

NYC Issues Guidance on Protections for Pregnant Employees

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Background

The NYCHRL prohibits unlawful discrimination in employment on the basis of pregnancy or perceived pregnancy through its prohibitions on discrimination based on gender. Pursuant to the Pregnant Workers Fairness Act, part of the NYCHRL and codified at New York City Administrative Code § 8-107(22) (a), employers in New York City were already required to provide reasonable accommodations to pregnant workers that would allow them “to perform the essential requisites of the job.” At the state level, the New York legislature’s Protect Women from Pregnancy Discrimination bill expanded these protections statewide under the New York State Human Rights Law by requiring employers to provide reasonable accommodations to any employee with a pregnancy-related condition.

The guidance issued by the New York City Commission on Human Rights provides clear examples of what may constitute discrimination based on pregnancy, childbirth, or a related medical condition under the NYCHRL. It also provides guidance on how employers should accommodate pregnant employees and contains examples and policies to assist employers in complying with the law.

Discrimination Defined

The New York City guidance provides that it is unlawful to treat an employee or job applicant “less well than others” because of her pregnancy or perceived pregnancy, such as by refusing to hire someone otherwise qualified because she is pregnant or firing an employee because of her pregnancy. In addition to these overt forms of adverse treatment, more subtle forms of adverse treatment or harassment are also prohibited: Unlawful harassment may include comments about a pregnant individual’s weight or appearance, her age in relation to her pregnancy, her commitment to her job, or her ability to focus.

The guidance explains that any policy that singles out pregnant individuals or those who are believed to be capable of becoming or likely to become pregnant in the future is unlawful disparate treatment under the NYCHRL unless the employer can demonstrate a legitimate, nondiscriminatory justification for the distinction. Such unlawful policies include those that categorically exclude pregnant workers from specific job categories, require employees to take unpaid leave at a certain month during their pregnancies, or require pregnant workers to obtain medical clearance to perform certain job duties when medical clearance is not required for other employees.

The guidance also makes clear that any actions rooted in stereotypes or assumptions regarding pregnancy are unlawful. For example, judgments or stereotypes about how pregnant individuals should behave, their physical capabilities, and what is or is not healthy for a fetus cannot be used as pretext for unlawful discrimination. Similarly, assumptions about a pregnant worker’s commitment to her job may not be used to justify disparate treatment. Accordingly, an employer cannot decide not to offer a promotion to a pregnant employee who is otherwise qualified based on the assumption that she will likely decide not to return to work after childbirth. Nor can an employer elect not to assign a pregnant employee to a new project because of concerns that she will be distracted by the pregnancy.

Reasonable Pregnancy Accommodations

Finally, the guidance provides information regarding reasonable accommodations for pregnant employees. The NYCHRL requires an employer to provide reasonable accommodations for an employee’s pregnancy, childbirth, or a related medical condition “that will allow the employee to perform the essential requisites of the job, so long as the employer knew or should have known of the employee’s pregnancy, childbirth, or related medical condition,” regardless of whether the condition amounts to a disability, and provided that the accommodation does not create an undue hardship for the employer. Reasonable accommodations may include making minor or temporary modifications to work schedules, temporarily reassigning shifts, allowing sitting during shifts, making adjustments to uniform requirements or dress codes, providing additional water or snack breaks, allowing individuals to eat at their work stations, providing extra bathroom breaks or additional breaks to rest, or physically modifying work stations. Leave requests to recover from childbirth must be granted absent an undue hardship. Employers must also provide reasonable time for an employee to express breast milk.

An employer also has a duty to reasonably accommodate employees who have experienced miscarriages or terminated pregnancies, as well as individuals undergoing fertility treatment.

Takeaway for Employers

New York City employers may want to develop written policies to provide information to employees on how accommodations for pregnancy, childbirth, or related medical conditions should be handled. Additionally, such employers will want to ensure that their managers and supervisors understand all the various forms of pregnancy discrimination and harassment prohibited by the NYCHRL.

TOPICS

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