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## Philadelphia Pregnancy Accommodation Law Notice to Employees Must be Posted by April 20, 2014

By Ben Huggett and Elizabeth Clement

On or before April 20, 2014, all employers with employees in the City of Philadelphia must post a new notice on pregnancy discrimination from the Philadelphia Commission on Human Relations. Unlike the Philadelphia 21st Century Minimum Wage and Benefits Standard,<sup>1</sup> this law is not limited to city employees or contractors, but instead applies to all employers and employees working within the City. The new Notice is a plain-language explanation of the January 20, 2014 amendments to the City's Fair Practices Ordinance which impose a duty on employers to accommodate employees "affected by pregnancy," regardless of whether they are disabled.

Philadelphia's new law, which is similar to recently-enacted laws in New Jersey,<sup>2</sup> Maryland,<sup>3</sup> and New York City,<sup>4</sup> places a significant burden on employers. Specifically, it makes it an unlawful employment practice for an employer to fail to provide reasonable accommodations for an employee with needs related to pregnancy, child birth, or a related condition provided: (1) the employee requests such accommodations; and (2) the requested accommodations would not pose an undue hardship to the employer. Notably, the law does not require any form of documentation or support from a physician for an accommodation request—all that is required is an employee's request to the employer.

Reasonable accommodations under the new law may include:

- restroom breaks
- periodic rest for those who stand for long periods of time
- assistance with manual labor
- leave for a period of disability arising from childbirth

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1 See Lisa Steele, [Philadelphia: The Most Recent City to Adopt Paid Sick Leave Requirements for Some Employers](#), Littler ASAP (Nov. 10, 2011).

2 See Amber Spataro, Alison Andolena, and Jessica Agarwal, [New Jersey Employers Face New Pregnancy Accommodation Requirements](#), Littler ASAP (Feb. 7, 2014).

3 See Joseph Harkins and Steven Kaplan, [Maryland Employers Must Soon Provide "Light Duty" to Pregnant Disabled Woman and Update Employment Handbooks](#), Littler ASAP (Sept. 16, 2013).

4 See David Wirtz, Barbara Gross, and Stefanie Kastrinsky, [New York City Law Provides Reasonable Accommodation for Pregnancy, Childbirth, and Related Conditions](#), Littler ASAP (Oct. 8, 2013).

- reassignment to a vacant position
- job restructuring

Importantly, this list is not exhaustive, and other actions may be considered reasonable accommodations.

Employers may refuse an accommodation request where it would pose an undue hardship on the business. An employer that denies a requested accommodation because it would impose an undue hardship bears the burden of proving undue hardship. The factors to be considered in the undue hardship analysis include:

- the nature and cost of the accommodations;
- the overall financial resources of the employer's facility or facilities involved in the provision of the reasonable accommodations, including the number of persons employed at such facility or facilities, the effect on expenses and resources, or the impact otherwise of such accommodations upon the operation of the employer;
- the overall financial resources of the employer, including the size of the employer with respect to the number of its employees and the number, type, and location of its facilities; and
- the type of operation or operations of the employer, including the composition, structure, and functions of the workforce, and the geographic separateness or administrative or fiscal relationship of the facility or facilities in question to the employer.

It may be difficult for employers to prove an undue hardship due to the obligation in the law to provide job restructuring or reassignment to a vacant position.

In addition to the undue burden defense, employers can also assert as an affirmative defense that the affected employee "could not, with reasonable accommodations, satisfy the requisites of the job." This provision means that an employer may continue to enforce its performance standards for pregnant employees.

If an employer refuses to provide a reasonable accommodation, the same remedies are available to employees as are available for other unlawful employment practices, including injunctive or other equitable relief, compensatory damages, punitive damages, and reasonable attorneys' fees.

A downloadable copy of the Notice released by the Philadelphia Commission on Human Relations on March 28, 2014 is available on the Philadelphia Commission on Human Relations' website<sup>5</sup> and hard copies are available for pick-up at the Greater Philadelphia Chamber of Commerce and other area chambers of commerce within the City. Employers must conspicuously post this Notice in an area accessible to employees by April 20, 2014.

## Legal Implications

The law's accommodation requirement differentiates it from other federal and state laws prohibiting pregnancy discrimination or requiring accommodation (such as the Pregnancy Discrimination Act, the Americans with Disabilities Act, and the Pennsylvania Human Relations Act) because it obligates employers to make reasonable workplace accommodations for employees who are pregnant or have medical conditions relating to pregnancy or related medical condition. As a result, the law extends privileges to employees affected by pregnancy that are unavailable to other employees, including many disabled employees. For example, the law requires an employer to consider job reassignment and job restructuring for pregnant employees, even though these types of accommodations may not be required for disabled employees under state or federal law.

It remains to be seen how the law will fare if it is challenged in court. Because it extends protections beyond those in the Pennsylvania Human Relations Act, there may be an argument that the City is acting beyond the limits of the authority in its Home Rule Charter and is without jurisdiction to enact this law. Until a legal challenge is asserted, however, the Philadelphia Commission on Human Relations will be enforcing the law.

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5 [http://www.phila.gov/HumanRelations/PDF/pregnancy\\_poster.pdf](http://www.phila.gov/HumanRelations/PDF/pregnancy_poster.pdf)

## Employer Actions

In light of this new law, employers with operations in Philadelphia should take the following steps:

- no later than April 20, 2014, obtain and conspicuously post in an area accessible to employees the Notice provided by the Philadelphia Commission on Human Relations;
- notify all existing Philadelphia-based employees of the new posting;
- review and make necessary revisions to their orientation materials;
- review and make necessary revisions to their leave of absence and reasonable accommodation policies; and
- train managers and human resources professionals on handling requests for accommodations from Philadelphia-based employees affected by pregnancy, including when the interactive process is triggered, the appropriate steps in that process, when accommodations must be granted, and what accommodations must be granted.

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