

Massachusetts Creates Yet Another Category of Employee Leave for 2018

11.14.17 | Advisory

David C. Henderson and Robin Morse

Massachusetts employers long have had reasonable accommodations obligations to disabled or handicapped employees. And most employers long have understood that a reasonable accommodation can be a leave of absence for the employee.

But now, by amending the state's Fair Employment Practices Act (M.G.L. c. 151B) with the Pregnant Workers Fairness Act,¹ Massachusetts is extending an analogous reasonable accommodation entitlement to employees who are not disabled or handicapped, but instead have normal, healthy pregnancies or conditions related to pregnancy. This new obligation to provide a reasonable accommodation becomes effective for all Massachusetts employers with six or more employees on April 1, 2018 (which, somewhat fittingly, happens to be *nine months* after the new law's enactment).

Pregnancy and related conditions thus become a protected category in their own right and will no longer depend on being part of a disability or handicap. And the new statutory provisions specifically say that reasonable accommodation for pregnancy or related conditions may include "more frequent or longer paid or unpaid breaks," "time off to recover from childbirth with or without pay," and "modified work schedules."

¹ The new legislation was enacted on July 27, 2017 and will be codified at M.G.L. c. 151B, § 4.

Employees' leave rights thus expand again, and employers' leave obligations again become a little more detailed, a little more complicated. Those keeping count will note that at least *five* sets of Massachusetts laws affecting employee leave (*i.e.*, those pertaining to parental leave, sick leave, domestic abuse leave, Veterans Day leave, and now pregnancy or pregnancy-related conditions leave) have been created or changed in roughly the last three years.

Employers therefore may find the following chart useful, because it depicts nineteen (19) sets of laws applicable in Massachusetts that can create a leave entitlement, and it provides at least a starting point for ensuring that employee leave practices are compliant.²

Source of leave entitlement	Number of employees triggering leave entitlement	Authorized reasons for leave	Other criteria to be met by employee to qualify for leave	Amount of leave authorized	Paid leave required?
FMLA (Family & Medical Leave Act, 29 U.S.C. § 2601 <i>et seq.</i> ; 29 C.F.R. Part 825).	50 within 75 miles of employee's worksite.	To allow for birth, placement of child for adoption or foster care, employee's or family member's serious health condition, military exigency for servicemember in family, or serious injury or illness of servicemember in family.	Have 12 months of employment and 1250 hours of service during the immediately preceding 12 month period.	Up to 12 workweeks normally, but up to 26 workweeks for care of family servicemember's injury or illness.	No.
ADA (Americans with Disabilities Act, 42 U.S.C. § 12111 <i>et seq.</i> , 29 C.F.R. Pt. 1630 App. § 1630.2(k)(3) & (o)).	15	To provide reasonable accommodation for a disability.	Have disability and be able to perform essential functions of position with or without reasonable accommodation.	Any reasonable amount not imposing undue hardship on the employer.	No.
USERRA (Uniformed Services Employment & Reemployment Rights Act, 38 U.S.C. § 4301 <i>et seq.</i> ; 29 C.F.R. Part 1002).	1	To allow for voluntary or involuntary duty in "the uniformed services" (<i>i.e.</i> , the Armed Forces, National Guard,	Have duty in "the uniformed services." (Also, must satisfy other additional criteria to have	Up to 5 years or more.	No.

² Each type of leave right originates in a statute. Some of the interpreting regulations are lengthy. Sanctions for noncompliance can be severe. The advice of experienced employment counsel can be critical.

		Air National Guard, commissioned corps of National Health Service, or any other category of persons designated in war or national emergency).	entitlement to reinstatement in civilian position.)		
Religious nondiscrimination provisions in Title VII (Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, <i>et seq.</i>)	15	To provide reasonable accommodation to religious beliefs and practices.	N/A.	Reasonable amount not imposing undue hardship on the employer.	No.
Religious nondiscrimination provisions in Massachusetts FEPA (M.G.L. c. 151B, § 4(1A)).	6	To preclude forcing an employee to violate or forego the practice of his creed or religion, "including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day."	Have "sincerely held religious beliefs, without regard to whether such beliefs are approved, espoused, prescribed or required by an established church or other religious institution or organization," and provide notice to the employer "not less than ten days in advance of each absence."	Reasonable amount not imposing undue hardship on the employer.	No.
Handicap nondiscrimination provisions in Massachusetts FEPA (M.G.L. c. 151B, §4(16)).	6	To provide reasonable accommodation for a handicap.	Have handicap and be capable of performing the essential functions position with or without reasonable accommodation.	Reasonable amount not imposing undue hardship on the employer.	No.
Pregnancy nondiscrimination provisions in Massachusetts FEPA (M.G.L. c. 151B, §4(E) added by the Pregnant Workers Fairness Act, effective April 1, 2018).	6	To provide reasonable accommodation for pregnancy and related conditions.	Have pregnancy or pregnancy-related condition.	Reasonable amount not imposing undue hardship on the employer.	No.

<p>Military obligation nondiscrimination provisions in Massachusetts FEPA (M.G.L. c. 151B, § 4(1D)).</p>	6	To allow performance of military service.	Have obligation to perform military service in a uniformed military service of the United States, including the National Guard.	Unspecified.	No.
<p>Massachusetts Military Service Law (M.G.L. c. 33, § 13.</p>	1	To allow voluntary or involuntary service in the “armed forces of the commonwealth, including the state defense force or similar organization composed as permitted by law, the state staff or the armed forces of another state or territory who are employed within the commonwealth and ordered to active duty under this chapter, the appropriate authority of another state or territory or Title 32 of the United States Code.”	Be member of “the armed forces of the commonwealth.”	Same as USERRA – see above (up to five years or more).	No.
<p>Massachusetts Earned Sick Time Law (M.G.L. c. 149, § 148C; 940 C.M.R. 33.00).</p>	1 for unpaid leave; 11 for paid leave.	To provide care for sickness or illness of employee or certain family members; attend routine medical appointments of employee or family member; or address effects of domestic violence on employee or employee’s child.	Have primary place of work in Massachusetts.	Up to 40 hours per year, accruing at a rate of 1 hour of leave for every 30 hours of work. (Leave begins to accrue when work begins and can be taken 90 days later. Time off may run concurrently with time off provided by FMLA, Parental Leave Act, Domestic Violence Leave Act, and other leave laws.)	Yes, if employer has 11 or more employees; otherwise, no.

Massachusetts Parental Leave Act (M.G.L. c. 149, § 105D).	6 in general, but only 1 if employee is domestic worker.	To allow for birth or adoption.	Have full-time employment for at least 3 months <i>or</i> have completed initial probationary period set by terms of employment, not to exceed 3 months.	8 weeks per child.	No.
Massachusetts Domestic Violence and Abusive Situation Leave Act (M.G.L. c. 149, § 52E).	50	To allow for medical attention, counseling, victim services, legal assistance, housing procurement, court or grand jury appearance, district attorney meeting, or other activity required as a result of domestic violence or abuse.	Be paid employee personally victimized by abusive behavior, or be paid employee with family member victimized by abusive behavior, but not be perpetrator of the abusive behavior.	Up to 15 days in any 12 month period. (Employee may be required to first exhaust all vacation, personal, and sick leave).	No.
Massachusetts Small Necessities Leave Act (M.G.L. c. 149, § 52D).	50 within 75 miles of employee's worksite.	To participate in child's school activities, accompany child to routine medical or dental appointments, or accompany elderly relatives to routine medical, dental, or other professional services appointments.	Have 12 months of employment and 1250 hours of service during immediately preceding 12 month period.	Up to 24 hours in any 12 month period (in addition to leave provided under the FMLA).	No.
Massachusetts Leave of Absence for Voting Statute (M.G.L. c. 149, § 178).	1	To vote in election.	Be entitled to vote. Ask for leave.	2 hours after opening of polls.	No.
Massachusetts Veterans or Memorial Day Leave Law (M.G.L. c. 149, § 52A½).	1	To participate in a Veterans Day or Memorial Day exercise, parade or service.	Be veteran or member of a department of war veterans desiring to participate in a Veterans Day or Memorial Day exercise, parade or service, but <i>not</i> be an employee whose services are essential to (a) public health or safety and (b) safety and security of the	"Sufficient time to participate" in Veterans or Memorial Day activities.	Yes, if (a) employer has 50 or more employees and (b) activities are for Veterans Day; otherwise, no.

			employer or the employer's property.		
Massachusetts Jury Service Law (M.G.L. c. 234A, §§ 48-49, 60-61; M.G.L. c. 268, §14A).	1	To serve as juror or grand juror.	Be notified of jury or grand jury duty.	Unlimited.	Yes, for first 3 days only (unless court excuses payment).
Massachusetts Witness in Criminal Actions Law (M.G.L. c. 268, § 14B); Massachusetts Rights Afforded Victims, Witnesses or Family Members Leave Law (M.G.L. c. 258B, § 3(l)).	1	To testify in criminal trial.	Be victim of crime or be subpoenaed to attend criminal action as witness.	Unlimited.	No.
Massachusetts Volunteer Firefighters and Emergency Medical Technicians Leave Law (M.G.L. c. 149, § 177B).	1	To respond to an emergency as a volunteer member of a fire department or ambulance department.	Be volunteer firefighter or emergency medical technician.	Unlimited.	No.
Massachusetts Domestic Workers Leave Law (M.G.L. c. 149, § 190-91).	1	To rest or take time for religious worship.	Be domestic worker working 40 or more hours per week.	At least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month	No.

This advisory was prepared by David C. Henderson, a member of Nutter's Litigation Department, and Robin Morse, a former associate at Nutter who now serves as Corporate Counsel, Labor & Employment, at MilliporeSigma. For more information, please contact David or your Nutter attorney at 617.439.2000.

This advisory is for information purposes only and should not be construed as legal advice on any specific facts or circumstances. Under the rules of the Supreme Judicial Court of Massachusetts, this material may be considered as advertising.