ADA and disability regulatory compliance

Summary of legislation

Private employer sector

2nd quarter 2017

sedgwick

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Connecticut

HB06668 – Pregnancy Accommodation
Passed June 6, 2017
Awaiting the Governor's signature

If signed by the Governor, this recently passed legislation will require employers to provide reasonable accommodations to pregnant employees. Reasonable accommodations could include, but would not be limited to, allowing pregnant employees to sit while working, granting more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, break time or time off to recover from childbirth. Employers also would be required to provide appropriate facilities for expressing breast milk.

Employers will be required to provide written notice of employees' right to be free from discrimination in relation to pregnancy, childbirth and related conditions, including the right to a reasonable accommodation, to new employees at the commencement of employment, to existing employees within one hundred twenty (120) days after the effective date of this law; and to any employee who notifies the employer of her pregnancy within ten days of such notification. Employers will be deemed to be in compliance with the notice provision of this proposed law by displaying a poster in a conspicuous place at the employer's place of business that contains the information required by this section in both English and Spanish.

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Nevada

SB 253 – Pregnant Workers' Fairness Act
Passed May 27, 2017
Signed by the Governor June 2, 2017

This bill applies to employers with 15 or more employees and makes it unlawful, with certain limited exceptions, for such employers to refuse to provide reasonable accommodations, upon request, to female employees and applicants for employment for a condition of the employee or applicant relating to pregnancy, childbirth or a related medical condition, unless the accommodation would impose an undue hardship on the business of the employer. This new law requires that, if an employer grants leave with pay, leave without pay, or leave without loss of seniority to other employees for sickness or disability because of a medical condition, it is an unlawful employment practice to fail or refuse to extend the same benefits to any female employee for a condition relating to pregnancy, childbirth or a related medical circumstance. A pregnant employee must be allowed to use the leave before and after childbirth, miscarriage or other natural resolution of her pregnancy, if the leave is granted, accrued or allowed to accumulate as a part of her employment benefits.

Employers are required to provide written or electronic notice to employees informing them that they have the right to be free from discrimination and other unlawful employment practices. Employers are required to provide the notice to new employees upon commencement of employment; and within 10 days after an employee notifies the employee's immediate supervisor that the employee is pregnant. Employers are required to post the notice in a conspicuous place in an area that is accessible to employees.

Notice requirements for existing employees become effective immediately. The act, for all other purposes, becomes effective October 1, 2017.

Sedgwick will add a pregnancy accommodation leave to our standard offering to account for any reasonable period of leave due to pregnancy that is certified by a healthcare provider. In addition, our accommodation process will be updated to include all other applicable aspects of this law where we are managing a client's accommodation cases.

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New Mexico

HB 179 – Pregnant Worker Accommodation Act
Vetoed April 2017

This bill sought to enact a state-wide Pregnant Workers Accommodation Act that would require employers with four or more employees to provide reasonable accommodations to employees or job applicants with known limitations arising out of pregnancy or childbirth related conditions. Employers would be required to provide written notice of an employee's rights under the act to job applicants, new employees at commencement of employment, existing employees within 120 days after the effective date of the act, and to any employee who has notified the employer of their pregnancy or childbirth related condition within 10 days.

The bill was vetoed by Governor Susana Martinez who stated that existing laws protecting people with disabilities were sufficient to provide the protection afforded by this proposed legislation. The bill had passed by a large margin in the New Mexico House of Representatives and a narrow margin in the New Mexico Senate. It is therefore unclear if the New Mexico legislature can override the Governor's veto.

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Pennsylvania

HB 1583 – Pregnant Workers Fairness Act
Introduced June 20, 2017

If passed, this proposed law would apply to all employers within the State of Pennsylvania. The law would make it unlawful for any employer to refuse an employee's or prospective employee's request for reasonable accommodations for limitations related to pregnancy, childbirth or related medical conditions, unless the employer could demonstrate that the accommodation would impose an undue hardship on their operations.

It also would be unlawful for an employer to deny employment opportunities to an employee or prospective employee if the denial is based on the employee's need for an accommodation related to pregnancy, childbirth or related medical conditions. Additionally, employers would be unable to require employees to accept an accommodation that changes the terms, privileges or conditions of their employment, such as reductions in pay or hours or changes in shifts or location, unless requested or agreed to by the employee or prospective employee. Employers also could not require an employee to take leave if other reasonable accommodations could be provided to address the employee's limitations related to pregnancy, childbirth or related medical conditions that would enable the employee to continue working.

The proposed legislation suggests that reasonable accommodations might include, but are not limited to, providing a chair, assistance with heavy lifting, access to drinking water or uncompensated break time. Accommodations also might include temporary job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and other similar accommodations.

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Rhode Island

Use of medical marijuana in the workplace
Rhode Island Superior Court ruling June 2017

Rhode Island Superior Court recently ruled that an employer that implemented a drug testing policy which caused an applicant with a medical marijuana card to be denied employment is a form of discrimination and a violation of the state's medical marijuana law. In the case, *Callaghan v. Darlington Fabrics Corporation et al.*, plaintiff Christine Callaghan claims that Darlington Fabrics violated the state's medical marijuana law as well as the Rhode Island Civil Rights Act because Darlington refused to employ Callaghan solely for her status as a cardholder.

During her interview for an internship, Callaghan had informed Darlington that she had a medical marijuana card and would test positive for marijuana in the employment drug test. Darlington told her that they were unable to hire her because failing a drug test would violate the company's drug-free workplace policy. The court ruled that while Darlington may regulate medical marijuana use by prohibiting workers from being under the influence on the job, and that allowing workers to be under the influence of marijuana is not considered a reasonable accommodation, it is nonetheless a discriminatory practice to refuse to hire individuals merely because of their status as medicinal marijuana users. Click here to view the court's decision.

Creating a further challenge for employers is the fact that marijuana remains classified as an illegal narcotic under federal law. Accordingly, employers must carefully analyze a patchwork of various state and federal laws to determine what obligations an employer might have, if any, to accommodate employees who use medicinal marijuana. Employers should review their workplace drug-use and drug-testing policies to ensure clear standards are set. Employers also should avoid making inquiries into the underlying disability of a medical marijuana cardholder.

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Vermont

H 136 – Accommodations for Pregnant Employees
Passed April 25, 2017
Signed by the Governor May 4, 2017

This new law makes it unlawful for employees to refuse to accommodate an employee's condition related to pregnancy, childbirth or related medical condition, unless providing such accommodations impose an undue hardship on the employer. Reasonable accommodations may include, but are not limited to, more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, assistance with manual labor or modified work schedules. The law requires employers to post a notice of these rights in a location conspicuous to employees. The accommodation provisions took effect on July 1, 2017. The posting requirements take effect on January 1, 2018.

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Washington

SB5835 – Healthy Outcomes for Pregnant Women and Infants
Signed by the Governor May 16, 2017

This new law provides protections for pregnant employees including the requirement that employers with 15 or more employees must make reasonable accommodations for employees with health conditions resulting from pregnancy. The law prohibits employers from requiring such employees to take leave if another reasonable accommodation can be provided.

Sedgwick will add a pregnancy accommodation leave to our standard offering to account for any reasonable period of leave due to pregnancy that is certified by a healthcare provider. In addition, our accommodation process will be updated to include all other applicable aspects of this law where we are managing a client's accommodation cases.

The act will take effect on January 1, 2018.

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Federal

ADA requirements – website accessibility
Recent court decisions

Places of public accommodation have long been made aware of accessibility requirements under the ADA at physical locations. Two recent rulings have potentially extended the ADA's requirements to include virtual locations including public websites.

A judge in the U.S. District Court for the Southern District of Florida has issued a decision in favor of plaintiff Juan Carlos Gil, ruling the defendant Winn-Dixie violated Title III of the ADA by failing to provide an accessible website and therefore not providing "full and equal enjoyment" to individuals with disabilities. The decision was based on the fact that the company's website is heavily connected with the physical store locations by providing coupons, allowing prescription refills and including a store locator, and thus is also a place of public accommodation.

Another decision by a U.S. District Court in the Central District of California is similar to the Florida ruling. The court denied defendant Hobby Lobby's motion to dismiss an accessibility lawsuit in which the plaintiff alleges that individuals with disabilities are not provided full and equal access to the retailer's website. Hobby Lobby's website allows online shopping, store locating and access to special offers. Hobby Lobby unsuccessfully argued that they should not be held liable for website accessibility issues until the U.S. Department of Justice formalizes website accessibly standards under Title III.

Given these recent decisions, it is recommended that business owners with places of physical public accommodation review their online presence for current accessibility features. The Web Content Accessibility Guidelines (WCAG) 2.0 appears to be a leading standard in web accessibility. Employers may also want to consider how online training and policy materials are presented to employees as the standards described in these recent decisions might be applied in the context of an employer's web-published policies and procedures, and could give rise to employment claims.

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Federal

ADA protections for transgender employees
U.S. District Court ruling May 18, 2017

A federal judge ruled that a transgender woman can sue her former employer for sex discrimination under the American Disabilities Act (ADA), despite the fact that being transgender is not included as a disability under the current language of the ADA. In *Blatt v. Cabela's Retail Inc.*, Kate Blatt, a transgender woman, has sued Cabela's for sex discrimination. In her complaint, Blatt claims she was fired after being subjected to harassment, including Cabela's denying her use of the women's restroom and requiring her to wear a name tag with her male birth name. Blatt's claims are filed under the Title VII of the Civil Rights Act and allege that Cabela's discriminated against her based on her sex. Her complaint also asserts claims under the ADA, alleging that Cabela's refused to provide her reasonable accommodation including the use of the women's restroom and use of her legal female name.

Although the ADA explicitly states that "transsexualism" is not a disability, and therefore is not protected as such, the court found that being transgender can give rise to gender dysphoria, which may require medical treatment and therefore is within the scope of the ADA.

The information contained within this document is intended to provide summary level information on proposed or enacted laws and court interpretations related to the Americans with Disabilities Act. It is not intended to provide guidance on the application of any legal requirement or as an update to your company's policies. We recommend you consult with legal counsel to determine what changes, if any, should be applied to company policy.

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