



New Jersey Expands New Jersey Law Against Discrimination to Include Breastfeeding

Publication:

Riker Danzig Labor & Employment Client Alert January 17, 2018

Brief Summary: Governor Chris Christie signed into law New Jersey Senate Bill S2709, expanding the New Jersey Law Against Discrimination (NJLAD) to prohibit discrimination against women who breastfeed or express milk at work. The law took effect immediately on January 8, 2018.

Amendment Prohibits Discrimination Against Women Who Breastfeed or Pump Milk at Work

S2709 states it is an unlawful employment practice to discriminate against women for breastfeeding in the workplace. The law requires an employer to provide an employee breastfeeding her infant child reasonable unpaid break time each day. (NJLAD prohibits discrimination on the basis of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to genetic test or make available the results of a genetic test to an employer.)

Specifically, the expanded law requires that the employer provide a “suitable room or other location with privacy” other than a toilet stall for breastfeeding. The room must be in “close proximity to the work area for the employee to express breast milk for the child,” unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer. Under NJLAD, whether an accommodation constitutes an undue hardship on an employer’s business is based upon an analysis of the following factors: “the overall size of the employer’s business with respect to the number of employees, number and type of facilities, and size of budget, the type of the employer’s operations, including the composition and structure of the

employer's workforce; the nature and cost of the accommodation needed, taking into consideration the availability of tax credits, tax deductions, and outside funding, and the extent to which the accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessary requirement.”

Prior to this amendment, New Jersey did not have an express law related to breastfeeding in the workplace. However, the Fair Labor Standards Act (FLSA) already provided this protection to non-exempt (from overtime under the FLSA) employees who are breastfeeding. Notably, the NJLAD amendment applies to both non-exempt and exempt employees. The federal requirements do not preempt state laws that offer employees greater protections.

Conclusion: While NJLAD already prohibits discrimination on the basis of pregnancy, sex, gender identity or expression, the amended law expands certain civil rights protections under the law to include breastfeeding and expressing milk (or related medical conditions). Employers with business operations in New Jersey should continue to review and update their policies to ensure compliance with the amended law.

If you have any questions about how this decision could affect your organization, please contact [Scott Ohnegian](#), [Natalya Johnson](#), or any member of Riker Danzig's [Labor & Employment Group](#).

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