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PREGNANT EMPLOYEE PROTECTION INCREASES IN ILLINOIS

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Beginning in January 2015, Illinois employers will need to prepare to offer a significant amount of additional accommodations to their pregnant employees. During the 2014 Spring Session of the Illinois General Assembly, Representative Mary Flowers (D-Chicago) proposed legislation (Public Act 98-1050) that requires Illinois employers to reasonably accommodate pregnant employees and extend those accommodations to employees dealing with childbirth, medical or common conditions related to pregnancy and childbirth.

Broadening Illinois's current definition of reasonable accommodation, if a job applicant or full time, part time or probationary employee requests pregnancy accommodations, an employer must accommodate the employee's needs or demonstrate undue hardship on the ordinary operations of the employer's business.

An employer, having received a request from an employee for accommodation, may request documentation from an employee's health care provider if the employer's request is job related and is consistent with business necessity. The employee's health care provider must provide the following: 1) medical justification for the accommodation, 2) description of the accommodation medically advised, 3) date when

medically advised to provide the accommodation and 4) probable duration needed for the accommodation. The employee owns the duty to provide their health care provider's information to their employer. An employee cannot be requested to take any sort of leave from her job if a reasonable accommodation can be made.

The accommodations approved include:

1. More frequent bathroom breaks
2. Periodic rest
3. Private, non-bathroom space for breast feeding/pumping
4. Seating
5. Relief from manual labor
6. Light duty
7. Temporary transfer to a less hazardous position
8. Modified work schedule
9. Reassignment to a vacant position.

An employer may deny accommodation only if such accommodation would impose undue hardship on the employer's business. The public act defines undue hardship as "prohibitively expensive or disruptive" considering the following elements:

1. Nature and cost of accommodation
2. Overall financial resources of the facility/facilities involved
3. Impact on facility
4. Financial resources of employer
5. Size of the business.

Should an employer deny accommodation to a pregnant employee and the Illinois Department of Human Rights (IDHR) deems the accommodation invalid, the invalidation will start a preliminary investigation by the IDHR. Should the IDHR, following its investigation, find a violation, it will issue a “notice to show cause,” after which the employer has 30 days to correct. Should an employer not correct the violation in 30 days, the employer will receive a civil rights violation from the IDHR.

In addition to the more specific accommodation requirements, Illinois employers must be careful to post the accommodation rights in prominent places throughout their workplace and include them in all employee handbooks.

During the last 3rd or 4th quarter of 2014, Illinois employers should revisit their pregnancy, childbirth and related policies. Additionally, a step-by-step plan, including forms and processes for employees to request accommodations and employers to respond to requests once in place, will go a long way toward handling the additional requirements imposed by the state in 2015.

If anyone has any questions, please feel free to contact Ashlie Kuehn, ashliekuehn@hessemartone.com.