

Virginia General Assembly Enacts Two Statutes Mandating Accommodations

WRITTEN BY

David E. Constine III | Andrew Henson | Shirley Akrasah

As employers may already be aware, the General Assembly of Virginia enacted two statutes mandating accommodations that became effective July 1. One statute, Virginia Code Section 2.2-3909, requires employers to offer reasonable accommodations for pregnancy, and the other statute, Virginia Code Section 2.2-3905.1, imposes mandates concerning reasonable accommodations for disability.

From a substantive standpoint, most employers are already complying with these obligations as required by the Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act (PDA), which is part of Title VII of the Civil Rights Act of 1964. The new statutes, however, have certain posting notice requirements, including placing accommodations policies in the employee handbook. Additionally, both statutes prohibit unpaid leave as an accommodation if there is another reasonable accommodation available, which is not consistent with federal law.

The following highlights the main features and affirmative requirements of both statutes:

Statute Requiring Reasonable Accommodations for Pregnancy (Va. Code § 2.2-3909)

Main Features

- The statute requires employers with five (5) or more employees to provide reasonable accommodations for pregnancy, childbirth, or related medical conditions (including lactation).
- Examples of reasonable accommodations include:
 - More frequent or longer bathroom breaks;
 - Breaks to express breast milk;
 - Access to a private location/room to express breast milk (a bathroom does not satisfy this requirement);
 - Acquisition or modification of equipment;
 - Modification of employee seating;
 - Temporary transfer to a less strenuous or hazardous position;
 - Assistance with manual labor;
 - Job restructuring;
 - Modified work schedule;
 - Light duty assignments; and
 - Leave to recover from childbirth.

- The statute expressly precludes employers from offering leave as an accommodation if another reasonable accommodation can be provided.
- Like the ADA, the statute does not require employers to provide accommodations if it would impose an undue hardship. However, an employer must engage in a “timely, good faith” interactive process with an employee requesting an accommodation to determine the reasonableness of the employee’s request or to discuss alternative reasonable accommodation options.

Notice and Handbook Requirements

- Employers must post a conspicuous notice to employees that features the nondiscrimination and reasonable accommodation provisions of the statute.
- Employers must include the accommodation obligations in all employee handbooks.
- Additionally, employers must provide all new employees with this information when they begin their employment, and to any employee within 10 days of the employee providing notice to the employer of the pregnancy.

Statute Requiring Reasonable Accommodations for Disability (Va. Code § 2.2-3905.1)

Main Features

- The statute concerning reasonable accommodations for disability mirrors many of the provisions in the pregnancy accommodations statute:
 - The statute covers employers with more than five (5) employees;
 - Employers need not provide an accommodation that would impose an undue hardship; and
 - Employers must engage in a “timely, good faith” interactive process.
- Examples of reasonable accommodations for qualified individuals with disabilities include:
 - Modifying work policies;
 - Reassignment to a vacant position;
 - Acquisition or modification of equipment;
 - Assistance with manual labor;
 - Job restructuring;
 - Modified work schedule; and
 - Light duty assignments.

Notice and Handbook Requirements

- Employers must post a notice to employees in a conspicuous location about their rights.

- Employers must include key provisions of the statute in their employee handbooks and must provide notice to new employees about their rights.
- Additionally, employers must provide information about the statute to all employees who disclose they have a disability within 10 days of that disclosure.

Conclusion

We have received a number of requests from clients who need assistance with drafting the accommodation policies and notices required. Please consult with a [Troutman Pepper Employment Law attorney](#) for any issues related to the changing laws affecting your workplace.

RELATED INDUSTRIES + PRACTICES

- [Labor + Employment](#)