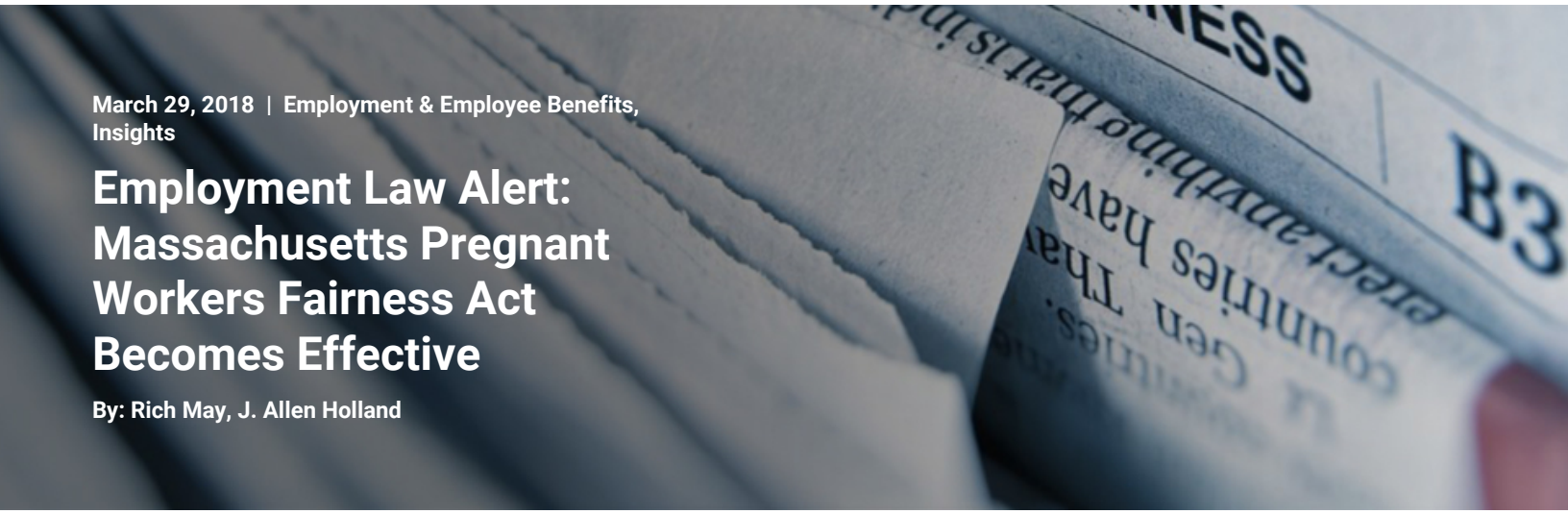

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Employment Law Alert: Massachusetts Pregnant Workers Fairness Act Becomes Effective

By: Rich May, J. Allen Holland

This Sunday, April 1, 2018, the Massachusetts Pregnant Workers Fairness Act (the Act) will officially become effective. This new law requires employers in Massachusetts with six or more employees to provide reasonable accommodations to pregnant employees and those who have pregnancy-related conditions (such as morning sickness and breastfeeding).

The law also updates Massachusetts' anti-discrimination statute (MGL Chapter 151B) to include these new protections. Massachusetts employers, and employees, must be aware of the rights and requirements defined in the Act.

Massachusetts employers must provide written notice to their employees no later than April 1, 2018 detailing the right to be free from discrimination in relation to an employee's pregnancy or a condition related to an employee's pregnancy, including the right to reasonable accommodations. Specifically, such notice must be provided:

– In a handbook or other means of notice to all employees,

– To any new employees at or prior to hiring, and

– Within 10 days to an employee after that employee notify the employer of a pregnancy or condition related to the employee's pregnancy.

In general, the Act makes it unlawful to:

1. take adverse action or retaliate against an employee who requests or uses a reasonable accommodation, including failing to reinstate the employee to the original employment status or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when the need for reasonable

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accommodation ceases,
2. deny an employment opportunity based on the need of the employer to make a reasonable accommodation,
3. require that the employee accept a reasonable accommodation that the employee chooses not to accept, if that accommodation is unnecessary to enable the employee to perform the essential functions of the job,
4. require an employee to take a leave if a reasonable accommodation may be provided without undue hardship to the employer, and
5. refuse to hire a person because of that person's pregnancy or condition related to their pregnancy, provided that person is capable of performing the essential functions of the position with reasonable accommodations that will not impose undue hardship on the employer.

Under the Act, employers have an affirmative obligation to communicate in good faith with their employees in order to determine what reasonable accommodations are required. Examples of reasonable accommodations include:

– More frequent or longer paid or unpaid breaks

– Time off to attend to a pregnancy complication or recover from childbirth with or without pay

– Acquisition or modification of equipment or seating

– Temporary transfer to a less strenuous or hazardous position

– Job restructuring

– Light duty

– Private non-bathroom space for expressing breast milk

– Assistance with manual labor

– Modified work schedule

An undue hardship, that might prevent an employer from making an otherwise reasonable accommodation, is an action that would require significant difficulty or expense. Employers are not required to discharge or transfer another employee with more seniority, or to promote an unqualified employee, as an accommodation.

Employers may request documentation supporting the need for any accommodation, however, the Act expressly prohibits an employer from requesting documentation for the following:

– More frequent restroom, food or water breaks.

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– Seating.

– Limitation on lifting objects over 20 pounds.

– Private non-bathroom space for expressing breast milk.

Given the Act's requirements and the consequences for failure to comply with them, employers should train human resources staff and managers in what is required of them. Employers should work with employment counsel to ensure their policies and practices comply with the Act, and employees should seek the advice of counsel if they believe their employer has discriminated against them on the basis of their pregnancy or pregnancy related condition.

Anyone with questions on the Massachusetts Pregnant Workers Fairness Act, or any other employment law question, can contact Rich May, P.C. attorneys J. Allen Holland and Nathaniel Donoghue.

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