ADA and disability regulatory compliance

Summary of legislation

Private employer sector

3rd quarter 2017

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San Francisco, California

Ordinance No. 131-17 – Lactation in the Workplace
Signed by the Mayor July 30, 2017
Informational only – Sedgwick does not administer

This new law, which becomes effective January 1, 2018, requires private employers in the City of San Francisco to provide break time for employees to express breast milk. This break time is concurrent with any required paid break time; however, if additional time is required, the employee is entitled to an unpaid extended break.

Employees also must be provided a private non-bathroom space for the purposes of expressing milk, which must be in close proximity to the employee's work area. The location must:

- Be safe, clean and free of toxic or hazardous materials;
- Contain a surface (e.g. a table or shelf) to place a breast pump and other personal items;
- Contain a place to sit; and
- Have access to electricity

In addition, employers must provide access to a refrigerator for the storage of breast milk and access to a sink with running water that are in close proximity to the employee's work area. If the space provided for lactation is to be used for other purposes, priority must be given to employees using the space for lactation accommodations.

Under this new law, employers are required to develop and implement a policy regarding lactation accommodation, which includes a statement of employees' rights and identifies a process by which employees may request such an accommodation. Employers must respond to a request for lactation accommodation within five business days and engage in an interactive process to determine the appropriate break periods and locations for the accommodation. Employers must distribute their lactation accommodation policy to all employees upon hire and to any employee who inquires about or requests pregnancy or parental leave.

Employers may qualify for an exception from this requirement if they can show that such a requirement would impose an undue hardship by causing the employer significant expense or operational difficulty.

This information was also provided in the August 2017 leave law update from Sedgwick.

Louisiana

Unlimited telecommuting as an accommodation
July 2017

The U.S. Court of Appeals in New Orleans has affirmed a lower court's ruling that an employer is not required to grant unlimited telecommuting as a reasonable accommodation under the Americans with Disabilities Act (ADA). In *Credeur v. the State of Louisiana,* the plaintiff sued her employer, the State of Louisiana, for refusing to continue a temporary telecommuting accommodation granted to her because of a recent surgery. The employee sued for failure to accommodate, harassment and retaliation in violation of the ADA. The courts found in favor of the State noting that the ADA protects qualified employees who can perform the essential functions of the job with or without reasonable accommodation and that regular work site attendance is an essential function of most jobs. In summary, the courts found that requiring employers to offer unlimited telecommuting options to disabled employees is not a reasonable accommodation if all essential job tasks cannot be completed remotely.

Massachusetts

H3680 – Massachusetts Pregnant Workers Fairness Act
Signed by the Governor July 27, 2017

This new law establishes the Massachusetts Pregnant Workers Fairness Act, which provides protections to employees who are pregnant or have any condition related to pregnancy including lactation or the need to express breast milk. Effective April 1, 2018, employers with 6 or more employees will be required to provide reasonable accommodation for an employee's pregnancy or related condition unless the employer is able to demonstrate that the accommodation would impose an undue hardship on the employer's business.

Employers will be required to provide existing employees with written notice of their rights on or before January 1, 2018. New employees must be notified at the commencement of employment. In addition, employees who notify their employer of a pregnancy or related condition should be notified of their rights within 10 days of the notification.

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 customer's accommodation cases.

This information was also provided in the July 2017 leave law update from Sedgwick.

Federal

Medical leave as an ADA accommodation
September 2017

The U.S. Court of Appeals for the Seventh Circuit has upheld a district court's ruling that an extended leave of absence is not a reasonable accommodation under the Americans with Disabilities Act (ADA). In the case of *Severson v. Heartland Woodcraft*, Severson alleged that he should have been provided with several months of leave to recover from back surgery as a reasonable accommodation after his 12 weeks of leave under the Family and Medical Leave Act (FMLA) had been exhausted. The district court found that his request for leave would not be a reasonable accommodation because he was not a qualified individual. Lifting more than 50 pounds was an essential function of the job and Severson was unable to perform such a task in his condition. The Seventh Circuit court upheld this finding adding that the purpose of the ADA is to protect against discrimination, not to provide leave entitlements, and clarified that the law is clear in stating reasonable accommodations are to enable employees to perform the essential functions of the job not to excuse employees from the job. The court concluded that "If, as the EEOC argues, employees are entitled to extended time off as a reasonable accommodation, the ADA is transformed into a medical-leave statute – in effect, an open-ended extension of the FMLA. That's an untenable interpretation of the term 'reasonable accommodation.'"

Employers should remember that leave may be a form of accommodation for shorter periods or on an intermittent basis, even when longer periods are not reasonable. It is the duty of both the employer and the employee to engage in an interactive process in determining possible accommodations that are reasonable and do not place an undue hardship upon the employer. Employers in other jurisdictions should be mindful that this holding may be limited to states within the Seventh Circuit's jurisdiction, which include Illinois, Indiana and Wisconsin.

Federal

Defining essential job functions
August 2017

The U.S. District Court for the District of Connecticut has ruled against employer SleepMed in an Americans with Disabilities Act (ADA) discrimination case based on a poorly defined job description. In the case of *Valenti v. SleepMed Inc.*, Valenti worked as a sleep technician at a SleepMed hotel location. SleepMed expected their technicians to escort patients to and from the hotel lobby. Due to a condition that prohibited her from excessive amounts of walking or standing, the employee requested and was granted an accommodation that excused her from escorting patients from the lobby and allowed her to greet them at the elevator. This accommodation was provided for two years until patient complaints led SleepMed to request a doctor's note stating her restrictions. Valenti provided the doctor's note. SleepMed then told her that escorting patients from the lobby was an "important" job role and requested she have her doctor fill out a company ADA medical form. After taking leave for an unrelated issue, the employee filed a complaint with the EEOC claiming SleepMed violated the ADA by failing to accommodate her disability, discriminating against her for her disability and for retaliating against her. SleepMed later fired Valenti.

The court determined that the case should be heard by a jury because of disputed facts related to whether escorting patients from the hotel lobby was an essential job function. According to the court, the employee's written job description, which required patients to be greeted upon arrival and escorted to their room, did not specify the hotel lobby expressly.

Employers should always use caution when altering or rescinding an accommodation and should regularly review job descriptions to ensure that they are accurate.

Federal

Potential ADA violations during EEOC investigations
August 2017

A federal trial judge has ruled that a company can violate the Americans with Disabilities Act (ADA) by communicating with employees regarding the existence of an ADA claim and related ongoing Equal Employment Opportunity Coalition (EEOC) investigations. In the current case, *EEOC v. Day & Zimmerman NPS, Inc*., a former employee filed suit alleging that his employer violated the ADA by terminating his employment at a nuclear facility after he provided a doctor's note stating he cannot work near radiation. In an effort to address common questions and concerns raised by employees during an investigation, the company's in-house counsel provided a letter to 150 employees informing them that the EEOC had requested their contact information as well as what to expect during an EEOC investigation. The letter also informed these employees of the alleged charges, including details regarding the former employee's claimed medical restrictions. The EEOC brought suit against the company claiming that the letter intended to punish the claimant making a charge of discrimination, and was designed to interfere with his and the 150 employees' exercise of rights protected by the ADA.

Employers should take this ruling as a cautionary tale and be mindful of what disclosures are made in relation to any medical condition or disability, as well as the appearance of any potential coercion or interference in connection with an investigation.

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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