

The Illinois Pregnancy Fairness Law

Employers Need to Know: An Overview of the Increased
Protections for Pregnant Employees and New Moms

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Preface

The Illinois Legislature determined that current workplace laws did not adequately protect pregnant women and new mothers from workplace discrimination. They noted that pregnant women and new mothers are often forced into unpaid leave or fired, despite the fact that employers could often make reasonable accommodations that would allow them to continue to work. Because women make up fifty percent of the Illinois workforce, and more than fifty percent of those women are of childbearing age, the problem impacted thousands of Illinois citizens. Failing to provide reasonable accommodations to pregnant women resulted in lost wages, unemployment, lost opportunities and benefits, that all combined to have lifelong repercussions on women's economic security and the well-being of their families.

Most women are able to work during pregnancy. Enabling them to do so, the legislature concluded, is not only good for them, but is good for businesses. Providing pregnant women with reasonable accommodations can lead to increased productivity, retention, and morale, while decreasing re-training costs and health care costs associated with pregnancy complications.

As a result, the Illinois Legislature passed the Illinois Pregnancy Fairness Act, which Governor Quinn signed into law, and went into effect on January 1, 2015. It is critical that employers know the new law's requirements regarding discrimination and retaliation, as well as reasonable accommodations and providing adequate notice to employees—those who do not understand the new law are inviting lawsuits.

Leinenweber Baroni & Daffada LLC is pleased to provide this overview to the Illinois Pregnancy Fairness Law. This overview is not a substitute to the advice of trained legal professionals, and is not intended to be a substitute for following Illinois law. For more information or advice in navigating this new law please contact Justin L. Leinenweber.

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Pregnancy is Now a Civil Right in Illinois

In Illinois, it is now a civil rights violation to discriminate against applicants or employees because they are pregnant, have recently given birth, or have medical conditions related to pregnancy or childbirth. The Illinois Pregnancy Fairness Law went into effect on January 1st of this year and applies to all employers that have one or more employees—without regard to whether they are part-time, full-time, or probationary employees.

The law amends the Illinois Human Rights Act to include pregnancy as a protected class. Pregnancy has been broadly defined to include: pregnancy, childbirth and medical conditions related to pregnancy or childbirth.

Under the new law, it is a civil rights violation to make employment decisions, including but not limited to: hiring, segregating, recruiting, promoting, renewing employment, providing training, discharging, disciplining, determining tenure or seniority, or making any decision regarding the terms, privileges or conditions of employment on the basis of pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

Women affected by pregnancy, childbirth, or medical conditions related to pregnancy or childbirth are to be treated the same for all employment-related purposes, including benefits under fringe benefits programs, as other persons not so affected but similar in their ability or inability to work, regardless of the source of the inability to work or employment classification or status.

Employers Must Provide Reasonable Accommodations to Covered Women

Employers must provide reasonable accommodations to applicants and employees who request them and are covered by the statute, unless the accommodation would result in undue hardship to the employer. Employers must engage in an interactive process with the person similar to that which is required for someone with a disability under the Americans with Disabilities Act to determine what, if any, accommodation should be provided.

Reasonable accommodation means: reasonable modifications or adjustments to the job application process or work environment, or the manner or circumstances under which the position desired or held is customarily performed, that enable applicant or employee to be considered or to perform essential functions of that position.

Typical reasonable accommodations may include, but are not limited to:

- More frequent or longer bathroom and rest breaks
- Additional hydration *i.e.* water breaks
- Private non-bathroom space for expressing breast milk or breastfeeding
- Seating modifications
- Assistance with manual labor
- Light duty assignment
- A temporary transfer to a less strenuous or hazardous position
- Creating a more accessible worksite
- Acquisition or modification of equipment

- Job restructuring
- Part time or modified work schedule
- Modification of examinations, training materials, policies
- Reassignment to a vacant position
- Providing time off to recover from conditions related to childbirth
- Granting a leave necessitated by pregnancy, childbirth, or medical or common conditions resulting from pregnancy or childbirth

Employers may request documentation regarding the need for a reasonable accommodation from the applicant or employee's health care provider; provided that the request is:

- Job-related and consistent with business necessity; and
- Limited to: (1) information concerning the need or medical justification for the requested accommodation; (2) a description of the medically advisable accommodation; (3) the date the reasonable accommodation became medically advisable; and (4) the probable duration of the reasonable accommodation will be required.

Employers cannot:

- Deny employment opportunities or benefits, or take any adverse actions against applicants or employees because they requested a reasonable accommodation related to pregnancy, childbirth, or medical conditions related to pregnancy or childbirth;
- Require applicants or employees to accept an accommodation when they did not request it and choose not to accept it;
- Require an employee to take leave if another accommodation can be provided;
- Refuse to reinstate the employee to their original job (or equivalent position) with equivalent pay, seniority, retirement, fringe benefits, and other applicable service credits, unless the employer can demonstrate undue hardship; or
- Retaliate against an employee because she requested, attempted to request, used, or attempted to use a reasonable accommodation under this law.

Employers Do Not Have to Provide an Accommodation if it Would Cause an Undue Hardship

Under the new law, an employer is not required to provide an accommodation if the employer can show that it would cause an undue hardship on the employer's ordinary operation. The burden of proving undue hardship rests squarely on the employer.

Undue hardships may include actions that are prohibitively expensive or disruptive when considered in light of factors including: (1) nature and cost of the accommodation needed; (2) overall financial resources of facility, number of persons employed, effect on expenses and resources; (3) overall financial resources of the employer, overall size of business; and (4) type of operation.

Employers are not required to create additional positions that the employer would not otherwise have created, or to discharge, transfer, or promote any employee who is not qualified to perform the job.

Employers Must Provide Notice of These Rights

The new law also requires that employers provide employees with appropriate notice of these rights in a conspicuous location on the premises, and must include notice in employee handbooks. The Illinois Department of Human Rights has prepared a Pregnancy Rights Notice in English and Spanish that employers may obtain on their website. Employers should post those notices in a conspicuous location at their premises.

Conclusion – Employers Need to Know:

- Pregnancy, childbirth and medical conditions related to pregnancy or child birth are now **protected civil rights** in Illinois;
- The new law applies to **all employers with one or more employees**;
- Employers **must engage in the interactive process** with covered applicants and employees requesting a reasonable accommodation, and **provide appropriate reasonable accommodation**;
- Employers **must update their employee handbooks** and personnel manuals to include notice of these new rights; and
- Employers **must post the Pregnancy Rights Notice** in a conspicuous location.

Please contact Justin Leinenweber at justin@ilesq.com or 312-380-6635 if you would like to discuss the law, how it affects your business, or to review your personnel or policy manuals.

About the Firm

Leinenweber Baroni & Daffada LLC is a full-service law firm composed of attorneys at law and public-policy experts. Our focus is on our clients: we are committed to resolving difficult issues efficiently and effectively and have demonstrated effectiveness in providing clients with representation in a variety of areas including:

Employment and Administrative Law

Provide advice and counsel to employers and employees regarding workplace issues including civil rights, wages, non-compete and severance agreements, as well as other contractual matters.

State and Federal Regulatory Compliance

Experienced, uncompromising representation of business that are regulated by state and federal agencies

Business And Commercial Transactions

Comprehensive counsel to privately owned business and professional enterprises, individual entrepreneurs and not-for-profit entities including transactional, formation, governance, and employment matters

Civil Litigation

Result driven representation of businesses and individuals in complex state and federal litigation and appeals

Criminal Defense

Representation of individuals and businesses in all phases of criminal and quasi-criminal matters, including federal and state prosecutions and investigations, pleas, appeals, administrative or regulatory proceedings, criminal defense matters, DUI, and traffic violations

About the Author



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Mr. Leinenweber's practice focuses on representing and advising employers and employees in employment disputes, as well as organizations and individuals that are regulated by Illinois agencies. Mr. Leinenweber is a former Assistant Attorney General with the Illinois Attorney General's Office where he worked closely with agencies and officials in state and federal litigation. He spent nearly five years at Winston & Strawn, and is a third generation Illinois attorney.

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