PORTER FOSTER RORICK LLP
800 Two Union Square | 601 Union Street | Seattle, Washington 98101 | **Tel** (206) 622-0203 | **Fax** (206) 223-2003 | www.pfrwa.com

Overview of Washington's Pregnancy Accommodation Law
October 1, 2017

Legislation passed in 2017 and effective July 23 (now codified in RCW 43.10.005) requires Washington employers to provide certain reasonable accommodations for pregnant workers, imposing some duties that go beyond those previously required by federal and state laws related to pregnancy discrimination. Many Washington school districts are likely providing some of these accommodations already pursuant to existing provisions in the federal Pregnancy Discrimination Act and the Americans with Disabilities Act. But because the new law does impose some new legal duties, including some restrictions on when employers may request a doctor's note, it will be important to train first-line managers and building principals on these requirements to ensure districts are meeting their duties with regard to pregnant workers.

1. Mandatory accommodations

The following accommodations must be provided to every pregnant employee, and employers *may not require a doctor's note* for them. Employers may not deny these accommodations based on a claim of undue hardship:

- Providing frequent, longer, or flexible restroom breaks;
- Modifying a no food or drink policy;
- Providing seating or allowing the employee to sit more frequently; and
- Limiting lifting to 17 pounds or less.

2. Accommodations for which medical proof of need may be requested

Other listed accommodations must be provided on a case-by-case basis. For the following accommodations, the employer may "request that the employee provide written certification from her treating health care professional." These accommodations may also be denied if the employer can demonstrate undue hardship:

- Job restructuring, including modifying a work schedule, job reassignment, changing a work station, or providing equipment;
- Providing a temporary transfer to a less strenuous or hazardous position;
- Scheduling flexibility for prenatal visits;
- Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the attending health care provider of the employee.

Even if the employer can demonstrate that one of the specific accommodations above is an undue hardship, the employer must offer an alternative, reasonable accommodation to the employee.

3. Prohibited practices

An employer of a pregnant employee may not:

- Fail or refuse to make reasonable accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would impose an undue hardship;
- Take adverse action against an employee who requests, declines, or uses an accommodation;
- Deny employment opportunities to an otherwise qualified employee if such denial is based on the employer′s need to make reasonable accommodation; or
- Require an employee to take leave if another reasonable accommodation can be provided for the employee′s pregnancy.

4. Leave as a reasonable accommodation

In determining whether to offer leave as a reasonable accommodation, districts should be wary of the fourth bulleted point above, which makes it illegal to "*require* an employee to take leave if another reasonable accommodation can be provided for the employee′s pregnancy." Therefore, although employees may certainly be reminded of available sick leave and Family Medical Leave Act benefits, the employee has the right to choose to stay in the workplace late into pregnancy, as long as one or more of the above reasonable accommodations can be provided without undue hardship.

5. "Undue hardship" defined

"Undue hardship" is defined by the law as "an action requiring significant difficulty or expense." This is identical to the definition of "undue hardship" under the Americans with Disabilities Act, and therefore we can expect Washington courts to look to ADA cases and interpretations to help define this term.

Under the ADA, the determination of undue hardship is individualized and based on several factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the school district. In general, a larger district with greater resources may be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

As is the case with employees with disabilities, employers should deny an accommodation based on a claim of "undue hardship" with caution and only after consulting with legal counsel.

If you have any questions about the changes in the law, revising board policies or procedures, or scheduling an attorney-led training on these new provisions, do not hesitate to contact any attorney at Porter Foster Rorick.

Lance Andree lance@pfrwa.com	Lynette Baisch lynette@pfrwa.com	Jon Collins jon@pfrwa.com	Leilani Fisher leilani@pfrwa.com
Cliff Foster cliff@pfrwa.com	Jeff Ganson jeff@pfrwa.com	Kathleen Haggard kathleen@pfrwa.com	Parker Howell parker@pfrwa.com
Lauren McElroy lauren@pfrwa.com	Rachel Miller rachel@pfrwa.com	Buzz Porter buzz@pfrwa.com	Michael Rorick mike@pfrwa.com
Tim Reynolds tim@pfrwa.com	Jay Schulkin jay@pfrwa.com	Valerie Walker valerie@pfrwa.com	Lorraine Wilson lorraine@pfrwa.com