

January 2014 New Arrival: New York City's Reasonable Accommodation Law (and Accompanying Notice Requirements) for Pregnant Workers Takes Effect

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As we previously reported (see the *Act Now Advisory* titled "[New York City Human Rights Law Expanded to Require Employers to Reasonably Accommodate Pregnant Employees](#)"), on October 2, 2013, former New York City Mayor Michael Bloomberg signed into law an amendment to the New York City Human Rights Law ("NYCHRL") adding protections for pregnant workers. The amended law prohibits employers from denying reasonable accommodations to an employee in connection with her pregnancy, childbirth, or a related medical condition.

Effective January 30, 2014, New York City employers with four or more employees must provide reasonable accommodations to an employee due to her pregnancy, childbirth, or related medical condition, provided that her pregnancy, childbirth, or related medical condition is known (or should have been known) by the employer.

While existing law previously prohibited discrimination based on gender and disability, the amended NYCHRL reasonable accommodation requirements cover all pregnant employees, regardless of whether a pregnant employee's condition would qualify as a disability under federal, state, or city law.

Types of Reasonable Accommodations

Pursuant to the amended law, employers must provide reasonable accommodations to allow covered employees to perform the essential requisites of their jobs. Under the NYCHRL, a reasonable accommodation is one that does not cause an undue hardship in the conduct of the employer's business. The amended law contains specific examples of reasonable accommodations, which may include, among other things:

- bathroom breaks;
- leave for a period of disability arising from childbirth;
- breaks to facilitate increased water intake;

- periodic rest for those who stand for long periods of time; and
- assistance with manual labor.¹

Notice Requirements

The amended law requires employers to provide written notice (“Notice”) to employees of their rights to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions. Beginning on January 30, 2014, the Notice must be distributed to all new employees upon commencement of employment. Further, by May 30, 2014, employers must distribute the Notice to existing employees. As of now, there is no guidance on the manner of distributing the Notice. Further, employers are encouraged (but not required) to post the Notice in a conspicuous place in the workplace. To be clear, solely posting the Notice in the workplace will not comply with the notice requirements of the amended law. Rather, employers must distribute the Notice to all employees, regardless of whether the Notice is posted in the workplace.

The New York City Commission on Human Rights (“Commission”), the agency that enforces the NYCHRL, issued the Notice in the form of a “Pregnancy and Employment Rights Poster” (“Poster”) and a “Pregnancy Info Card” (“Info Card”) on its website. The Poster can be accessed by clicking [here](#), and the Info Card may be accessed by clicking [here](#). The Poster is available in English, Chinese, Haitian Creole, Italian, Korean, Russian, and Spanish. Info Cards have been published in English, Chinese, French, Russian, and Spanish. As the amended law does not require that the Notice be distributed to employees in any language other than English, employers may opt to provide the Notice in English only. Alternatively, employees may elect to provide the Notice in the primary language that an individual employee has previously identified in connection with the distribution of his or her New York State Wage Theft Prevention Act (“WTPA”) wage notice pursuant to Section 195.1 of the New York State Labor Law.

Notably, while the information contained in the Poster and the Info Card is similar, the Poster includes additional information that is not included on the Info Card. Although there are differences between the two, the Commission does not distinguish between the Poster and the Info Card, nor does it specify which one should be used for distribution.

What Employers Should Do Now

New York City employers should review their procedures and practices to ensure compliance with the amended NYCHRL by:

- Updating orientation and new hire materials to include the Notice for distribution to all new employees hired on or after January 30, 2014;

¹ In addition to these examples of reasonable accommodations, other possible accommodations include unpaid medical leave, changes to the employee’s work environment, and lighter workloads/shorter hours. Each such accommodation will generally be deemed reasonable as long as the employee can still perform the essential requisites of the job and such accommodation does not result in an undue hardship for the employer. It is the employer’s burden to prove any such undue hardship when raising same as a defense to a claim of noncompliance with the amended law.

- Distributing Notices to current employees on or before May 30, 2014;²
- Requiring employees to acknowledge receipt of the Notice, in case any employees challenge whether the Notice was provided (although the amended law does not require employers to obtain employee acknowledgment of receipt of the Notice);
- Maintaining acknowledgment of receipt in employees' personnel files (although such recordkeeping is not required by the amended law);
- Distributing the Notice by electronic means, if such method of distribution is administratively easier (although the amended law does not address the permissibility of distributing the Notice electronically);
- Providing reasonable accommodations to employees due to pregnancy, childbirth, or related medical conditions, to the extent that they are not already doing so;
- Reviewing and revising reasonable accommodation policies and procedures; and
- Training supervisors and managers on how to handle accommodation requests.

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² Unlike the WTPA, there is no requirement to distribute the Notice annually.

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