LABOR & EMPLOYMENT ALERT

Employers in Illinois Take Note: Pregnancy Accommodation Amendments Go Into Effect January 1, 2015

November 25, 2014

As of January 1, 2015, the recently enacted pregnancy accommodation amendments to the Illinois Human Rights Act ("IHRA") will go into effect, requiring many Illinois employers to update or change their policies and practices with regard to the expecting and new mothers in their workforce. Read below for the highlights of the IHRA's pregnancy-related amendments, and stay tuned for an announcement from our group about an upcoming breakfast training at which we will discuss the details of the amendments, along with other employment hot topics for 2015.

Which employers are covered by the amendments? All private, non-religious employers in Illinois, regardless of the number of employees, will be covered by the new pregnancy-related provisions of the IHRA. Note, most IHRA provisions generally apply only to employers with 15 or more employees in Illinois. The Act's pregnancy-related amendments, however, apply to all employers, regardless of size.

Which employees are protected by the amendments? The amended IHRA prohibits discrimination based on, and requires employers to provide reasonable accommodations for, "pregnancy." "Pregnancy" is defined broadly under the Act to include "pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth." Thus, the amendments generally will apply to applicants and employees who are expecting and who recently gave birth.

What do the amendments require? Broadly speaking, the amendments impose an affirmative obligation on employers to offer reasonable accommodations for pregnancy and childbirth-related conditions. Such accommodations may include: more frequent or longer breaks; providing time and a private, non-bathroom space to express breast milk; physical accommodations such as seating and assistance with manual labor; modified or a part-time work schedule or even "job restructuring"; time off to recover from conditions related to childbirth; and/or leave "necessitated by" pregnancy, childbirth or medical "or common conditions" resulting from pregnancy or childbirth.

Importantly, under the amended IHRA employers may not require expecting or new mothers to just take leave, or to accept an accommodation that the applicant or the employee did not request. The individual must agree to the form of accommodation being offered. However, prior to providing the requested accommodation, employers will have the ability to require the requesting employee to submit medical proof of the need for that accommodation, to include a description of the advisable accommodation and its probable duration.

In addition, similar to the provisions of the federal Americans with Disabilities Act ("ADA"), the amended IHRA will not require employers to create new positions, discharge or transfer other employees, or to promote an unqualified employee in order to meet the "reasonable accommodation" requirement. If the requested accommodation would pose an "undue hardship," it need not be provided. Employers should note, however, that the amended IHRA (similar to the ADA) places the burden of proving an "undue hardship" squarely on the employer, and meeting that burden is no easy task. An "undue hardship" will be found to exist only if the requested accommodation is "prohibitively expensive or disruptive" when considered in light of certain specified factors, including the accommodation's nature and cost, the overall financial resources of and impact on the facility or facilities involved in providing the requested accommodation, the overall financial resources of the employer, and the employer's general operations. Importantly, if the employer provides or would be required to provide the kind of accommodation being

requested to other similarly-situated, non-pregnant employees, the amended IHRA will impose a "rebuttable presumption" that the requested accommodation would not impose an undue hardship.

Once an employee's need for reasonable accommodation ceases and she relays an intent to return to her former position, the amended IHRA requires that the employer reinstate her to that former position or an equivalent position with equivalent pay, without loss of seniority or other benefits, unless, again, doing so would impose an undue burden.

The amended IHRA further requires that employers in Illinois post an Illinois Department of Human Rights-prepared or approved notice about the pregnancy accommodation amendments in the workplace, and also include appropriate information regarding employees' rights under the amendments in their handbooks.

In short… Considering that women compose nearly 50% of all workers in Illinois, it is important for employers to understand and ensure compliance with the IHRA's new pregnancy-related amendments. Any request for an accommodation made by an expecting or new mother must be evaluated thoughtfully, with the new statutory framework in mind. If you have any questions about the amendments and/or how they may impact the policies or procedures at your workplace, please contact Sonya Rosenberg or any the other member of Neal Gerber Eisenberg's Labor & Employment practice group.

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