RI Employers (Large and Small) Required to Accommodate Healthy Pregnant Workers and New Moms. No, FMLA Leave is Not Enough.

By Alicia J. Samolis

Last month, the Rhode Island Fair Employment Practices Act was amended to require employers with 4 or more employees to provide reasonable accommodations to employees and prospective employees with a "condition". Such accommodations include, but are not limited to, more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor and modified work schedules. To avoid granting an accommodation, the employer would have to prove undue hardship, a historically extremely high standard which, among other factors, is based upon the financial resources of the employer as a whole.

When word got out that Rhode Island law had been amended to include pregnancy protections, many businesses and attorneys yawned. After all, discriminating against an employee for being pregnant has long been illegal under both state and federal laws. Further, employers already had to accommodate for serious health impairments that resulted from child birth and pregnancy disability discrimination laws and had to provide for either 4 weeks (if the employer had fewer than 50 employees) or 12 to 13 weeks (if the employer had 50 or more employees) of unpaid leave under the Rhode Island Temporary Caregiver Insurance Law, the Family Medical Leave Act, and the Rhode Island Parental and Family Medical Leave Act.

But for those readers about to tune out, the new law still significantly changes the law – even for businesses previously following the various state and federal employment laws involving pregnancy and childbirth.

Here is why your business should care about the new law:

It's Not About Disability.

Employers hopefully already understand that when a pregnancy or childbirth becomes complicated enough to create serious health problems for the employee, accommodations for those health conditions must be made, just as they would for any other disability. Prior to the new law passing, the latest interpretations of the disability laws often extended the disability protections to various common medical conditions relating to pregnancy or childbirth. But under the new law, no longer will doctors have to creatively write notes referencing more serious conditions to ensure accommodation rights attach. The new law affords coverage to pregnancies and childbirths which are 100% healthy and normal.

It's Not Just About Leave.

Leave will likely be the largest accommodation sought under the statute, but the law also explicitly requires the employer buy new equipment, transfer employees to less strenuous positions, job restructuring, and modified work schedules. And an employer cannot ask the employee to stay out on leave rather than consider the request for a pricey ergonomic office chair.

Don't Breathe Easy After Three or Four Months.

Employers under the law are required to give time off for pregnancy and to recover from childbirth. Unlike the FMLA, which gives 3 months of unpaid leave, and many of the state pregnancy law counterparts, such as Louisiana, Tennessee, and California (which all give up to 4 months), the Rhode Island law gives no maximum

unpaid time off or time for an accommodation. As long as the employee can find a doctor to say that she still needs time off or other accommodation for her pregnancy or to recover from the childbirth, the leave or other accommodation continues until it is an undue burden. In the disability context, unpaid leaves often extend from 6 months to 1 year prior to the undue burden standard being reached.

Even the Newest Employees are Protected.

There is no 90-day probationary period, much less a 1-year seniority period, before employees are protected by the law. This means a week after getting hired, a pregnant employee can ask for mornings off to deal with morning sickness.

It Provides More than Young v. United Parcel Service, Inc.

For those keeping up to date on pregnancy accommodations issues, the Supreme Court ruled in March of this year that employers with 15 or more employees that provided accommodations to a significant number of employees ho couldn't work for other reasons – such as disabilities and workers' compensation reasons – were required to provide the same accommodations to pregnant workers if the employer's policies placed a "significant burden" on pregnant workers without a "sufficiently strong justification." The aftermath of the decision has left a large question as to what exactly this means for the world outside of Rhode Island. Inside Rhode Island, it's all irrelevant – the accommodations have to be granted under the Rhode Island law regardless of how other employees are treated, regardless of the burden the policy places on the employee and regardless of the employer's justification.

It's Not a Caregiver Leave Law.

The employee's work performance must be affected by her own pregnancy or childbirth (or related condition). It is not bonding leave and thus does not apply to fathers or families adopting children. It applies to employees who are pregnant, regardless of whether they ultimately decide to have an abortion, give the baby up for adoption or serve as a surrogate mother.

Employers have the Affirmative Obligation to Provide Notices to their Employees.

Finally, the law requires that employers give employees notice of the law upon hire and within 10 days after notifying an employer of pregnancy. In addition, employers are required to provide all employees a general notice of the law by October 23, 2015. The Rhode Island Commission for Human Rights has released a model notice.

Employers should follow the notice requirements and train managers to alert upper management to any potential pregnancy accommodation requests so that such requests can either be granted or legal advice can be sought to understand the potential liability risks from denying such a request.

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