PREGNANT WORKERS FAIRNESS ACT

On June 1, 2016, Colorado enacted the Pregnant Workers Fairness Act (PWFA), which went into effect on August 20, 2016. C.R.S. § 24-34-402.3. The statute requires employers to provide reasonable accommodations to an applicant or employee for health conditions related to pregnancy or the physical recovery from childbirth, unless the accommodation would impose an undue hardship on the business. The PWFA prohibits adverse actions against an employee who requests or uses a reasonable accommodation, and further prohibits the denial of employment opportunities to applicants or employees based on the need for accommodation. Employers cannot require an applicant or employee to accept an accommodation that is not requested or is unnecessary to perform the essential functions of her job. More specifically, employers cannot require an employee to take leave if another reasonable accommodation can be provided. However, employers can require an employee or applicant to provide a note from a licensed health care provider stating the necessity of a reasonable accommodation.

Under the PWFA, if an applicant or employee who is pregnant or has a condition related to pregnancy or childbirth requests an accommodation, the employer must engage in an interactive process to assess the availability of effective, reasonable accommodations. The statute identifies reasonable accommodations as including, but not limited to:

- provision of more frequent or longer break periods;
- more frequent restroom, food, and water breaks;
- acquisition or modification of equipment or seating;
- limitations on lifting;
- temporary transfer to a less strenuous or hazardous position if available, with return to the current position after pregnancy;
- job restructuring;
- light duty, if available;
- assistance with manual labor; or
- modified work schedule.

By contrast, an accommodation is not reasonable if it poses an "undue hardship" on the employer, meaning it imposes significant difficulty or expense. The following factors are considered in determining whether there is undue hardship to the employer:

- the nature and cost of accommodation;
- the overall financial resources of the employer;
- the overall size of the employer's business with respect to number of employees and number, type, and location of available facilities; and
- the accommodation's effect on expenses and resources or its effect upon the operations of the employer;

An employer is not required to hire new employees that the employer would not have otherwise hired, discharge an employee, transfer another employee with more seniority, promote another employee who is not qualified to perform the new job, create a new position for the employee, or provide the employee paid leave beyond what is provided to similarly situated employees. If the employer has provided a similar accommodation to other classes of employees, the PWFA creates a rebuttable presumption that the accommodation does not impose an undue hardship.

Employers must provide written notice of the right to be free from discriminatory or unfair employment practices under the statute to new employees at the start of employment, and to existing employees within 120 days after the effective date of the section. Employers must also post a notice of the new in a conspicuous place in an area accessible to employees. A copy of the required notice is available on the Colorado Department of Regulatory Agencies website. If you have any questions about this update, please contact Gillian Dale.