

# MD Toughens Rules Against Pregnancy Discrimination

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On May 16, 2013, a Maryland law was approved which substantially modifies existing protections against pregnancy-related discrimination and appears to create something resembling “most favored nation” status for pregnant workers. All Maryland employers with more than 15 employees need to pay close attention to the new law because it changes human resource management protocol for dealing with pregnant employees, requires more posters be displayed in the workplace and mandates modifications to employee handbooks. The law is scheduled to take effect October 1, 2013.

Although both Maryland and federal law already protect pregnant woman from discrimination, the new law, which expands the existing State disability discrimination code, appears to now effectively require an employer to provide a reasonable accommodation for a disability caused or contributed to by pregnancy, upon request of an employee. An employer may require an employee making the request to provide a certification from the employee’s health care provider that sets forth the date when the reasonable accommodation became medically advisable, the probable duration of the reasonable accommodations, and an explanatory statement as to the medical advisability of the reasonable accommodation.

The new law also requires that employers post in a conspicuous location at the workplace, and in any employee handbook, information concerning an employee’s rights to reasonable accommodations and leave for a disability caused or contributed to by pregnancy. What precisely an employer must post, however, is not spelled out. The Maryland Commission on Civil Rights has jurisdiction to enforce the new law, but the Commission is not required to issue regulations or to provide sample language or posting information. As such, employers should confer with legal counsel and discuss how to comply with the posting requirements and how to address new claims for reasonable accommodations for pregnancy-related disabilities.

The amendments to Maryland’s discrimination law represent a swift response to a case decided by the United States Court of Appeals for the Fourth Circuit just months earlier on January 9, 2013. In *Young v. United Parcel Service (UPS)*, the court held that a pregnant UPS driver whose doctor ordered a 20-pound lifting restriction was not disabled and thus not covered by the Americans with Disabilities Act (ADA). She was also not entitled to light duty work under UPS’s policy which provided light duty work in three limited instances: (1) after on-the-job injuries, (2) for impairments cognizable under the ADA, and (3) for drivers who lost their DOT certification.

The court found UPS’s policy to be non-discriminatory. Since the pregnant driver did not qualify for light duty and yet could not perform an essential function of the job, the court upheld UPS’s decision not to continue to employ her. Essentially, the court found that pregnant employees are not entitled to favorable treatment. Under the new law, however, Maryland employers will need to engage in a reasonable accommodation dialogue with any pregnant employee who requests an accommodation.