances, employers that employ 50 or more employees must provide twelve (12) weeks of unpaid leave for the employee's own health and following the birth of a child, provided that the employee has worked for at least 1,250 hours and twelve (12) months during the previous twelve (12) month time period.

As a result of this newly enacted legislation, employers must review its policies and procedures. Employment manuals should be revised and human resources personnel should be aware of the change. These policies should be in place before your business is confronted with an employee's questions. Consultation with an employment attorney is advised before you or any member of your staff communicates with the pregnant employee.