ILLINOIS GREATLY EXPANDS PREGNANCY PROTECTIONS

By: Kimberly A. Ross

On August 26, 2014, Illinois Governor Pat Quinn signed into law new amendments to the Illinois Human Rights Act, referred to as the Pregnancy Fairness Law, which goes into effect on January 1, 2015. "Pregnancy" is now included as its own class protected from unlawful discrimination, and is defined as "pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth."

The new law provides that women are entitled to reasonable accommodations for any medical or common condition related to pregnancy or childbirth, and that employers must engage in a timely, good faith, and meaningful exchange with a woman covered by the new law to determine effective reasonable accommodations. The new law will require pregnant employees to first request an accommodation, and then will require employers to engage in an interactive process much the same as for someone with a disability under the Americans with Disabilities Act. Also similar to the ADA, if the employer can show "undue hardship" in accommodating the employee (based on the detailed factors set forth in the new law), the employer may be exempted from having to provide the accommodation. Employers may require women seeking accommodations to provide a note from a medical provider that justifies the request with a description of the accommodation that is medically advisable and the probable duration.

Where the new language of the IHRA differs from accommodating disabilities under the ADA, or even accommodating medical issues under the PDA, is how far it goes in providing examples of what may constitute a "reasonable accommodation." The IHRA includes a specific (though non-inclusive) list of examples of what may constitute reasonable accommodations, starting from the more obvious frequent or longer bathroom and rest breaks and assistance with manual labor, to acquisition or modification of equipment, temporary transfer to a less strenuous or hazardous position, job restructuring, a part-time or modified work schedule, and reassignment to a vacant position, to name some.

Importantly, the new law also requires employers to allow time off to recover from conditions related to pregnancy and childbirth. Many companies already have policies allowing varying numbers of weeks of leave, and companies with 50 or more employees must also follow the Family and Medical Leave Act, which requires unpaid leaves of up to 12 weeks. Unfortunately, the new law fails to define how long a period of leave is expected or reasonable such that it may require leave even longer than 12 weeks. And, because the IHRA applies to employers with 15 or more employees, this provision will now require Illinois employers with between 15 and 49 employees to provide leave to pregnant women (during pregnancy and after childbirth).

Similar to FMLA, the IHRA will require employers to return the employees to their original (or equivalent) positions with equivalent pay and benefits. Employers will neither be required to create entirely new positions as an accommodation, nor will they

be required to terminate another employee. It is unclear whether an employer is required to transfer another employee with less seniority than the pregnant employee to another position so that the pregnant employee can take the less senior employee's job.

Further, as with other employment laws, employers must post a notice with the details of the new law. Employers must also provide the details of employees' rights under the law in their employee handbooks.

Although the Act does not go into effect until January 1, 2015, Illinois employers should not wait to begin implementing changes to their policies and application process. Employers will now need to post the new law, amend employee handbooks, and train human resources and management employees in detail regarding accommodation of pregnancy and childbirth-related conditions.