

## WORKPLACE JUSTICE

# Pregnancy Accommodations in the States

Thirty states and the District of Columbia have adopted legislation or executive orders to explicitly grant pregnant employees the right to accommodations at work. Twenty-three of the bills have been passed since 2013, all with bipartisan support, and in nearly a majority of cases with unanimous or near-unanimous support. Although the details of the laws vary from state to state, they share a core principle: a pregnant worker with a medical need for accommodation should not be pushed out of work when she can be reasonably accommodated without imposing an undue hardship on the employer. These laws affirm that no one should be forced to choose between the health of her pregnancy and her paycheck.

## Alaska

- Applies to state employers with at least 21 employees.
- Requires transfer of a pregnant public employee to a less strenuous or hazardous available position for which she is qualified in the same division, when recommended by a licensed health care provider.<sup>1</sup>

## California

- Applies to all public employers and to all private employers with at least 5 employees.
- Requires the provision of reasonable accommodations for conditions related to pregnancy, childbirth, or related

medical conditions when an employee requests an accommodation based on the advice of a health care provider.

- Prohibits employers who have a policy, practice, or a collective bargaining agreement requiring or authorizing transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability from refusing to transfer a pregnant employee who so requests.<sup>2</sup>

## Colorado (passed with bipartisan support in 2016)

- Applies to all employers.
- Requires employers to provide an applicant or employee with health conditions related to pregnancy or childbirth with reasonable accommodations to perform the essential functions of the job, if the applicant or employee requests the reasonable accommodations, unless the accommodation would impose an undue hardship on the employer's business. An employer may require an applicant or employee to provide a note from a licensed health care provider before providing a reasonable accommodation.<sup>3</sup>

## Connecticut (passed with bipartisan support in 2017)

- Applies to all employers with at least 3 employees.
- Requires the provision of reasonable accommodations

to employees and persons seeking employment for pregnancy, childbirth, or a related conditions including lactation, unless it would impose an undue hardship on the employer.<sup>4</sup>

### **Delaware** (passed unanimously in 2014)

- Applies to all employers with at least 4 employees.
- Requires the provision of reasonable accommodations to employees with known limitations related to pregnancy, childbirth, or related conditions, including the need to express breast milk, unless it would impose an undue hardship on the employer.<sup>5</sup>

### **District of Columbia** (passed unanimously in 2014)

- Applies to all employers.
- Requires the provision of reasonable accommodations to employees with known limitations related to pregnancy, childbirth, related medical conditions, or breast feeding, unless providing such accommodation would impose an undue hardship on the employer. An employer may require an employee to provide a certificate from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities.<sup>6</sup>

### **Hawaii**

- Applies to all employers.
- Requires the provision of reasonable accommodations to employees affected by disability due to pregnancy, childbirth, or related medical conditions.<sup>7</sup>

### **Illinois** (passed unanimously in 2014)

- Applies to all employers.
- Requires the provision of reasonable accommodations to employees for medical or common conditions related to pregnancy or childbirth if an employee requests this, unless the accommodation would impose an undue hardship on the employer. An employer may request documentation from the employee's health care provider concerning the need for the requested reasonable accommodation to the same extent documentation is requested for conditions related to disability, if the employer's request for documentation is job-related and consistent with business necessity.<sup>8</sup>

### **Kentucky** (passed with bipartisan support in 2019)

- Applies to all employers with at least 15 employees.
- Requires the provision of reasonable accommodations to employees with limitations related to pregnancy, childbirth, or related medical conditions, including but not limited to the need to express breast milk, who request an accommodation, unless the accommodation would impose an undue hardship on the employer's program, enterprise, or business.<sup>9</sup>

### **Louisiana**

- Applies to employers with at least 25 employees.
- Prohibits employers who have a policy, practice, or a collective bargaining agreement requiring or authorizing transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability from refusing to transfer a pregnant employee who so requests.
- Requires transfer of a pregnant employee to a less strenuous or hazardous position for which she is qualified if she requests this based on advice of her physician and if the transfer can be reasonably accommodated by the employer.<sup>10</sup>

### **Maine** (passed with bipartisan support in 2019)

- Applies to all employers.
- Requires the provision of reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, including lactation, unless the accommodation would impose an undue hardship on the operation of the employer's business.<sup>11</sup>

### **Maryland**

- Applies to all employers with at least 15 employees.
- Requires the employer to explore all possible means of providing a reasonable accommodation that does not impose an undue hardship on the employer for an employee who requests it for a disability caused or contributed to by pregnancy. An employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities.
- Requires transfer of a pregnant employee to a less strenuous or hazardous available position in some circumstances if she requests such a transfer.<sup>12</sup>

## Massachusetts (passed unanimously in 2017)

- Applies to all employer with six or more employees.
- Requires the provision of reasonable accommodations for an employee's pregnancy or any condition related to pregnancy, including lactation or the need to express breast milk for a nursing child, if the employee so requests, unless it would impose an undue hardship on the employer's program, enterprise, or business. Employers may require employees to submit documentation about the need for an accommodation from an appropriate health care or rehabilitation professional, but may not require documentation if the employee is requesting more frequent restroom, food, or water breaks; seating; limits on lifting over 20 pounds; or private non-bathroom space for expressing breast milk.<sup>13</sup>

## Minnesota

- Applies to all employers with at least 21 employees at any one site.
- Requires the provision of reasonable accommodations for health conditions related to pregnancy or childbirth if the employee so requests, with the advice of her licensed health care provider or certified doula, unless the accommodation would impose an undue hardship on business operations. A pregnant employee is not required to obtain the advice of her licensed health care provider or certified doula, nor can an employer claim undue hardship, for more frequent restroom, food, and water breaks; seating; and limits on lifting over 20 pounds.<sup>14</sup>

## Nebraska (passed with no dissenting votes in 2015)

- Applies to all employers with at least 15 employees.
- Requires employer to accommodate the known physical limitations of employees who are pregnant, have given birth, or have a related medical condition, unless doing so would impose an undue hardship on the operations of the business.<sup>15</sup>

## Nevada (passed with bipartisan support in 2017)

- Applies to all employers with 15 or more employees.
- Requires the provision of reasonable accommodations to a female employee or applicant for employment, upon request, for a physical or mental condition relating to pregnancy, childbirth or a related medical condition, including lactation or the need to express breast milk, unless it would impose an undue hardship on the employer. The law includes some limited exceptions

for certain construction contractors. An employer may require an employee to provide an explanatory statement from the employee's physician concerning the specific accommodation recommended by the physician.<sup>16</sup>

## New Jersey (passed with one dissenting votes in 2014)

- Applies to all employers.
- Requires the provision of reasonable accommodations to an employee who is a woman affected by pregnancy, childbirth, or related medical conditions, including recovery from childbirth, when the employee, based on the advice of her physician, requests the accommodation, unless doing so would impose undue hardship on business operations.<sup>17</sup>

## New Mexico (passed with bipartisan support in 2020)

- Applies to employers with 4 or more employees.
- Requires the provision of reasonable accommodations for employees and applicants with a need arising from pregnancy, childbirth, or a related condition, unless it would pose an undue hardship on the employer.<sup>18</sup>

## New York (passed with no dissenting votes in 2015)

- Applies to all employers with at least 4 employees.
- Requires the provision of reasonable accommodations for employees who have known temporary medical conditions related to pregnancy or childbirth that inhibit the exercise of normal bodily function, or are otherwise medically demonstrable, absent undue hardship to the employer. An employer can request medical or other information necessary to verify the existence of the pregnancy-related condition or necessary for consideration of the accommodation.<sup>19</sup>

## North Carolina (Executive Order issued in 2018)

- Applies to state agencies for which the Governor has oversight responsibility.
- Absent an undue hardship, requires the provision of workplace adjustments to employees due to pregnancy, childbirth, or a related medical condition upon request. A state agency may require documentation from the employee's health care provider certifying the necessity of workplace adjustments.<sup>20</sup>

## North Dakota (passed with one dissenting vote in 2015)

- Applies to all employers.

- Requires the provision of reasonable accommodations for pregnant employees, unless the accommodation disrupts or interferes with the employer's normal business operations, threatens anyone's health or safety, contradicts a business necessity of the employer, or imposes an undue hardship on the employer.<sup>21</sup>

### **Oregon** (passed with bipartisan support in 2019)

- Applies to employers with 6 or more employees.
- Requires the provision of reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, including lactation, unless the accommodation would impose an undue hardship on the operation of the employer's business.<sup>22</sup>

### **Rhode Island** (passed with no dissenting votes in 2015)

- Applies to all employers with at least 4 employees.
- Requires the provision of reasonable accommodations to employees, upon request, who have limitations in their ability to work stemming from pregnancy, childbirth, or a related medical condition, explicitly including the need to express breast milk, absent undue hardship to the employer.<sup>23</sup>

### **South Carolina** (passed with bipartisan support in 2018)

- Applies to all employers with at least 15 employees.
- Requires the provision of reasonable accommodations to employees for medical needs that arise from pregnancy, childbirth, or related medical conditions, including lactation, unless the accommodation would impose an undue hardship on the operation of the employer's business.<sup>24</sup>

### **Tennessee** (passed with unanimous support in 2020)

- Applies to all employers with at least 15 employees.
- Requires the provision of reasonable accommodations to employees with medical needs arising from pregnancy, childbirth, or related medical conditions, who request an accommodation, unless the accommodation would impose an undue hardship on the operation of the business of the employer. An employer may, if required of other employees with medical conditions, request that an employee with a medical need relating to pregnancy, childbirth, or related medical conditions provide medical certification from a healthcare professional if the

employee is requesting a reasonable accommodation related to temporary transfer to a vacant position, job restructuring, or light duty, or an accommodation that requires time away from work.<sup>25</sup>

### **Texas**

- Applies to all municipal and county employers.
- Requires the employer to make a reasonable effort to accommodate an employee who is determined by a physician to be partially physically restricted by a pregnancy. In addition, if any employee's physician certifies that the employee cannot perform her duties as a result of her pregnancy, the employee can receive an alternative temporary work assignment if such an assignment is available in the same office.<sup>26</sup>

### **Utah** (passed with bipartisan support in 2016)

- Applies to all public employers and to all private employers with at least 15 employees.
- Requires the provision of reasonable accommodations related to pregnancy, childbirth, breastfeeding, or related conditions upon the employee's request, unless the accommodation would impose an undue hardship on the employee. An employer may require certification from a health care provider concerning the medical advisability of a reasonable accommodation, unless the accommodation sought is more frequent restroom, food, or water breaks, in which case no certification may be required.<sup>27</sup>

### **Vermont** (passed with bipartisan support in 2017)

- Applies to all employers.
- Requires the provision of reasonable accommodations for employees who have limitations in their ability to work caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, unless it would impose an undue hardship on the employer.<sup>28</sup>

### **Virginia** (passed with bipartisan support in 2020)

- Applies to employers with 5 or more employees.
- Requires the provision of reasonable accommodations to the known limitations of a person related to pregnancy, childbirth, or related medical conditions, including lactation, unless it would impose an undue hardship on the employer.<sup>29</sup>

## Washington (passed unanimously in 2017)

- Applies to employers with 15 or more employees.
- Requires the provision of reasonable accommodations to employees for pregnancy and pregnancy-related health conditions, unless it would impose an undue hardship on the employer's program, enterprise, or business.<sup>30</sup>

## West Virginia (passed unanimously in 2014)

- Applies to all employers with at least 12 employees.
- Requires reasonable accommodations for employees who have limitations in their ability to work documented by a

health care provider that stem from pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer.<sup>31</sup>

Several municipalities have also adopted pregnant workers accommodations laws, all since 2013: New York City, NY (unanimously);<sup>32</sup> Philadelphia (no dissenting votes)<sup>33</sup> and Pittsburgh (unanimously),<sup>34</sup> PA; and Providence (unanimously)<sup>35</sup> and Central Falls,<sup>36</sup> RI.

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- 1 ALASKA STAT. § 39.20.520 (1992).
  - 2 CAL GOV'T CODE § 12945(A)(3)-(4) (1999).
  - 3 COLO. REV. STAT. § 24-34-401, 402.3 (2016).
  - 4 CONN. GEN. STAT. §§ 46A-60(A)(1)-(3), 46A-60(b)(7) (2017).
  - 5 DEL. CODE ANN. TIT. 19, § 711(A)(3) (2015).
  - 6 D.C.CODE § 32-1231.01 – 1231.15 (2014).
  - 7 HAW. CODE R. § 12-46-107 (1990).
  - 8 775 ILL. COMP. STAT. 5/2-102(J) (2015).
  - 9 S.B. 18, 2019 GEN. ASSEMB., REG. SESS. (KY. 2019).
  - 10 LA. REV. STAT. ANN. § 23:342 (1997).
  - 11 L.D. 666, 129TH LEG., REG. SESS. (ME. 2019).
  - 12 MD. CODE ANN., STATE GOV'T § 20-609 (2013).
  - 13 H. 3680, 109TH LEG. SESS. (MASS. 2017) (to be codified at M.G.L.A. CH. 151B sec. 4).
  - 14 MINN. STAT. § 181.9414 (2014).
  - 15 NEB. REV. STAT. § 48-1107.02(2) (2015).
  - 16 NEV. REV. STAT. §§ 613.4353-4383 (2017).
  - 17 N.J. REV. STAT. § 10:5-12(s) (2014).
  - 18 H.B. 25, 54th LEG., SECOND SESS. (N.M. 2020).
  - 19 N.Y. EXEC. LAW §§ 292, 296 (2016).
  - 20 N.C. EXEC. ORDER No. 82 (2018).
  - 21 N.D. CENT. CODE § 14-02.4-03 (2015).
  - 22 H.B. 2341, 80TH LEGIS. ASSEMB., REG. SESS. (OR. 2019).
  - 23 R.I. GEN. LAWS ANN. § 28-5-7.4 (2015).
  - 24 S.C. CODE ANN. §§ 1-13-30(L), (t), 1-13-80 (2018).
  - 25 TENN. CODE ANN. § 50-10-101 (2020).
  - 26 TEX. LOC. GOV'T. CODE § 180.004 (2001).
  - 27 UTAH CODE §§ 34A-5-102, 106, 34-49-202 (2016).
  - 28 21 V.S.A § 495k (2017).
  - 29 H.B. 827, 2020 GEN. ASSEM., REG. SESS. (VA. 2020).
  - 30 WASH. REV. CODE ANN. § 43.10.005 (2017).
  - 31 W. VA. CODE § 5-11B-2 (2014).
  - 32 N.Y. ADMIN. CODE 8-107(22) (2013).
  - 33 PHILA. CODE § 9-1128 (2014).
  - 34 PITTSBURGH ADMIN. CODE art. VII, § 161.44 (2014).
  - 35 PROVIDENCE ORDINANCE No. 2014-10 (2014) (to be codified at Providence Code of Ordinances §§ 16-57).
  - 36 CENTRAL FALLS CODE OF ORDINANCES, art. I, § 12-5 (2014).