

# New South Carolina Pregnancy Accommodations Act Requires Action by Employers

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Cherie W. Blackburn  
843.720.1728  
cblackburn@nexsenpruet.com

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## Purpose of the Act

The South Carolina General Assembly enacted the Pregnancy Accommodations Act to “combat pregnancy discrimination” and “require employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related medical conditions.” SC H3865. In describing its intent, the General Assembly expressly noted that “current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple,

reasonable accommodation in order to stay on the job.” *Id.*

## Amendments to the South Carolina Human Affairs Law

The existing South Carolina Human Affairs Law, which applies to employers with 15 or more employees, prohibits certain unlawful employment actions, including, among other things, discrimination against an individual because of the individual's race, color, religion, sex, age, national origin, or disability. § 1-13-80. It also requires employers to provide a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship. § 1-13-80(D)(2).

The Pregnancy Accommodations Act amends the definitions in the South Carolina Human Affairs Law to clarify that the terms “because of sex” or “on the basis of sex” include, but are not limited to, “because of or on the basis of pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation.” § 1-13-30(l).

## Workplace Accommodations for Pregnant Employees

The Act provides specific examples of reasonable accommodations an employer may be required to make for pregnant workers absent a showing of undue hardship:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities and individuals with medical needs arising from pregnancy, childbirth, or related medical conditions provided the employer shall not be required to construct a permanent, dedicated space for expressing milk;
- For individuals with disabilities: 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, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations; or
- For individuals with medical needs arising from pregnancy, childbirth, or related medical conditions providing more frequent or longer break periods; providing more frequent bathroom breaks; providing a private place, other than a bathroom stall for the purpose of expressing milk; modifying food or drink policy; providing seating or allowing the employee to sit more frequently if the job requires the employee to stand; providing assistance with manual labor and limits on lifting; temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified; providing job restructuring or light duty, if available; acquiring or modifying equipment or devices necessary for performing essential job functions; modifying work schedules.

1-13-30(T)(1) – (2). The above list is not exhaustive, and employers may identify and provide “other reasonable accommodations.”

Except where employers have policies that allow for the following accommodations for other classes of employees, the Act does not require employers to a) hire new employees that the employer would not otherwise have hired; b) discharge an employee, transfer another employee with more seniority, or promote another employee who is not qualified to perform the new job; (c) create a new position, including a light duty position for the employee, unless a

light duty position would be provided for another equivalent employee; or (d) compensate an employee for more frequent or longer break periods, unless the employee uses a break period which would otherwise be compensated. § 1-13-30(T)(2)(b).

## Unlawful Employment Practices Related to Pregnant Employees

To further protect pregnant workers, the Act expands the existing description of “unlawful employment practice,” stating that it is an unlawful employment practice for a covered employer to:

- Fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or an employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;
- Deny employment opportunities to a job applicant or employee, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or an employee;
- Require an applicant for employment or an employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;
- Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions; or
- Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions.

## Notice Requirements

The Act places new notice requirements on covered employers who are to provide written notice to employees of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions pursuant to the Pregnancy Accommodations Act. The notice must be a) given to all new employees at the commencement of employment, b) given to existing employees within one hundred twenty days (120) days after the effective date of the Act (i.e., no later than September 14, 2018), and c) conspicuously posted at an employer's place of business in an area accessible to employees. Section 1-13-80(A)(i)-(ii).

## Next Steps for Employers

South Carolina employers were to begin complying with the Act as of its effective date, May 17, 2018. In addition to reviewing existing policies to determine any changes that need to be made based upon the language of the Act, employers should immediately begin providing the written notice required by the Act to new employees and to all

existing employees, and conspicuously post it in an area accessible to all employees, such as a breakroom or other conspicuous area, preferably where other required postings are located. Employers also need to train managers and human resource personnel on the Act's provisions, including identifying and addressing reasonable accommodations for pregnant workers.

The South Carolina Human Affairs Commission has not yet issued a guidance or promulgated any regulations related to the Act. We anticipate that these, as well as a poster, will be forthcoming. In the meantime, employers need to make sure they are in compliance with the Act and keep in mind that the Act does not limit or affect the requirements of federal discrimination laws applicable to pregnant workers.

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