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New York City Passes Law to Protect Pregnant Women from Discrimination in the Workplace

On October 2, 2013, following a unanimous New York City Council vote, Mayor Michael Bloomberg signed the Pregnant Workers Fairness Act, which expands the city's Human Rights Law to require most New York City employers to provide reasonable accommodations to pregnant workers. The new law is designed to protect pregnant women from discrimination in the workplace, including being removed from their positions, placed on unpaid leave or fired for requesting a reasonable accommodation. The law will go into effect on January 30, 2014.

The new law applies to all New York City employers with four or more employees and prohibits employers from discriminating against employees on the basis of pregnancy, childbirth or a related medical condition. The Act requires employers to provide reasonable accommodations to pregnant employees and conditions related to the pregnancy where the condition is known or should have been known to the employer. Some of those accommodations include rest breaks, assistance with manual labor, and a period of recovery from childbirth. Employers must also provide pregnant workers with a written notice of their rights.

The new law does not require an employer to provide an accommodation if it would cause an "undue hardship" that would result in significant difficulty or expense to the employer. It is the employer's burden to prove undue hardship. There are several factors that an employer may consider in determining if the requested accommodation constitutes an "undue hardship":

- the nature and cost of the accommodation;
- the overall financial resources of the facility or facilities involved in the request;
- 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 employer;

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

An employer may raise an affirmative defense to any claim brought by an employee where the need for reasonable accommodation is placed in issue that the employee, even with a reasonable accommodation, could not satisfy the essential requisites of the job.

An employee who feels she has been discriminated against may bring a civil action in court or file a complaint with the New York City Commission on Human Rights. The Commission can order the employer to halt its practices, hire back employees, require back-pay for said employees or award compensatory damages. An employer who fails to comply with a Commission order may be penalized up to $50,000 and an additional civil penalty of no more than $100 per day. If the Commission determines that an employer engaged in an unlawful discriminatory practice, it may impose a civil penalty of up to $125,000, unless it determines that the practice was "willful, wanton or malicious", in which case the Commission may impose a penalty of up to $250,000. An employer that willfully violates a Commission order may even be found guilty of a misdemeanor and can face up to one year of jail time or a fine of up to $10,000.

New York City employers who are covered by the new law should update their handbooks to reflect the new requirements and train their management and supervisors as to what kinds of accommodations may be required. They should also inform employees of the new law by providing written notice to them of their rights.