



THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW
Part II – Disabilities, Accommodations, and Leave Laws

July 25, 2019

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The courts and legislatures have been busy over the last two months. Thus, this installment of our 60-day newsletter is broken down by subject-matter. Part II deals with changes in disability, accommodation, and leave laws. Most notable are the decisions of the Washington Supreme Court and, less than one month later, of the United States Supreme Court regarding whether obesity is a disability. Under Washington state law, obesity is a disability, while under the Americans with Disabilities Act, it may not be.

Federal

On June 12, 2019, the Seventh Circuit Court of Appeals ruled that obesity is not a disability under the Americans with Disabilities Act unless it is caused by an underlying physiological disorder or condition. Richardson v. Chi. Transit Auth., 2019 U.S. App. LEXIS 17597 (7th Cir. June 12, 2019).

California

On June 27, 2019, California extended benefits under its Paid Family Leave program from six to eight weeks. The change is effective July 1, 2020. 2019 Cal. SB 83 §§ 39, 40.

Kentucky

Effective June 27, 2019, Kentucky amended its Civil Rights Act to require employers to provide reasonable accommodations for pregnancy, childbirth, and related conditions. See Ky. Rev. Stat. Ann. § 344.030(6)(b).

Maine

On July 19, 2019, Maine amended its Volunteer Emergency Responder Leave law. Effective September 17, 2019, employers may not discipline or discharge an employee because the employee is absent from work to respond to an emergency in the employee's capacity as a firefighter or emergency medical services volunteer. See Me. Rev. Stat. tit. 26, § 809.

In late June 2019, Maine amended its Human Rights Act to include gender identity as a protected class and to require reasonable accommodations for pregnancy-related conditions. Effective September 19, 2019, the revised anti-discrimination statute applies to all employers located in the state. See Me. Rev. Stat. tit. 5, § 4553 and § 4572-A.

On May 28, 2019, Maine enacted a law guaranteeing employees' entitlement to paid

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personal leave. The new law applies to employers in Maine that employ 10 or more employees for more than 120 days in a calendar year. Effective January 1, 2021, employers must allow employees to use accrued paid leave for any purpose, including non-medical personal reasons. See Me. Rev. Stat. tit. 26, § 637.

Maryland

On May 13, 2019, Maryland enacted a law, effective on October 1, 2019, requiring employers to provide up to 60 business days of unpaid leave for organ and bone marrow donation. See 2019 Md. HB 1284.

Massachusetts

Effective July 1, 2019, the Massachusetts Department of Family and Medical Leave issued final regulations for the administration and enforcement of the Paid Family and Medical Leave Act. Pursuant to the Act, beginning in 2021, most Massachusetts workers will be eligible for up to 12 weeks of paid family leave and up to 20 weeks of paid medical leave. Premiums paid by employers, employees, and the self-employed will fund the program. Massachusetts has delayed, until October 1, the start of employer and employee contributions to the paid family and medical leave program. You can download the final regulations at <https://www.mass.gov/regulations/458-CMR-200-department-of-family-and-medical-leave>.

Nevada

On June 12, 2019, Nevada enacted a law requiring private employers to provide employees with paid sick leave. Effective

January 1, 2020, the law applies to private employers in Nevada with 50 or more employees. Although employees must give notice of their desire to use leave as soon as practicable, employees do not need to provide a reason for its use. Employers cannot deny employees the right to use paid leave, require an employee to find a replacement worker while on paid leave, or retaliate against an employee for using accrued paid leave. See 2019 Nev. SB 312.

New Mexico

Effective June 14, 2019, New Mexico enacted the Caregiver Leave Act that requires employers that provide sick leave for its employees' own illnesses or injuries to allow employees to use that leave to care for a family member. See 2019 Bill Text NM S.B. 123.

Oregon

On July 12, 2019, Oregon enacted a paid family and medical leave law. The law establishes a state-managed insurance program that employers and employees will fund. The law applies to all employers with one or more employees working in Oregon. The law will be effective on September 29, 2019, contributions to the fund will begin in January 2022, and employees will be eligible for benefits beginning in January 2023. The program will provide all employees in Oregon who earn at least \$1,000 annually with up to 12 weeks of leave per benefit year for family, medical, and/or safe leave purposes. This leave can be combined with up to four weeks of leave currently provided under Oregon's unpaid family leave program. In addition, employees requiring leave for pregnancy, childbirth, and associated

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medical conditions (including lactation) may qualify for an additional two weeks of paid leave. See 2019 Bill Text OR H.B. 2005.

On May 14, 2019, Oregon amended its lactation accommodation law to apply to employers with 10 or more employees and to require employers to provide employees with a reasonable rest period each time the employee has a need to express milk. The amendment is effective September 29, 2019. See Or. Rev. Stat. § 653.077.

Pennsylvania

On July 17, 2019, the Pennsylvania Supreme Court revived Pittsburgh's Paid Sick Days Act when it ruled that it was not trumped by the business exclusion of Pennsylvania's Home Rule Charter and Optional Plans Law. The business exclusion forbids municipalities from placing duties on businesses unless expressly authorized by statute to do so. The divided Pennsylvania Supreme Court held that Pennsylvania's Disease Prevention and Control Law expressly allowed Pittsburgh to enact the paid sick law, which it found to be a health and safety ordinance that incidentally affects businesses, rather than a law meant to regulate businesses. See Pa. Rest. & Lodging Ass'n v. City of Pittsburgh, 2019 Pa. LEXIS 3848 (July 17, 2019).

Utah

Effective May 14, 2019, Utah enacted the Emergency Services Volunteer Employment Protection Act, which prohibits an employer from terminating employees who are absent or late to work because they were responding to an emergency as an emergency services volunteer. Employers,

however, may reduce employees' regular pay for the time they miss work responding to an emergency. See Utah Code Ann. § 34-54-101.

Washington

Effective July 28, 2019, Washington amended its pregnancy accommodation law to require covered employers (employers with eight or more employees) to provide employees with a private location, other than a bathroom, to express breast milk. See Rev. Code Wash. § (ARCW) 43.10.005.

On July 11, 2019, the Washington Supreme Court held that obesity is an impairment protected by the disability provisions of the state's Law Against Discrimination. Taylor v. Burlington N.R.R. Holdings, Inc., 2019 Wash. LEXIS 456 (July 11, 2019).

To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or ptsipras@rubinformunato.com.

Tricia thanks Jomana Abdallah, the Firm's Summer Associate, for her assistance with this newsletter.

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