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Colorado Amends Discrimination Law to Accommodate Pregnant and Post-Partum Employees

On June 1, 2016, Gov. Hickenlooper signed into law [Colorado House Bill 16-1438](#), requiring employers to provide reasonable accommodations for pregnant and post-partum employees (specifically, for applicants or employees with “health conditions related to pregnancy, the physical recovery from childbirth, or related conditions”). Employers who fail to do so may assert the affirmative defense of undue hardship. The amendments will become effective Aug. 10, 2016. Critically, there are posting and notification requirements. Starting Aug. 10, 2016, employers are required to provide notice to new employees, and by Dec. 8, 2016, notice to existing employees. Conspicuous notice must also be posted. Please contact a member of our team for assistance drafting the required notices; revising the related policies and handbook, and updating job descriptions with the essential functions of each job; and conducting training regarding these new requirements.

For more detail, the General Assembly’s overarching policy goal is to provide pregnant and post-partum women workplace protections to ensure they can remain gainfully employed by ensuring: “full and equal protection for women in the labor force by requiring employers to provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or a related condition.” To that end, the Colorado Anti-Discrimination Act, C.R.S. §§ 24-34-401, et seq., was amended to prohibit an employer from discriminating against employees and applicants who have health conditions related to pregnancy, the physical recovery from childbirth, or related conditions. Specifically, employers must:

- provide reasonable accommodations unless that would cause undue hardships on the employer’s business;
- not take adverse actions against employees who request or use a reasonable accommodation;
- hire applicants despite the need to make a reasonable accommodation;
- not require an applicant or employee to accept an accommodation that the employee did not require or that is not necessary to perform the essential job functions; and
- not require leave if the employer can provide another reasonable accommodation.

An employer may require a health care provider note before making an accommodation and must engage in good faith in the interactive process in a timely manner. Reasonable accommodations may include:

- providing more frequent or longer break periods;
- more frequent breaks;
- acquiring or modifying equipment or seating;
- lifting limitations;
- temporary transfers to less strenuous or hazardous positions if available (with return to current position after pregnancy);
- job restructuring;
- light duty (if available);

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- manual labor assistance; and/or
- modified work schedules.

However, an employer does not have to make the above reasonable accommodations if it would require the employer to:

- hire new employees that it would not otherwise have had to hire;
- discharge, transfer, or promote another employee;
- create a new position (including light duty) unless it would be provided for another equivalent employee; or
- provide leave beyond what is provided to similarly situated employees.

Similarly, “undue hardship” as used in this amendment means “an action requiring significant difficulty or expense to the employer,” with the following factors considered: nature and cost of accommodation, the employer’s overall financial resources, the employer’s size of business (with respect to employee numbers and types, and locations), and the effect of the accommodation on the employer’s expenses, resources, and obligations. However, to the extent that the employer provides a similar accommodation to other classes of employees, that “creates a rebuttable presumption that the accommodation does not impose an undue hardship.”

Employers must also provide written notice of these rights to new employees at the start of employment and to existing employees within 120 days of Aug. 10, 2016.

A finding that an unfair employment practice has been committed could result in the award of punitive damages unless the employer demonstrates good faith efforts to identify and make reasonable accommodations.

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This document is intended to provide you with general information regarding Colorado's Discrimination Law to Accommodate Pregnant and Post-Partum Employees. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney(s) listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.