Schaffer Law, LLC
Labor and Employment Law

Pregnancy Related Rights Expanded Under Connecticut Law

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Effective October 1, 2017, Connecticut's Fair Employment Practices Act (CFEPA), will provide greater pregnancy related protections. P.A. 17-118. Under the new law, the definition of "pregnancy" has been expanded to encompass any condition related to pregnancy and childbirth, including, but not limited to, lactation. This definition is broader than both the federal Pregnancy Discrimination Act, which limits "pregnancy" to related medical conditions, and current state law. It also defines the terms "reasonable accommodation" and "undue hardship," instead of leaving those terms more open-ended.

Under current state law it is discriminatory to:

-to terminate a woman's employment because of her pregnancy;

-to refuse to grant to that employee a reasonable leave of absence for disability resulting from her pregnancy;

-to deny to that employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by the employer; and

-to fail or refuse to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits upon her signifying her intent to return unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

These provisions remain unchanged.

Several current provisions, however will be deleted. These include:

-failure or refusal to make a reasonable effort to transfer a pregnant employee to any suitable temporary position which may be available in any case in which an employee gives written notice of her pregnancy to her employer and the employer or pregnant employee reasonably believes that continued employment in the position held by the pregnant employee may cause injury to the employee or fetus;

-failure or refusal to inform the pregnant employee that a transfer pursuant to subparagraph (E) of this subdivision may be appealed under the provisions of this chapter; or

-failure or refusal to inform employees of the employer, by any reasonable means, that they must give written notice of their pregnancy in order to be eligible for transfer to a temporary position;

In their place, several new provisions have been added that would make it a violation to:

-limit, segregate or classify the employee in a way that would deprive her of employment opportunities due to her pregnancy;

-discriminate against an employee or person seeking employment on the basis of her pregnancy in the terms or conditions of her employment;

-fail or refuse to make a reasonable accommodation for an employee or person seeking employment due to her pregnancy, unless the employer can demonstrate that such accommodation would impose an undue hardship on such employer;

-deny employment opportunities to an employee or person seeking employment if such denial is due to the employee's request for a reasonable accommodation due to her pregnancy;

-force an employee or person seeking employment affected by pregnancy to accept a reasonable accommodation if such employee or person seeking employment (i) does not have a known limitation related to her pregnancy, or (ii) does not require a reasonable accommodation to perform the essential duties related to her employment;

-require an employee to take a leave of absence if a reasonable accommodation can be provided in lieu of such leave; and

-retaliate against an employee in the terms, conditions or privileges of her employment based upon such employee's request for a reasonable accommodation.

The Act also creates specific definitions for “reasonable accommodation” and “undue hardship.”

“Reasonable accommodation” means, but shall not be limited to:

> “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 or break time and appropriate facilities for expressing breast milk.”

“Undue hardship” now means an action requiring significant difficulty or expense when considered in light of factors such as (A) the nature and cost of the accommodation; (B) the overall financial resources of the employer; (C) the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and (D) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

These new definitions differ a bit from the Federal ADA.

Under federal law “reasonable accommodation” may include (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

"Undue hardship" under federal law means an action requiring significant difficulty or expense, when considered in light of the factors set forth below:

-the nature and cost of the accommodation needed under this chapter;

-the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

-the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

-the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity

Separately, employers must provide existing employees with written notice of employee rights under the Act within 120 days of the law going into effect, and must also provide notice (going forward) to all new employees upon hire, and to any employee who notifies the employer of a pregnancy within ten days of such notification. Notice can be satisfied by displaying a poster containing all relevant information in both Spanish and English in a conspicuous location at the employer's place of business. It is anticipated that the CT Commission on Human Rights and Opportunities will issue a form posting for this purpose. Employers should also include these changes in their employee handbooks.

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