

It is Not an Early April Fools' Joke: Give Your Employees the Required Massachusetts Pregnant Workers Fairness Act Notice TODAY

By [Alicia J. Samolis](#) and [Michael A. Gamboli](#)

The Massachusetts Pregnant Workers Fairness Act (the "Act") goes into effect on Sunday, April 1st, 2018. The Act, which applies to all Massachusetts employers with six or more employees, requires employers to provide pregnant workers or workers with pregnancy-related conditions with reasonable accommodations and protection from discrimination and retaliation under Massachusetts's general anti-discrimination law. Most immediately, the Act requires that Employers provide employees notice of the provisions of the law on or before the effective date. The Massachusetts Commission Against Discrimination has indicated that its guidance can be used to fulfill the notice requirement. Click [here](#) to view the guidance document. So for employers who have not done so already, this notice needs to be provided to their Massachusetts employees **today**.

The key provisions of the Act are as follows:

- Federal and Massachusetts laws generally prohibit employers from subjecting employees to adverse employment actions because they are pregnant. The Act expands these protections to require that "ordinary" pregnancy and related conditions (such as nursing) be accommodated, in a manner similar to providing workplace accommodations to employees with disabilities. The Act goes beyond some prior Massachusetts precedent, which only provided reasonable accommodations with respect to pregnant employees when the employee exhibits unusual medical conditions or complications sufficient to constitute a disability.
- Under the Act, upon request from an employee for an accommodation related to pregnancy, the employer has an obligation to communicate with the employee in order to determine a reasonable accommodation for the pregnancy or pregnancy-related condition. This is called an "interactive process," and it must be done in good faith. A "reasonable accommodation" is a modification or adjustment that allows the employee or job applicant to perform the essential functions of the job while pregnant or experiencing a pregnancy-related condition, without undue hardship to the employer.
- The Act requires that employers accommodate conditions related to pregnancy, including post-pregnancy conditions such as the need to express breast milk for a nursing child, unless doing so would pose an undue hardship on the employer. "Undue hardship" means that providing the accommodation would cause the employer significant difficulty or expense.
- The Act provides a list of exemplar reasonable accommodations that might be appropriate for pregnant and nursing employees: more frequent or longer paid or unpaid breaks; time off to 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; a private non-bathroom space for expressing breast milk; assistance with manual labor or modified work schedules.
- In general, employers may require medical documentation to substantiate the need for an accommodation. However, the Act is clear that an employer may not require medical documentation to establish a pregnant or nursing employee's need for the following accommodations: more frequent restroom breaks, food or water breaks; seating; limits on lifting more than 20 pounds; and a private, non-bathroom space to express breast milk.
- An employer cannot refuse to hire a pregnant job applicant or applicant with a pregnancy-related condition, because of the pregnancy or the pregnancy-related condition, if an applicant is capable of performing the essential functions of the position with a reasonable accommodation.
- In addition to providing the aforementioned notice to employees **now**, employers must also provide the

notice to new employees at the time of hire and to pregnant or nursing employees within 10 days of the employee's notification of her pregnancy to the employer.

The Partridge Snow & Hahn Employment Law Team is fully conversant with the Act, and is prepared to assist clients in connection with compliance with the law. Please contact our Employment Law Team at 617-292-7900.

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