

## ***KD Alert: New Jersey Moves to Eradicate Pregnancy Discrimination***

*By Philip R. Voluck, Esq. and Anna Maria Tejada, Esq.  
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*On January 21, 2014, Bill S-2995/A-4486 was signed into law by Governor Chris Christie granting women “affected” by pregnancy protected status under the New Jersey Law Against Discrimination. Pregnancy discrimination has long been recognized by state courts under the theories of sex and/or gender discrimination. However, this law, effective immediately, extends a specific protection to pregnant employees who are “affected” by pregnancy, thus allowing a claim for a separately actionable pregnancy discrimination claim. The term “pregnancy” includes pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, including recovery from childbirth.*

*What does this mean for employers? Pregnancy is now treated like any other protected category in the workplace, such as race, age, religion, and disability. Employers must engage in the “interactive process” with pregnant employees to determine whether any reasonable accommodations are necessary. The following accommodations have been deemed “reasonable”: bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restricting or modified work schedules, and temporary transfers to less strenuous or hazardous work. If an accommodation is not feasible, the employer may still be required to provide leave under the Family and Medical Leave Act (FMLA), and/or the New Jersey Family Leave Act (NJFLA). Employers should document all efforts undertaken to accommodate the employee.*

*Employers cannot penalize or retaliate against women affected by pregnancy in their terms, conditions, or privileges of employment for requesting or using an agreed-upon accommodation or FMLA-type leave, as certified by the employee’s physician. The statute is clear that any type of retaliation is strictly prohibited.*

*A number of factors are considered in determining whether an accommodation is reasonable, with perhaps the most important being the extent to which the accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.*

*New Jersey employers should review their employee handbooks and policies to ensure that pregnancy is included as a protected category. Managers and supervisors should also be trained on how to engage in the interactive process with women affected by pregnancy. Employers must know the types of reasonable accommodations that are expected to be provided, including an extended leave of absence so long as it is certified by the physician and medically necessary.*

*KD provides employers with guidance in formulating and implementing employment practices and decisions to stay ahead of new and complex statutory regulations and to minimize their potential liability exposure. If you have questions pertaining to the New Jersey Law Against Discrimination or Bill S-2995/A-4486, please contact Anna Maria Tejada at 201-708-8209.*