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## **Pittsburgh Expands Employment Protections for Pregnant Workers and Their Partners**

A new Pittsburgh ordinance makes pregnancy a protected class under the city's antidiscrimination laws and extends protections to both pregnant workers and to their partners against employment discrimination based on pregnancy, childbirth, or related medical conditions and events. Employers should review their employment practices and update their policies as needed to ensure compliance.

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### **Background**

For some time, the City of Pittsburgh has prohibited discrimination in employment based on race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, age, nonjob-related handicap, and disability. Historically, the Pittsburgh City Code (Code) treated pregnancy discrimination as a form of sex discrimination and prohibited unlawful employment practices based on an employee's or job applicant's pregnancy, childbirth, or related medical conditions.

Employment protections under the Code extend to employment contracted for, performed, or to be performed within the city limits. Private employers that employ five or more employees, the city (including its departments, boards, commissions and authorities), and any other governmental agency within its jurisdiction are subject to the Code's antidiscrimination provisions. Religious, fraternal, charitable, or sectarian organizations are exempt unless they are wholly or partly supported by governmental appropriations.

### **Expanded pregnancy protections**

On March 15, Pittsburgh Mayor Bill Peduto signed into law an ordinance that expands pregnancy protections under the city's antidiscrimination laws. The new law elevates existing protections against employment discrimination based on pregnancy, childbirth, or related medical conditions and events by making pregnancy a protected class, and extends protections to both pregnant workers and their partners.

The new law defines “pregnancy” as “the state of being pregnant, including the partner of a pregnant person, seeking to become pregnant, and related symptoms of pregnancy.” It broadly defines the term “related medical condition or event” as any medical condition or event related to or caused by pregnancy or childbirth occurring before, during or after the gestation period or childbirth, including being the partner of a person affected by such a condition or event. For these purposes, a “partner” is a person of any gender with whom a pregnant person or a person with a related medical condition has a relationship of mutual emotional and/or physical support. The term does not require a marital or domestic relationship.

**Buck comment.** Pittsburgh is one of the first jurisdictions in the nation to provide employment protections for the partners of employees who are pregnant or seeking to become pregnant and to extend such protections to related events such as medical appointments and procedures that occur before, during and after gestation.

## Guidance from Pittsburgh Commission on Human Relations

The Pittsburgh Commission on Human Relations (PghCHR), which is tasked with investigating complaints of employment discrimination, has provided guidance on discrimination on the basis of pregnancy under the Code. In particular, the guidance provides clarifying information on employer obligations to reasonably accommodate employees and their partners regarding pregnancy, childbirth, or a related medical condition or event.

### Accommodation obligation

According to the PghCHR, the new law requires covered employers to accommodate employees who are having work-related issues relating to their own or a partner’s pregnancy, childbirth, or related medical condition — regardless of whether the condition would qualify as a disability under federal, state, or local law. The accommodation obligation would cover conditions such as such as infertility, gestational diabetes, hypertension, anemia, sciatica, preeclampsia, post-partum depression, miscarriage, lactation, recovery from childbirth, and termination of pregnancy, and would extend to events such as medical appointments, testing, and procedures.

### Interactive process

Regardless of whether an employee has requested an accommodation, the PghCHR would require the employer to promptly initiate a dialogue with that individual (the “interactive process”) and to participate in the process in good faith when it:

- Learns — directly or indirectly — that the employee is pregnant, has recently experienced childbirth, has a pregnancy-related medical condition, or is the partner of such an employee
- Has knowledge that the employee is having an issue with work performance or conduct, and
- Has reason to believe that the issue is related to the employee’s or their partner’s pregnancy, childbirth, or a related medical condition.

The interactive process is intended to give the employer an understanding of the employee's needs and an opportunity for both parties to explore ways to meet them. This dialogue may occur in person, by phone, or electronically. While the employer need not agree to a specific accommodation requested by an employee, it must explore possible accommodations and consider reasonable alternatives.

The employer's obligation to engage in this process continues until a reasonable accommodation that will enable the employee to perform the essential job duties is agreed on, or the employer reasonably concludes that no accommodation is available without causing undue hardship. Because employees must be permitted to make new requests for accommodation as their condition changes, the employer must re-start the interactive process with each such request.

### **Reasonable accommodations**

The guidance provides examples of several types of reasonable accommodations and alternatives that may be available to employers to meet pregnant employees' or their partners' needs, including:

- Schedule modifications and leave requests (including time off for medical appointments and procedures)
- Modified duties and job requirements
- Modified work stations

### **Medical documentation**

The PghCHR reminds employers that they may not require medical documentation or confirmation of the employee's or their partner's pregnancy, childbirth, or related medical condition. However, they may request medical documentation in certain limited circumstances — generally requests for time off (including for medical appointments) or to work from home on an intermittent or longer-term basis, provided the employer normally requires documentation from employees who make such requests for other reasons. If the documentation provided is insufficient, the employer must give the employee an opportunity to supplement it before denying the request.

### **Retaliation prohibited**

Like other antidiscrimination measures, the new law prohibits employers from retaliating against an individual because he or she has requested a reasonable accommodation, opposed a discriminatory act, complained about discrimination, or testified, assisted, or participated in an investigation by the PghCHR or a proceeding before it. Examples of unlawful retaliation may include taking such adverse employment actions as discipline, demotion, reassignment to less desirable duties, or termination.

## **In closing**

Employers should update their employment practices and policies as needed to reflect Pittsburgh's expanded antidiscrimination law and ensure compliance.

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