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KD Alert: New Philadelphia Law Gives Birth to Accommodations for Pregnant Employees

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Philadelphia Mayor Michael Nutter recently signed Bill No. 130687 into law, requiring reasonable workplace accommodations for employees who have needs related to pregnancy, childbirth, or a related medical condition. Reasonable accommodations allow an employee to perform the essential functions of the job, and can include, but are not limited to, restroom breaks, periodic rest for those who stand for long periods of time, assistance with manual labor, leave for a period of disability arising from childbirth, reassignment to a vacant position, and job restructuring.

The law allows Philadelphia employers to avoid providing an accommodation to a pregnant employee by showing that doing so would create "undue hardship." The "undue hardship" factors generally mirror those found in the Americans with Disabilities Act, as amended, ("ADA") and generally involve looking at such factors as the essential functions of the job, the cost of the accommodation, the employer's overall financial resources, and the impact upon operations and doing business.

The first component in determining whether an accommodation is reasonable is an "interactive dialogue" with the pregnant employee, and documenting all such discussion(s) and efforts undertaken to accommodate the employee. It is critical that employers not penalize or retaliate against women affected by pregnancy in their terms, conditions, or privileges of employment for requesting or using an agreed-upon accommodation.

Pregnancy is not a "disability" within the meaning of the ADA. Instead, pregnancy discrimination is governed by the Pregnancy Discrimination Act amendments to Title VII of the Civil Rights Act of 1964, and has long been considered by state courts as a form of sex discrimination. The term "pregnancy" includes pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, including recovery from childbirth.

WHAT SHOULD EMPLOYERS DO? The new pregnancy accommodation law is effective immediately, and Philadelphia employers have until April 20, 2014 to post notice of the new law in the workplace. 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 a 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 Pregnancy Discrimination Act, Bill No. 130687, or need assistance with preparing the required notice, please contact Philip R. Voluck, Esq. or Irina V. Rabovetsky, Esq. at 215-461-1100.

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