

# Massachusetts Strengthens Protections for Pregnant Workers

**Jackson Lewis**

Article By

[Samia M. Kirmani](#)

[Brian E. Lewis](#)

[Jackson Lewis P.C.  
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An amendment to the Massachusetts Fair Employment Practices Act, G.L. c. 151B, expressly includes pregnancy as a protected characteristic and expands accommodation requirements for pregnant employees. The amended law goes into effect April 1, 2018.

## Requirements

The amended law expressly establishes pregnancy “or any condition related to the employee’s pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child,” as a protected characteristic and requires that employers not discriminate against employees on the basis of pregnancy or conditions related to pregnancy (such as expressing breast milk). It further prohibits employers from retaliating against pregnant employees who request reasonable accommodation. Like other discrimination statutes, the new law makes it unlawful for employers to take adverse actions or deny employment because of an employee’s pregnancy or because she may require a reasonable accommodation. Employers also may not require pregnant employees to accept accommodations that are not necessary for them to perform their job or require them to take a leave of absence if alternative accommodations may suffice to meet their needs.

## Reasonable Accommodations

The amended law affirmatively requires that employers provide reasonable accommodations to pregnant employees. The law provides several examples of

reasonable accommodations, such as:

- more frequent or longer breaks;
- time off;
- acquisition or modification of equipment or seating;
- temporary transfers;
- job restructuring;
- light duty;
- private non-bathroom space for expressing breast milk;
- assistance with manual labor; or
- a modified work schedule.

The law makes clear that employers are not required to discharge or transfer an employee with more seniority or promote an employee who is not able to perform the job with or without a reasonable accommodation.

The reasonable accommodation requirements under the amended law go further than those currently provided under current federal and state law. Under the Americans with Disabilities Act, for example, expectant mothers typically receive reasonable accommodations if they suffer from temporary medical conditions exacerbated by pregnancy, such as gestational diabetes. Under the amended Massachusetts law, pregnant employees may seek reasonable accommodations on the basis of pregnancy or childbirth, with or without the existence of related medical complications.

Under the new law, employers must engage in the interactive process to determine what reasonable accommodation may be required. Employers may seek and require documentation for certain, but not all, accommodations requested by the employee. The law specifically provides that employers may *not* seek or require documentation for the requested accommodation if the accommodation sought is more frequent breaks, seating changes, limitations on lifting more than 20 pounds, or a private space for expressing breast milk.

The new law also makes clear that employers are not required to provide an accommodation if doing so would result in an undue hardship on the employer. While the burden lies with the employer to prove undue hardship, the law enumerates the following four factors that should be considered in determining whether an undue hardship exists:

1. the nature and cost of the accommodation;
2. the financial resources of the employer;
3. the size of the employer; and
4. the effect and impact of the accommodation on the employer's business.

## **Notice**

The new law also provides explicit, written notice requirements. Specifically, employers must provide written notice — in an employee handbook or elsewhere — of employee rights under the new law. Such notice also must be provided:

1. to new employees on or prior to their first day; and
2. to an employee who notifies the employer of a pregnancy or of a condition

related to pregnancy (e.g., lactation or need to express breast milk) within 10 days after such notification.

In addition, the law calls for the Massachusetts Commission Against Discrimination to provide “courses of instruction” and “conduct public education” on the law, provided that the legislature appropriates money for it to do so.

## **Next Steps**

Employers should review their policies, practices, and communications as they relate to hiring, discrimination, accommodation, leave, and lactation so that appropriate notices are provided at hire and upon learning of an employee’s pregnancy or need for accommodation. As is the case with other compliance and employee-relations matters, employers should consider training Human Resource professionals and managers on their responsibilities under the new law.

*Matthew Chambers assisted with this legal update.*

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