



## Pregnancy Accommodation Outline of the Law

An employer's obligation to provide accommodations to pregnant women springs from five main legal sources:

- [Americans with Disabilities Act](#)
- [Pregnancy Discrimination Act](#)
- [Family and Medical Leave Act](#)
- [State pregnancy accommodation laws](#)
- [Local pregnancy accommodation laws](#)

The outline below presents how each governs an employer's obligation to provide pregnancy accommodations. More information can be found in the training materials for lawyers on the [Pregnant@Work](#) website (visit [www.pregnantatwork.org](http://www.pregnantatwork.org)) and in the legal treatise FAMILY RESPONSIBILITIES DISCRIMINATION by Calvert, Williams, & Phelan (Bloomberg BNA).

### I. Federal Statutes

#### A. **Americans with Disabilities Act**, 42 U.S.C. §12101 *et seq.*, Regulations, 29 C.F.R. Part 1630

1. Applies to employers of 15 or more employees.
2. Prohibits employment discrimination because of an employee's actual or perceived disability; a failure to accommodate an employee's disability is discrimination under the statute. 42 U.S.C. §12112(b)(5)(A).
3. A disability is a physical or mental impairment that substantially limits a major life activity. 42 U.S.C. §12102(1).
  - a. The ADA was substantially amended in 2008 to broaden the interpretation of this definition of disability. Pub. L. No. 101-325, 122 Stat. 3553 (2008) ("ADAAA"). The amendment was intended to broaden the coverage of the statute. As a result, many pregnancy-related conditions that were not covered by the ADA prior to the amendments are now covered and must be accommodated under that law. See, e.g., *Alexander v. Trilogy*, 2012 U.S. Dist. LEXIS 152079 (S.D. Ohio Oct. 23, 2012) (granting plaintiff's motion for summary judgment and holding that

preeclampsia is a disability under the ADAAA); *Price v. UTi Integrated Logistics*, 2013 U.S. Dist. LEXIS 142974 (E.D. Mo. Oct. 3, 2013) (denying employer’s motion for summary judgment because complications related to pregnancy can be disabilities under the ADAAA; at trial, jury found for the employer). Thus, many of the ADA cases involving claims that employers did not accommodate employees who had pregnancy-related disabilities that were brought under the old version of the statute are no longer good law. *Nayak v. St. Vincent Hosp. & Health Care Ctr.*, 2013 U.S. Dist. LEXIS 3273 (S.D. Ind. Jan. 9, 2013). Following the amendments, the appropriate inquiry for most disability cases is not whether the employee has a disability, but whether the employer has reasonably accommodated the disability.

b. There are three changes ushered in by the ADA Amendments Act that expand the interpretation of “disability” so that it now includes pregnancy-related impairments:

i. First change: The ADAAA broadened the interpretation of the term “major life activity.”

- The ADAAA provides a non-exhaustive list of the types of activities that could be considered major life activities, including “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 U.S.C. §12102(2)(A). The EEOC added to this: sitting, reaching, and interacting with others. 29 C.F.R. §1630.2(i)(1)(i).
- The ADAAA added that major life activity also includes “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” 42 U.S.C. §12102(2)(B). This is a also a non-exhaustive list. The EEOC regulations added skin, genitourinary, cardiovascular, hemic, lymphatic, and musculoskeletal functions. 29 C.F.R. §1630.2(i)(1)(ii).
- This change brings many pregnancy-related conditions within the definition of “disability.” For example, a high risk pregnancy involves the operation of the reproductive function, swelling of the feet involves the operation of the cardiovascular system (and additionally may affect the employee’s ability to stand and walk).

ii. Second change: the ADAAA significantly weakened the requirement that the employee’s impairment “substantially limit” a major life activity by providing that the term not be construed to create a demanding standard or to require that an impairment severely restrict an employee from doing certain activities. 42 U.S.C. §12102(4)(A) & (B). Now, the employee

must show only that she is limited in an activity as compared to most people in the general population. 29 C.F.R. §1630.2(j)(1)(ii).

iii. Third change: Prior to the ADAAA, an impairment of short duration was not considered a disability for the purpose of making a claim that an employee had a disability that was not accommodated. The ADAAA eliminated this bar on impairments of short duration. *See* 42 U.S.C. §12102 (excluding from definition of “disability” impairments that are transitory or minor only for disabilities arising under “regarded as” prong, but not actual disability prong). (Note the duration requirement remains in place for the “regarded as” prong, but that prong is not relevant to the question of whether an employee was denied a reasonable accommodation to which she was entitled.) *See* 42 U.S.C. §12102(3)(B). The regulations provide that the effects of an impairment expected to last fewer than six months can be substantially limiting. 29 C.F.R. §1630.2(j)(1)(ix). The duration of an impairment is still one factor that courts can consider in determining if an employee has a disability. 29 C.F.R. Part 1630 App. §1630.2(j)(1)(ix).

4. Pregnancy by itself is not a disability. 29 C.F.R. Part 1630 App. §1630.2(h). Many conditions that commonly accompany pregnancy, however, may be disabilities. *Id.* Migraine headaches, carpal tunnel syndrome, gastrointestinal acid reflux, urinary incontinence, fatigue, back pain, hypertension, gestational diabetes, and pre-eclampsia are examples of such conditions that could meet the definition of disability. Morning sickness may also meet the definition, particularly if it is prolonged or severe. *See* A Cool Sip of Water: Pregnancy Accommodation After the ADA Amendments Act, *Joan C. Williams, Robin Devaux, Danielle Fuschetti, and Carolyn Salmon, 32 Yale Law and Policy Rev. 1, 97-148 (2013), available at <http://worklifelaw.org/wp-content/uploads/2014/07/A-Sip-of-Cool-Water.pdf>.*

5. An employer is required to provide a reasonable accommodation that will enable the employee with a disability to work, unless it would create an undue hardship for the employer to do so. 42 U.S.C. §12112(b)(5).

a. A reasonable accommodation is a change to how, when, or where an employee works, and it enables the employee to perform the essential functions of her job. 29 C.F.R. Part 1630 App. §1630.2(o). Employers are not required to remove or change essential functions of the job, but they may be required to remove or change marginal functions. EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2002), available at <http://www.eeoc.gov/policy/docs/accommodation.html>. In practice, however, employers often do remove or change essential functions on a temporary basis. See below for reasonable accommodations commonly provided for pregnancy-related conditions.

b. Once an employee requests an accommodation, or when the employee’s need for an accommodation is obvious, the employee and employer engage in an informal, interactive process to determine an accommodation that would be reasonable and effective, and that

would not create an undue hardship on the employer. EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2002), available at <http://www.eeoc.gov/policy/docs/accommodation.html>; see, e.g., *EEOC v. Chevron Phillips Chem. Co., LP*, 570 F.3d 606, 621 (5th Cir. 2009).

- i. The employer may ask the employee and/or the employee's health care provider for more information, such as the nature, severity, and duration of the impairment and the extent to which it limits the employee's ability to perform an activity. The employer can also ask for information about the requested accommodation(s) to determine their feasibility, and can offer suggestions for accommodations. The employer and employee should discuss the options and try to reach an agreement as to the accommodation that will be provided. *Id.*
  - ii. Although an employee may be entitled to an accommodation, she is not entitled to her preferred accommodation. If more than one accommodation would be effective and reasonable, the employer may choose the one it will provide. *Id.*
  - iii. The employee's need for an accommodation may change over time, and it may be necessary for the employer and employee to engage in another interactive process to determine a new accommodation or to revise the existing accommodation. *Id.*
- c. Employers and employees are encouraged to look for creative solutions, and to focus on the outcomes of the work, rather than the methods of performing essential tasks. For example, if they focus on the essential task of moving boxes from one location to another, rather than focusing on whether the employee can lift the boxes, they can think about whether carts or dollies or other methods can be used to move the boxes. Good suggestions for accommodations for various pregnancy-related conditions are available at Pregnant@Work's [Workable Accommodation Ideas](#). For expert consultation on workplace accommodations, contact the Job Accommodation Network at [www.askjan.org](http://www.askjan.org).
- d. Common accommodations for pregnant women include:
- i. Additional or longer breaks to use the restroom, consume water or food, check blood sugar, or rest
  - ii. A chair to sit on
  - iii. Modification of equipment, such as raising or lowering machine height
  - iv. Job restructuring to remove nonessential tasks that she can no longer do, or that she can do but only with difficulty or pain

v. Time off for medical appointments

vi. Schedule changes, such as arriving and departing later to deal with morning sickness. Schedule changes could also include working fewer hours, or taking several hours off in the middle of the day to rest.

vii. Lifting assistance

viii. Light duty

ix. Work from home. Whether working from home is a reasonable accommodation will depend on a fact specific inquiry into whether the employee's job duties can be performed remotely, whether others are allowed to work from home, how she would be supervised, and the like.

x. Reassignment. Reassignment may be reasonable if no other accommodation will allow the employee to work. 29 C.F.R. Part 1630 App. 29 C.F.R. §1630.2(o). The employer does not have to create a position for the employee, or move an employee already in the position, and the employer does not have to transfer the employee if she does not have the requisite skills or certifications. Once the need that caused the transfer has ended, the employee is to be reinstated to her original position.

xi. Leave. If no accommodation that will allow the employee to continue to work is possible, then leave may be a reasonable accommodation. EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2002), available at <http://www.eeoc.gov/policy/docs/accommodation.html>; e.g., *Robert v. Board of Cnty. Comm'rs of Brown Cnty.*, Kan., 691 F.3d 1211, 1217–18 (10th Cir. 2012); *Dark v. Curry Cnty.*, 451 F.3d 1078, 1090 (9th Cir. 2006). Open-ended leave is not reasonable, however. The employee's health care provider should be able to provide an estimate in the near future as to when the employee will be able to return to work in order to make the leave reasonable. The leave may be unpaid, although employees should be permitted to use accrued vacation and sick leave to receive pay while out of work. When the employee is able to return to work, she is to be restored to her original position, unless to do so would create an undue hardship for the employer.

Employers may not be able to require an employee to take leave if she is able to work and wishes to continue to work. See Pregnancy Discrimination Act, below. If an employee wishes to take leave, even if her employer does not want her to, she may be entitled to do so under other statutes such as the FMLA or state pregnancy accommodation laws, also discussed below.

When an employee has exhausted her FMLA leave and cannot return to work because of a disability, additional leave may be a reasonable accommodation under the ADA. EEOC, Fact Sheet: The Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964, available at <http://www.eeoc.gov/policy/docs/fmlaada.html>.

**B. Pregnancy Discrimination Act**, 42 U.S.C. §2000e(k), EEOC, Enforcement Guidance on Pregnancy Discrimination and Related Issues, [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm)

1. First clause of the PDA: “The terms 'because of sex' or 'on the basis of sex' include [under Title VII], but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . .” Meaning: Discrimination based on sex is prohibited; “sex” includes pregnancy, childbirth, and related medical conditions. Therefore employers cannot discriminate against pregnant employees because they are pregnant.

a. If employers provide accommodations to non-pregnant employees, such as flexible schedules, reduced hours, light duty, and transfers, they cannot refuse to provide similar accommodations to pregnant employees because the employees are pregnant. EEOC, Enforcement Guidance on Pregnancy Discrimination and Related Issues, available at [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm).

b. An employer cannot try to force a pregnant employee to quit by refusing to accommodate her because she is pregnant.

c. An employer cannot force a pregnant employee to take leave when she is able to work simply because she is pregnant or based on stereotypes or assumptions about pregnant women. *Id.*

2. Second clause of the PDA: “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work . . .” Meaning: Pregnant women are to be treated the same as other employees who are similar in their ability or inability to work.

a. An employer that provides an accommodation, such as light duty, to non-pregnant employees must provide the accommodation to pregnant employees unless it has a strong, legitimate reason (other than cost or convenience) for treating the pregnant employees differently. *Young v. UPS*, 135 S.Ct. 1338 (2015).

b. An employer cannot force a pregnant employee to take leave when she is able to work if it allows non-pregnant employees to work when they are able to work. (Both the first and second clauses prohibit this.) EEOC, Enforcement Guidance on Pregnancy Discrimination and Related Issues, available at [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm).

c. An employer cannot overlook a non-pregnant employee's noncompliance with attendance or work rules but discipline a pregnant employee for violating the rules, such as allowing a nonpregnant employee to arrive to work late with no penalty but disciplining a pregnant employee for being late.

d. If an employer that does not have a maternity leave policy provides leave to non-pregnant employees due to medical conditions, it may need to provide leave to pregnant women due to medical conditions, including pregnancy-related conditions, childbirth, and recovery.

**C. Family and Medical Leave Act, 29 U.S.C. §§2601–2654, FMLA Regulations, 29 C.F.R. Part 825**

1. Pregnant employees who work for a covered employer and who are eligible for FMLA leave may be entitled to leave as an accommodation. 29 C.F.R. §825.203(c)(1). Leave is not discretionary; if the employee meets the criteria, she is entitled to leave. Leave may be taken on an intermittent or reduced schedule basis. 29 U.S.C. §2612(b)(1). Leave may be taken for prenatal medical appointments, morning sickness, pregnancy-related conditions, and in the final weeks of pregnancy.

2. Prenatal use reduces the amount of FMLA time available for childbirth and baby bonding. If the employee is not able to return to work at the end of her 12-week allotment because of a physical or mental impairment that substantially limits a major life activity, she may be entitled to additional leave as a reasonable accommodation under the ADA (see I. above), unless the additional leave would create an undue hardship for the employer.

3. After leave, the employee is to be reinstated to the same position or a substantially equivalent position. 29 U.S.C. §2614(a); 29 C.F.R. §825.214.

4. State or local family and medical leave laws may require additional leave benefits and may apply to individuals not covered by the federal FMLA.

**II. State statutes**

**A. Alaska**

A state employee who is pregnant may request a transfer to a suitable position if her health care provider recommends the transfer, the transfer is to an existing and vacant position, and she is qualified to perform the duties of the position. Alaska Stat. § 39.20.520.

**B. California**

1. An employer of five or more employees is required to provide a reasonable accommodation for an employee with a condition related to pregnancy, childbirth, or a related medical condition,

when requested and with the advice of the employee's health care provider. Cal. Gov't Code §12945(a)(3)(A).

2. If an employer has a practice or policy of transferring temporarily disabled employees to less strenuous or hazardous jobs, then the employer must similarly transfer a pregnant employee if she so requests. Cal. Gov't Code §12945(a)(3)(B). Even if the employer does not have such a practice or policy, if a pregnant woman requests, with the advice of her physician, a temporary transfer to a less strenuous or hazardous position for the duration of her pregnancy and the transfer can be reasonably accommodated, then the employer cannot refuse. Cal. Gov't Code §12945(a)(3)(C).

3. Implementing regulations provide that employers must accommodate employees with pregnancy-related disabilities regardless of the length of time they have worked for the employer. Cal. Code Regs. tit. 2, §11037. Reasonable accommodations include any change in the work environment or the way a job is done that allows an employee who is affected by pregnancy to perform the essential functions of her job. Cal. Code Regs. tit. 2, §11035(s). There is no undue hardship defense.

4. Employees disabled by pregnancy, childbirth, or a related medical condition are eligible for up to four months of pregnancy disability leave per pregnancy (not per year). Cal. Code Regs. tit. 2, §11042(a)(1). Pregnancy disability leave may be taken in addition to the 12 weeks of leave provided by the FMLA and/or CFRA. Employees may be entitled to additional leave as a reasonable accommodation. *Sanchez v. Swissport, Inc.*, 213 Cal. App. 4th 1331 (2013).

5. An employer may require medical certification of the need for accommodation. Cal. Code Regs. tit. 2, §1042 (c).

### C. Colorado

1. Colorado employers must provide reasonable accommodations to employees with health conditions related to pregnancy or who are physically recovering from childbirth upon the employee's request, unless the accommodation would impose an undue hardship on the employer's business. Colo. Rev. Stat. § 24-34-402.3.
2. Employers must engage in a timely, good faith interactive process with an applicant or employee who requests accommodation and may not retaliate against an applicant or employee who makes an accommodation request. Colo. Rev. Stat. § 24-34-402.3.
3. Employers are not required to create new positions, discharge or transfer more senior employees, hire new employees, or provide leave beyond that which is provided to similarly situated employees. Colo. Rev. Stat. § 24-34-402.3.
4. Employers may not force employees to take accommodations that they did not request, nor may they require an employee to take leave if another reasonable accommodation could be provided. Colo. Rev. Stat. § 24-34-402.3.



5. Employers may require employees to provide a note from a licensed health care provider stating the necessity of a reasonable accommodation.

#### **D. Connecticut**

1. Public employers and private employers of three or more employees may not refuse to grant an employee a temporary leave due to pregnancy disability, must provide a temporary transfer to a pregnant employee who might be harmed or whose fetus might be harmed by continued employment in her original position, and may not refuse to reinstate an employee to her original position or its equivalent when she indicates that she intends to return to her employment after maternity leave. Conn. Gen. Stat. §46a-60(a)(7).

#### **Expanded Provisions Effective October 1, 2017:**

2. Employers must reasonably accommodate employees and applicants who request accommodations for pregnancy, childbirth, or a related medical condition unless the employer can demonstrate that such accommodation would impose an undue hardship on the employer. Conn. Gen. Stat. §46a-60(b)(7) (as amended by HB 6668).
3. Reasonable accommodations include but are not limited to being permitted to sit while working, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, and break time and appropriate facilities for expressing breastmilk. Conn. Gen. Stat. §46a-60(a)(2) (as amended by HB 6668).
4. An employer may not retaliate against an employee based on her request for reasonable accommodation due to her pregnancy, childbirth, or a related medical condition. Conn. Gen. Stat. §46a-60(b)(7) (as amended by HB 6668).
5. An employer may not force an employee to take a reasonable accommodation if the employee does not have a known limitation related to pregnancy, childbirth or a related medical condition or does not require a reasonable accommodation to perform the essential functions of her job. An employer may not force an employee to take a leave of absence if a reasonable accommodation would enable the employee to keep working. Conn. Gen. Stat. §46a-60(b)(7) (as amended by HB 6668).

#### **E. Delaware**

1. Public and private employers of four or more employees must treat employees affected by pregnancy, childbirth or a related medical condition as well as the employer treats or would treat any other nonpregnant employee who is similar in his or her ability or inability to work, without regard to how their condition arose. 19 Del. Code § 711(a)(3)(a).

2. In addition, employers must make reasonable accommodations to an employee's pregnancy-related limitations, unless it would create an undue hardship for the employer. 19 Del. Code § 711(a)(3)(b). Reasonable accommodations include equipment for sitting, more frequent or longer breaks, rest, assistance with manual labor, job restructuring, light duty, modified work schedules, temporary transfers to less strenuous or hazardous work, and leave to recover from childbirth. 19 Del. Code § 710(17).

3. Employers cannot require pregnant employees to accept reasonable accommodations they do not want, if they do not have pregnancy-related limitations or the accommodations are not necessary for the employee to perform the essential duties of her job. 19 Del. Code § 711(a)(3)(d). Similarly, employers cannot require an employee to take leave if another reasonable accommodation can be provided. 19 Del. Code § 711(a)(3)(e).

#### **F. Hawaii**

Regulations require all employers to "make every reasonable accommodation" of the needs of employees affected by disability due to pregnancy, childbirth, and related conditions. Haw. Admin. Code §12-46-107(c). Employers are required to provide female employees with a "reasonable amount" of leave for pregnancy disability, childbirth and recovery, with each employee's physician determining what constitutes a reasonable amount of time. Haw. Admin. Code §12-46-108. Restoration to the same or an equivalent position is required.

#### **G. Illinois**

1. Employers of 1 or more employees must provide reasonable accommodations to pregnant employees who have a medical or common condition related to pregnancy or childbirth, unless to do so would create an undue hardship for the employer. 775 ILCS 5/2-102(J). Reasonable accommodations include more frequent or longer breaks, seating, assistance with manual labor, light duty, temporary transfer to a less strenuous or hazardous position, job restructuring, modified work schedule, and leave.

2. Employers may request documentation from the pregnant employee's health care provider about the need for the requested reasonable accommodation to the same extent as they request documentation for conditions related to disabilities. 775 ILCS 5/2-102(J)(1). The employee and employer are to engage in a timely, good faith, and meaningful exchange to determine effective reasonable accommodations. *Id.*

3. An employer may not require a pregnant employee to accept an accommodation that she did not request and does not want. 775 ILCS 5/2-102(J)(3). An employer may not require a pregnant employee to take leave if another reasonable accommodation can be provided. 775 ILCS 5/2-

102(J)(4). Reinstatement to the employee's same or equivalent job is required, unless it would create an undue hardship. *Id.*

#### H. Iowa

Disabilities caused by pregnancy, miscarriage, childbirth, and recovery are to be treated as any temporary disability. Iowa Code §216.2b. Employers are prohibited from denying leave for a disability caused by pregnancy even if the employee has no leave available. Iowa Code §216.2e. Whether Iowa employers are required to accommodate pregnant workers is unclear. The Iowa Civil Rights Commission ruled that employers must provide reasonable accommodations to pregnant employees if necessary to permit them to perform the essential functions of their jobs and unless the accommodations would create an undue hardship for the employer. *Latham v. ABCM Corporation*, CP# 12-10-60032, 12 ICRC 002 (Jan. 24, 2013). This ruling was, however, implicitly overruled by the Iowa Supreme Court in *McQuiston v. City of Clinton*, 872 N.W.2d 817, fn5 (Iowa 2015), which noted that the Court had not extended the requirement of reasonable accommodation to temporary disabilities, including pregnancy.

#### I. Louisiana

1. Employers of 25 or more employees must allow their employees to take up to four months' leave for any disability caused by pregnancy, childbirth, or related medical conditions (six weeks for uncomplicated pregnancy and delivery). La. Rev. Stat. §23:342(2)(b).
2. Employers that have policies or practices of transferring temporarily disabled employees to less strenuous or hazardous positions cannot refuse to transfer pregnant women to such positions if they so request. La. Rev. Stat. §23:342(3). Similarly, employers cannot refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position if she requests, with the advice of her physician, and the transfer can be reasonably accommodated. La. Rev. Stat. §23:342(4).

#### J. Maryland

Employers are required to accommodate disabilities caused or contributed to by pregnancy, including changing job duties or work hours, relocating the employee's work area, providing mechanical or electrical aids, transferring, or providing leave, unless to do so would cause the employer an undue hardship. Md. Code Ann. State Gov't § 20-609. An employer can require certification from the employee's health care provider regarding the need for the requested accommodation. Md. Code Ann. State Gov't § 20-609 (f).

#### K. Massachusetts (eff. 4/1/2018)

1. It is unlawful for an employer to deny reasonable accommodation for an employee's pregnancy or any condition related to pregnancy if the employee requests accommodation, unless the employer

can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business. Reasonable accommodations may include, but are not limited to:

- (i) more frequent or longer paid or unpaid breaks;
- (ii) time off to attend to a pregnancy complication or recover from childbirth with or without pay;
- (iii) acquisition or modification of equipment or seating
- (iv) temporary transfer to a less strenuous or hazardous position, job restructuring or light duty;
- (v) private non-bathroom space for expressing breast milk
- (vi) assistance with manual labor; or
- (vii) modified work schedule

An employer is not required to discharge or transfer an employee with more seniority or promote an employee who is not able to perform the essential functions of the job with reasonable accommodation. Mass. Gen. Laws Ann. ch. 151B, § 4(1E)(a) (as amended by Bill H. 3680, eff. 4/1/2018)

2. An employer may not retaliate against an employee for requesting a reasonable accommodation and must reinstate the employee to their original employment status or equivalent position with equivalent seniority, pay and benefits when the need for accommodation ends. Mass. Gen. Laws Ann. ch. 151B, § 4(1E)(a) (as amended by Bill H. 3680, eff. 4/1/2018)
3. An employer may not refuse to hire an applicant or deny an employment opportunity to an employee based on the need to accommodation the employee's pregnancy or lactation. Mass. Gen. Laws Ann. ch. 151B, § 4(1E)(a) (as amended by Bill H. 3680, eff. 4/1/2018)
4. An employer may not force an employee to accept an accommodation for pregnancy or lactation that she does not want, nor may an employer force an employee to take leave if another reasonable accommodation could be provided that would not cause undue hardship to the employer. Mass. Gen. Laws Ann. ch. 151B, § 4(1E)(a) (as amended by Bill H. 3680, eff. 4/1/2018)

#### L. **Minnesota**

1. Employers of 21 or more employees must provide reasonable accommodations to workers with pregnancy-related health conditions, if requested and if supported by advice of health care providers. Minn. Stat. § 181.9414. Employees are not required to obtain the advice of their health care providers for accommodations that (1) allow workers to take more frequent restroom, food and water breaks; (2) have seating; and (3) limit lifting over 20 pounds.

2. Employers and employees are required to engage in an interactive process to determine a reasonable accommodation. Reasonable accommodations include, but are not limited to, temporary transfer to a less strenuous or hazardous position, seating, frequent restroom breaks, and limits to heavy lifting.

3. Employers are not required to provide accommodations where it would create an undue hardship, and they are not required to provide accommodations that would require the creation of new positions or termination or transfer another employee with greater seniority. *Id.*

**M Nebraska**

1. Employers of 15 or more employees are required to provide reasonable accommodations to the known limitations of employees who are pregnant, have given birth, or who have a related medical condition, provided that the employee can perform the essential functions of her job or a job to which she may be temporarily assigned (Neb. Rev. Stat. § 48-1102(18)), unless the accommodation would impose an undue hardship on the employer. Neb. Rev. Stat. § 48-1107.02(2)(d).

2. Reasonable accommodation includes equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light-duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, and time off to recover from childbirth. Neb. Rev. Stat. § 48-1102(11).

**N. Nevada (eff. 10/1/2017)**

1. Employers are required to provide reasonable accommodations to employees and applicants who are pregnant, lactating or have related medical conditions upon request, unless the accommodation would impose an undue hardship on the business of the employer. Reasonable accommodations may include, but are not limited to:

- a. Modifying equipment or providing different seating;
- b. Providing space other than a bathroom for an employee to express milk;
- c. Allowing more, longer, or differently scheduled breaks;
- d. Providing assistance with manual labor if manual labor is incidental to the employee's primary work duties.
- e. Granting light duty; or
- f. Restructuring a position or providing a modified work schedule.

SB 253, sec. 5.1(a) & 6.3 (amending NRS 613.335)

2. An employer must engage in a timely, good faith, interactive process to identify an effective reasonable accommodation for an employee when the employee makes a request for accommodation of pregnancy, childbirth or a related medical condition. SB 253, sec 6.1 (amending NRS 613.335)

3. Evidence that the employer provides or would be required to provide a similar accommodation to a similarly situated employee creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer. SB 253, sec 6.3 (amending NRS 613.335)

4. An employer is not required to create a new position the employer would not otherwise have hired, transfer any employee with more seniority, or promote employees not qualified to perform the job unless the employer has taken or would take such an action to accommodate other classes of employees. SB 253, sec. 6.4 (amending NRS 613.335)

5. An employer may not take any adverse employment action against an employee who requests or uses a reasonable accommodation for pregnancy, childbirth or lactation nor may an employer deny an employee or applicant an employment opportunity based on the employee or applicant's need for accommodation. SB 253, sec. 5.1(b) (amending NRS 613.335)
6. An employer may not require an employee to accept an accommodation for pregnancy, childbirth or a related condition, and an employer may not require an employee to take medical leave if a reasonable accommodation would have been available to allow the employee to continue to work. SB 253, sec 5.1 (d) & (e) (amending NRS 613.335)

**O. New Jersey**

1. Employers must provide a pregnant employee with reasonable accommodation for needs related to her pregnancy, when the employee requests the accommodation based on her physician's advice and the accommodation would not create an undue hardship for the employer. N.J. Stat. § 10:5-12(s).
2. Reasonable accommodations include bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring, modified work schedules, temporary transfers to less strenuous or hazardous work, and leave. *Id.*

**P. New York**

1. Employers of four or more employees must provide reasonable accommodations for employees with pregnancy-related conditions. NY Exec. Law § 296(3)(a). "Pregnancy-related condition" is defined as a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted diagnostic techniques, provided that the medical condition would not prevent the employee from performing her job if she had a reasonable accommodation. NY Exec. Law § 292 (21-f). Employers can request medical or other information to verify the condition or that is necessary for determining a reasonable accommodation. NY Exec. Law § 296(3)(c).
2. Reasonable accommodations include, but are not limited to, modification of equipment, job restructuring, and modified work schedules. NY Exec. Law § 292 (21-e). Employers are not required to provide a reasonable accommodation where the accommodation would create an undue hardship for the employer. *Id.*

**Q. North Dakota**

Employers must provide reasonable accommodations for an employee who is pregnant, N.D. Cent. Code § 14-02.4-03(2), unless to do so would disrupt the employer's operations, threaten the health and safety of the employee or others, contradict a business necessity, or impose an undue hardship on the employer. N.D. Cent. Code § 14-02.4-02.17.

## R. Rhode Island

1. Employers of four or more employees cannot refuse to reasonably accommodate an employee's condition related to pregnancy, childbirth, or a related medical condition, if she so requests, unless the accommodation would create an undue hardship for the employer. R.I. Gen. Laws § 28-5-7.4(a)(1).
2. Reasonable accommodations include more frequent or longer breaks, time off to recover from childbirth, modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, assistance with manual labor, or modified work schedules. R.I. Gen. Laws §28-5-7.4(b)(1).
3. An employer cannot require a pregnant employee to take leave if another reasonable accommodation can be provided. R.I. Gen. Laws § 28-5-7.4(a)(2). An employee does not need to accept an accommodation that she does not wish to accept. R.I. Gen. Laws § 28-5-7.4(f).

## S. Texas

Municipalities and counties are required to make reasonable efforts to accommodate pregnant employees whose physicians certify that they are partially physically restricted by pregnancy, if suitable positions are available. Tex. Loc. Gov't. Code § 180.004. The state's Department of Public Safety is similarly required to make reasonable efforts to accommodate its officers' pregnancy-related restrictions. Tex. Gov't. Code § 411.0079.

## T. Utah

Private employers with 15 or more employees and all public employers must provide reasonable accommodations to employees related to pregnancy, childbirth, breastfeeding and related medical condition, if requested, unless the accommodation would create an undue hardship for the employer. §34A-5-106(1)(g). Employers may not require a pregnant employee to terminate employment if another reasonable accommodation can be provided without undue hardship to the employer. *Id.* Employers may require employees to provide medical certification explaining the medical advisability of the requested accommodation unless the request is for more frequent restroom, food or water breaks. Utah Code Ann. §34A-5-106(7).

## U. Vermont (eff. 1/1/2018)

Employers of any size may not refuse to provide an accommodation for an employee's pregnancy related condition unless it would impose an undue hardship on the employer. 21 V.S.A. § 495k(a)(1). "Pregnancy related condition" is defined by the statute as a limitation of an employee's ability to perform the functions of a job due to pregnancy, childbirth or a medical condition related to pregnancy

or childbirth. 21 V.S.A. § 495d(14). An employees with a pregnancy-related condition has the same rights with respect to reasonable accommodations as qualified individuals with disabilities under Vermont's Fair Employment Practices Act, regardless of whether she has a disability. 21 V.S.A. §495k(a)(2); 21 V.S.A. §495d(5)-(6).

V. **Washington** (eff. 7/23/2017)

1. Employers with 15 or more employees must reasonably accommodate an employee for pregnancy or a pregnancy-related condition unless doing so would impose an undue hardship on the employer's business.
2. "Reasonable accommodations" include:
  - a. Providing more frequent, longer, or flexible restroom breaks;
  - b. Modifying a no food or drink policy;
  - c. Job restructuring, part-time or modified work schedules;
  - d. Reassignment to a vacant position;
  - e. Acquiring or modifying equipment, devices, or an employee's work station;
  - f. Providing seating or allowing the employee to sit more frequently if her job requires her to stand;
  - g. Providing for a temporary transfer to a less strenuous or less hazardous position;
  - h. Providing assistance with manual labor and limits on lifting; and
  - i. Scheduling flexibility for prenatal visits.
  - j. An employer must also give reasonable consideration to any other pregnancy accommodation an employee requests, in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's health care provider. RCW 43.10.0004.
3. An employer may not claim undue hardship based on (1) an employee's request for longer, more frequent or flexible restroom breaks; (2) an employee's request for modification of a no food or drink policy; (3) an employee's request for seating or permission to sit more frequently in a job that requires standing; or (4) an employee's limit on lifting more than 17 pounds. RCW 43.10.0004.
4. In most cases, employer may request medical certification regarding the need for reasonable accommodation from the employee's treating provider health care provider if the need for accommodation is not apparent to a reasonable person. An employer may not require a medical certification if an employee is only requesting (1) longer, more frequent or flexible restroom breaks; (2) modification of a no food or drink policy; or (3) seating or permission to sit in a job that requires standing. RCW 43.10.0004.



5. A covered employer may not take any adverse employment action against an employee who requests, uses or declines an accommodation for pregnancy or a pregnancy-related condition. A covered employer may not deny employment opportunities to qualified employees based on the employer's need to provide reasonable accommodation of the employee's pregnancy or pregnancy-related condition. RCW 43.10.0004.
6. Covered employers are not required to create additional employment that the employer would not otherwise have created unless the employer does so or would do so for other classes of employees who need accommodation. Covered employers are not required to discharge an employee, transfer an employee with more seniority, or promote an employee who is not qualified unless the employer does so or would do so to accommodate other classes of employees who need accommodation. RCW 43.10.0004.

#### **W. West Virginia**

Employers of 12 or more employees are required to provide reasonable accommodations to an employee's known limitations related to pregnancy, childbirth, or related medical conditions, as long as the accommodations do not create an undue hardship for the employer. W. Va. Code Ann. §5-11B-2(1). A pregnant employee seeking an accommodation must provide a written statement from her health care provider that describes her limitations and suggests accommodations. *Id.* Employers are also prohibited from requiring a pregnant employee to accept an accommodation that she does not want, W. Va. Code Ann. §5-11B-2(3), and from requiring a pregnant employee to take leave if another reasonable accommodation can be provided. W. Va. Code Ann. §5-11B-2(4).

### **III. Local ordinances**

#### **A. New York City, NY**

1. Employers of four or more employees are required to provide reasonable accommodation to the needs of an employee for her known pregnancy, childbirth, or related medical condition that will allow her to perform the essential functions of her job, unless the accommodation would cause undue hardship to the employer. N.Y. Admin. Code 8-102(18); 8-107(22).
2. Enforcement guidance from the NYC Commission on Human Rights provides that covered employers are required to engage in a "cooperative dialogue" with employees who request accommodation due to pregnancy, childbirth or a related medical condition. An employer also has an affirmative duty to engage in an interactive dialogue when the employer knows or has a reasonable basis to believe that an issue related to pregnancy, childbirth or a related medical condition has affected the employee's performance or behavior at work in a way that could lead to an adverse employment action. An employer's failure to engage in an interactive dialogue is tantamount to a failure to accommodate. NYC Commission on Human Rights Legal Enforcement

Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013); N.Y.C. Admin. Code § 8-107(22).

3. Enforcement guidance provides that leave requests to recover from childbirth must be granted unless the employer can show that granting the leave request would cause undue hardship to the employer. NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013); N.Y.C. Admin. Code § 8-107(22).
4. Enforcement guidance further provides that an employer generally may not require an employee to provide medical confirmation of pregnancy, childbirth or a related medical condition unless the employee is requesting (1) time away from work other than the presumptive six to eight week period following childbirth for recovery from childbirth or (2) a work-from-home accommodation. NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013); N.Y.C. Admin. Code § 8-107(22).
5. Enforcement guidance also states that employees undergoing fertility treatment are entitled to reasonable accommodation because fertility relates to the state of seeking to become pregnant. Possible accommodations of fertility treatment include unpaid leave to attend medical appointments or a modified or flexible work schedule. NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013); N.Y.C. Admin. Code § 8-107(22).

#### **B. Philadelphia, PA**

Employers are required to provide reasonable accommodations related to an employee's pregnancy, childbirth, or related medical condition, if she so requests, unless the accommodation would cause an undue hardship for the employer. Reasonable accommodations are those that allow an employee to perform the essential functions of her job and 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 due to childbirth, reassignment to a vacant position, and job restructuring. Phila. Code §§ 9-1103(1)(l), 9-1128.

#### **C. Providence, RI**

1. Employers of seven or more employees must provide reasonable accommodations to employees' conditions related to pregnancy, childbirth, and related medical conditions, unless the accommodation would create an undue hardship for the employer. Providence, R.I. Mun. Code § 16-57(e). In addition, pregnancy-related disabilities must be treated the same as other types of temporary disabilities. Providence, R.I. Mun. Code § 16-57(d).

2. Reasonable accommodations include, but are not limited to, more frequent or longer breaks, leave to recover from childbirth, modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, assistance with manual labor, and modified work schedules. Providence, R.I. Mun. Code § 16-57(b). An employer may not require an employee to take leave if another reasonable accommodation can be provided. Providence, R.I. Mun. Code § 16-57(f).

**D. Central Falls, RI**

1. Employers are prohibited from refusing to reasonably accommodate an employee's condition related to pregnancy, childbirth, or related medical condition, if she so requests, unless the accommodation would create an undue hardship for the employer. Central Falls, R.I. Mun. Code § 12-5(c)(1).

2. Reasonable accommodations include, but are not limited to, more frequent or longer breaks, leave to recover from childbirth, modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, assistance with manual labor, and modified work schedules. Central Falls, R.I. Mun. Code § 12-5(b)(1). Employers cannot require an employee to take leave if another reasonable accommodation can be provided to accommodate the employee's condition related to pregnancy, childbirth, or related medical condition. Central Falls, R.I. Mun. Code § 12-5(c)(2).

**E. Washington, D.C.**

1. Employers are prohibited from refusing to make reasonable accommodations to an employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation would create an undue hardship for the employer. Protecting Pregnant Workers Fairness Act of 2014, D.C. Act 20-458, § 4(1).

2. Reasonable accommodations include more frequent or longer breaks, leave to recover from childbirth, modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, modified work schedule, refraining from heavy lifting, and relocating the employee's work area. Protecting Pregnant Workers Fairness Act of 2014, D.C. Act 20-458, § 2(2). Employers must engage in a good faith and timely interactive process with an employee who requests an accommodation to determine a reasonable accommodation for that employee. *Id.*, § 3(a). Employers may require the employee to provide a certification from her health care provider about the medical advisability of the requested accommodation, to the same extent that the employer requires medical certification for other temporary disabilities. *Id.*, § 3(b).

3. Employers may not require an employee to accept an accommodation she does not want if she does not have a known limitation or the accommodation is not necessary for her to perform her

duties. Protecting Pregnant Workers Fairness Act of 2014, D.C. Act 20-458, § 4(4). Employers may not require employees to take leave if a reasonable accommodation can be provided. *Id.*, § 4(5).