

LB 627 PROVIDES PROTECTIONS TO PREGNANT AND NURSING MOTHERS

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On April 7, 2015, the Nebraska Unicameral passed LB 627 by a vote of 45-0-4. Governor Ricketts signed the law on April 13, 2015. LB 627 amends the Nebraska Fair Employment Practice Act, NEB. REV. STAT. 48-1101, *et seq.* ("FEPA"), and was intended to "clarify and solidify workplace protections for pregnant workers," "define reasonable accommodations for pregnant workers," and "to provide discrimination protections for pregnant workers similar to those already provided to workers with disabilities."

Generally, most employers with 15 or more employees, state and local governments, and labor organizations must comply with FEPA. Under FEPA, Nebraska employers are prohibited from discriminating on the basis of race, color, national origin, religion, sex (including pregnancy), disability, and marital status. LB 627 expands this list by providing that it is an unlawful employment practice to:

Discriminate against an individual who is pregnant, who has given birth, or who has a related medical condition in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

LB 627 further provides that discrimination includes not making "reasonable accommodations" for and "taking adverse actions against" an employee for using a reasonable accommodation. Significantly, "reasonable accommodation" includes: (1) the acquisition of equipment for sitting, (2) more frequent or longer breaks, (3) periodic rest, (4) assistance with manual labor, (5) job restructuring, (6) light-duty assignments, (7) modified work schedules, (8) temporary transfers to less strenuous or hazardous work, (9) time off to recover from childbirth, or (10) break time and appropriate facilities for breast-feeding or expressing breast milk." An employer is required to provide these accommodations unless it can demonstrate that the accommodation would impose an "undue hardship on the operation of the business of the covered entity."

By defining reasonable accommodation to include both break time and facilities for expressing breast milk, LB 627 provides employees with more protection than the Fair Labor Standards Act (FLSA) and the Pregnancy Discrimination Act (PDA). A plain reading of the law suggests both exempt (salaried) and non-exempt (hourly) workers are entitled to break time and space. Further, breastfeeding moms are now a protected class similar to race and disability.

LB 627 includes additional protections and provisions covering individuals who are pregnant, who have given birth, or who have a related medical condition. You should consult with your employment law attorney to explore how this law affects you.

Editor's Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances. The authors of this article, Adam J. Prochaska and Jack Shultz, can be contacted at [\(402\) 434-3000](tel:4024343000) or at O'Neill, Heinrich, Damkroger, Bergmeyer, & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, or at aprochaska@ohdbslaw.com and jshultz@ohdbslaw.com.