



TOWN OF BOURNE
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THOMAS M. GUERINO
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March 26, 2018

TO: All Employees
FROM: Thomas M. Guerino – Town Administrator
RE: Massachusetts Pregnant Workers Fairness Act

All:

On July 27, 2017, Governor Charlie Baker signed into law an Act Establishing the Massachusetts Pregnant Workers Fairness Act, **Chapter 54 of the Acts of 2017**. The Pregnant Workers Fairness Act will provide needed and reasonable accommodations to pregnant workers throughout the Commonwealth. Below is a breakdown of employee and employer rights and responsibilities under the new law, effective April 1, 2018.

Who the law applies to:

Employers with six or more employees.

What the law does:

The Pregnant Workers Fairness Act makes it unlawful for an employer in Massachusetts to discriminate against an employee due to pregnancy or a condition related to pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child. The law updates MGL Chapter 151B, the Massachusetts anti-discrimination law to include these new provisions.

Specifically, the law makes it unlawful to:

1. Take adverse action or retaliate against an employee who requests or uses a reasonable accommodation. This includes failing to reinstate the employee to the original employment status or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when the need for reasonable accommodation ceases.
2. Deny an employment opportunity to an employee if the denial is based on the need of the employer to make a reasonable accommodation to the known conditions related to the employee's pregnancy.
3. Require a pregnant employee or employee with a pregnancy related condition to accept an accommodation that the employee chooses not to accept, if that accommodation is unnecessary to enable the employee to perform the essential functions of the job.
4. Require an employee to take leave if another reasonable accommodation may be provided to the known conditions related to the employee's pregnancy or need to pump without undue hardship on the employer.
5. Refuse to hire a person who is pregnant because of the pregnancy or because of a condition related to the person's pregnancy such as breast milk expression; provided that the person is capable of performing the essential functions of the position with reasonable accommodations and that the reasonable accommodation would not impose an undue hardship on the employer.

The law also sets up a process for a pregnant employee or pregnant prospective employee, or an employee or prospective employee with a pregnancy related condition to engage with an employer in establishing reasonable accommodations.

- Upon the request of an accommodation from the employee or prospective employee, the employee and employer must engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation to enable the employee to perform the essential functions of the position.

What is a reasonable accommodation?

Under the law, reasonable accommodations include, but are not limited to:

- More frequent or longer paid or unpaid breaks
- Time off to attend to a pregnancy complication or recover from childbirth with or without pay
- Acquisition or modification of equipment or seating
- Temporary transfer to a less strenuous or hazardous position
- Job restructuring
- Light duty
- Private non-bathroom space for expressing breast milk
- Assistance with manual labor
- Modified work schedule

When can an employer deny a reasonable accommodation?

An employer can only deny a reasonable accommodation for an employee's pregnancy or condition related to the employee's pregnancy, including but not limited to lactation or the need to express breast milk for a nursing child, if the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

Undue Hardship: Under the law, the employer has the burden of proving undue hardship, which is defined as an action requiring significant difficulty or expense. In determining undue hardship, employers must consider the following factors:

- The nature and cost of the needed accommodation
- 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 effect on expenses and resources or any other impact on the employer's program, enterprise or business

Documentation:

Employers may require documentation about the need for a reasonable accommodation from an appropriate health care professional, unless it is for:

- More frequent restroom, food or water breaks during pregnancy
- Seating
- Limits on lifting over 20 pounds
- Private non-bathroom space for expressing breast milk

If an employee requests an extension of the originally agreed upon accommodation, an employer may require documentation.

Other employer responsibilities:

- The law requires employers to distribute a written notice to their employees that details their right to be free from discrimination in relation to pregnancy or a condition related to the employee's pregnancy, including lactation or the need to express breast milk for a nursing child,

including the right to reasonable accommodations for conditions related to pregnancy pursuant to the new law.

- The notice must be provided in a handbook or other means of notice to all employees including to:
 - new employees at or prior to the commencement of employment
 - an employee who notifies their employer of a pregnancy or a condition related to the employee's pregnancy not more than 10 days after such notification.

Any further questions on this matter may be directed back to Personnel.

Thank you.