

Nonprofit 411: Preparing for Employment Policy Changes

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This year, changes to statutes addressing gender pay equity and pregnant workers will require most Massachusetts organizations to update at least some of their policies and practices. It is crucial for HR and management teams to ensure all policies and procedures are fully established and clearly communicated to employees to prevent legal hurdles and potential reputation risks.

Pregnant Workers Fairness

The Federal Pregnancy Discrimination Act prevents employers from discriminating against women for being pregnant and the Americans with Disabilities Act prohibits discrimination based on temporary, pregnancy-related conditions, but neither mandate reasonable workplace accommodations for pregnant women. This year, a new Massachusetts law will go into effect to classify individuals experiencing “pregnancy or a condition related to pregnancy, including, but not limited to, lactation, or the need to express breast milk for a nursing child” as members of a protected class. Beginning on April 1, 2018, Massachusetts employers with six or more employees will be prohibited from:

- Discriminating against, failing to hire, or firing an employee or prospective employee based on pregnancy or a pregnancy-related condition;
- Denying employees and prospective employees reasonable accommodations for pregnancy and pregnancy-related conditions (or taking adverse action against someone who requests

or uses accommodations), such as more frequent or longer unpaid breaks, paid or unpaid time off to recover from childbirth, modified equipment or seating, job restructuring, or assistance with manual labor;

- Requiring documentation for certain accommodations, such as more frequent restroom, food or water breaks and private non-bathroom space for expressing breast milk;
- Forcing an employee to take a leave of absence if a reasonable accommodation would allow the employee to continue to perform the essential functions of her job; and
- Failing to engage in a timely, good faith, and interactive process with an employee or prospective employee who requests an accommodation that would allow her to perform the essential functions of her position.

Before April 1, employers must provide written notice to all employees about their right to be free from discrimination under the amended anti-discrimination statute, which must be given to new employees when or before they begin employment. Employers should revise existing materials to include this new protected class.

Pay Equity

In 2016, Massachusetts passed one of the strongest state laws in the nation focused on cultivating equal pay and combating discrimination based on gender. An Act to Establish Pay Equity will take effect on July 1, 2018 and prohibit Massachusetts employers from:

- Discriminating against employees on the basis of gender in the payment of wages for work that is substantially similar and requires substantially similar skill, effort, and responsibility, and is performed under similar working conditions, unless the variation is based on a legitimate factor, like a bona fide seniority or merit system;
- Inquiring about an applicant's wage or salary history before extending an employment offer that contains negotiated compensation terms, to cause employers to pay women based on competitive market rates; and
- Prohibiting employees from discussing wages or benefits with coworkers.

Therefore, before July 1, employers must update employment applications and interview protocols to strike inquiries regarding salary and wage history and update employee policies to include notice of the rights set forth under the new law. Employers should consider engaging outside counsel for an evaluation of pay practices at least once every three years moving forward.