

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN Fall 2014

Employee Accommodations in Two Arenas: Pregnancy and Mental Disabilities

New Pregnancy Accommodation Requirements – Illinois and EEOC

Even **absent a disabling condition, pregnancy alone** will now entitle employees to reasonable accommodations in Illinois beginning January 1. **Illinois employers of all sizes** will be required to provide reasonable accommodations to pregnant employees and new mothers under the Illinois Human Rights Act amendments.

In addition to a leave of absence (without eligibility and other restrictions of the federal Family and Medical Leave Act), employers may have to provide light duty, part-time or modified work schedules, more frequent breaks, and help with physical tasks like lifting. Employers can require a medical certification to support the need for accommodation and can deny a requested accommodation if it would impose an **“undue hardship”** on the business (i.e. the accommodation is “prohibitively expensive or disruptive” based on several factors.)

Employers **cannot impose an accommodation that the employee did not request**, including a leave if another reasonable accommodation is available. Pregnant employees and new mothers will have **reinstatement rights** after notice of intent to return. Employers cannot retaliate against an individual who has “requested, attempted to request, used or attempted to use” a reasonable accommodation for pregnancy or childbirth.

The new law requires **employers to post a notice and include the new requirements in employee handbooks**. The amendments will particularly affect small employers who aren't covered by FMLA (50 employee minimum), the Americans with Disabilities Act (15 employees), and the federal Pregnancy Discrimination Act (15 employees.)

Federal EEOC Guidance

The Equal Employment Opportunity Commission also recently issued its Enforcement Guidance on Pregnancy Discrimination and Related Issues with similar rules. Most significantly, the Guidance **overturns the EEOC's long-standing position that a normal pregnancy is not a disability and also requires employers to provide prescription contraception coverage**.

The change means that a pregnant employee who does not have a disability under the ADA is still entitled to reasonable accommodations if she has a job restriction similar to an individual with a disability. Essentially this gives pregnant employees status above disabled

employees.

In addition, the Guidance not only protects an employee's right to discuss and use contraceptives, but requires employers that provide health insurance to include prescription contraceptive coverage. However, this position already has been overruled by the U.S. Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc., et al.*, 573 U.S. ___, 2014 WL 2921709 (June 30, 2014).

While the Guidance does not have the force of law, it will certainly be used in legal arguments for pregnancy discrimination claims. Based on these changes, employers should **review and modify anti-discrimination, accommodation, leave of absence, and benefits policies** and procedures to comply. Light-duty policies must be applied to pregnant employees similar to individuals with similar limitations on their ability to work. **Train managers and employees** about their rights and responsibilities related to pregnancy, childbirth, and related medical conditions. Employers should not ask questions about an applicant's or employee's pregnancy status, children, or plans to have a family.

Accommodating Mental Disabilities

Due to our difficult economy, high unemployment, consolidations and reductions in force, the **work environment has become more stressful**. Managers focused on the bottom line and efficiency often impose their own anxieties on employees, leading to an uptick in **bullying**. Employees not included in group terminations are forced to take on **increased workloads** as positions are eliminated. Mental health and related physical issues, leaves of absence, and workers compensation claims are on the rise, and post-traumatic stress disorder is common with veterans returning to the workforce. The **clash of management styles, age and work ethic** also cause a difficult environment.

Employees and employers should be aware of the legal rights and obligations affected as a result: age and disability discrimination laws, leave of absence laws, reasonable accommodations and undue hardship, harassment and hostile environment, workers compensation, and retaliation. Managers should be trained to carefully handle these sensitive issues. **Applicants and employees should not be subject to inappropriate questions** and concerns about an actual or perceived disability, treatment and related insurance costs. **Confidentiality** and HIPAA obligations should be strictly enforced.

Legal Employment News: The November 4 election added Alaska, Oregon, and Washington D.C. to the jurisdictions **legalizing marijuana for general recreation** purposes. Meanwhile **Illinois employers should prepare for the state's new medical marijuana law**. Illinois residents have begun applying for medical marijuana cards, and marijuana cultivation centers and dispensaries are popping up. Now is the time for employers to review and amend policies and conduct appropriate management training.

This bulletin is an advertisement intended to provide clients and others with general information and is not intended to provide specific legal advice or opinions. Employers and workers seeking assistance with topics addressed in this bulletin or other workplace issues should contact Lori Goldstein at (847) 624-6640 or lori.a.goldstein@gmail.com. Visit www.lorigoldsteinlaw.com for more information about the Law Office of Lori A. Goldstein, LLC.

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