

# New Pregnancy Discrimination and Accommodation Amendments to the Illinois Human Rights Act

August 27, 2014

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- **The amendments apply to all Illinois employers and virtually all employees.** The duty to accommodate women affected by pregnancy, childbirth, or related conditions imposed by the new amendments extends to Illinois employers of all sizes and applies to all full-time, part-time, and probationary employees.
- **The amendments impose an affirmative legal obligation to accommodate pregnancy and childbirth-related conditions.** In July 2014, the U.S. Equal Employment Opportunity Commission (EEOC) issued an enforcement guidance on pregnancy discrimination and accommodations for women affected by pregnancy, childbirth, and medical conditions based on its interpretation of the Pregnancy Discrimination Act and the Americans With Disabilities Act. The IHRA amendments go beyond the EEOC guidance by codifying, under Illinois law, an employer’s legal obligation to provide reasonable accommodations to pregnant applicants and employees if requested.
- **The IHRA’s examples of reasonable accommodations.** Specific reasonable accommodations outlined in the IHRA amendments include (but are not limited to) the following:

- more frequent or longer bathroom breaks
- breaks for increased water intake and periodic rest
- a private non-bathroom space for breastfeeding and expressing breast milk
- seating
- assistance with manual labor
- light duty
- temporary transfers to less strenuous or hazardous positions
- accessible worksites
- the acquisition or modification of equipment
- job restructuring
- part-time or modified work schedules
- appropriate adjustments or modifications of examinations, training materials, or policies
- a reassignment to a vacant position
- time off to recover from childbirth and leave required by the employee's pregnancy, childbirth, or related conditions
- **What an employer is *not* required to do as a reasonable accommodation.** An employer is not required to
  - create additional employment opportunities for women affected by pregnancy or childbirth conditions,
  - discharge or transfer another employee, or
  - promote an unqualified employee

unless the employer does so for other employees who request accommodations.

- **A pregnant employee must agree to the specific form of accommodation.** An employer may not force a protected employee to accept an accommodation that she did not request or to which she did not agree, nor may it force the employee to take leave if another reasonable accommodation can be provided.

- **An employer can require medical proof of the employee's need for accommodation.** The employer may request documentation from the employee's health care provider concerning the need for the requested reasonable accommodation to the same extent documentation is requested for conditions related to disability if the employer's request for documentation is job-related and consistent with business necessity. Items the employer request are limited to the following:

- the medical justification for the requested accommodation(s)
- a description of the reasonable accommodation(s) that are medically advisable,
- the date the reasonable accommodation(s) became medically advisable, and
- the probable duration of the reasonable accommodation(s).

When seeking a reasonable accommodation, it is the employee-applicant's duty to provide the employer with any of the foregoing items that the employer requests.

- **"Undue hardship" is required to excuse an employer's refusal to accommodate.** An employer must demonstrate "undue hardship" on the ordinary operation of its business in order to refuse to provide a reasonable accommodation for any medical or common condition related to pregnancy or childbirth requested by an employee or applicant. The factors to be considered in evaluating whether a requested accommodation poses an "undue hardship" include
  - the nature and cost of the accommodation;
  - the overall financial resources of, the number of persons employed at, the effect on expenses and resources of and other impacts on the operations of the facility involved;
  - the overall financial resources, the overall number of employees, and the number, type and location of the facilities of the employer involved; and
  - the type of operations of the employer and relationship of the facility involved to the overall operations of the employer.
- **Job restoration rights.** Absent a showing of undue hardship by the employer, an employee who has been affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth must be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other applicable service credits upon her signifying her intent to return or when her need for reasonable accommodation ceases.
- **An applicant or employee's need for accommodation cannot be the basis for employment decisions.** An employer may not deny employment opportunities or take adverse employment action against otherwise qualified applicants or employees if the decision is based on the employer's need to

make such reasonable accommodations, nor can an employer retaliate against an employee who requests accommodation or otherwise exercises her rights under the IHRA.

- **Required handbook language and notice posting.** Illinois employers will be required to post a notice of employee rights that will be made available from the Illinois Department of Human Rights. Additionally, employers that maintain handbooks must include in them information about employee rights with respect to pregnancy accommodation. In anticipation of the amendments taking effect, employers should review their EEO, accommodation, maternity leave, and Family and Medical Leave Act (FMLA) policies to ensure that all are compliant with the new pregnancy accommodation obligations.
- Employers that need assistance updating their policies or adopting a pregnancy accommodation policy can contact the authors or the Ogletree Deakins attorney with whom they normally work.

## TOPICS

[State Developments](#)