

**Labor and Employment Team**

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## Employment Law Update

### Governor Dayton Signs Women's Economic Security Act

On Mother's Day 2014, Governor Dayton signed into law the Women's Economic Security Act ("WESA"). The new law provides a number of new protections to women in the workplace and will likely require employers to revise their current workplace policies and procedures. This update highlights several of the new law's key provisions.

#### *"Familial Status" now a Protected Class under the Minnesota Human Rights Act*

The WESA amended the Minnesota Human Rights Act by adding "familial status" as a protected class under the Act. It is now an unfair employment practice for an employer, employment agency, or labor organization to discriminate against an applicant or employee based on their familial status, such as whether the employee or applicant has children or other caregiving responsibilities. It is also unlawful for employers to require or request that an applicant furnish information about their familial status prior to being hired. Practically speaking, employers should also be particularly cautious about how they approach this issue throughout the employment relationship.

#### *Reasonable Accommodation for Pregnancy and Nursing Mothers*

Under the WESA, an employer must now provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if she so requests with the advice of her health care provider, unless the employer demonstrates that the accommodation would impose an undue hardship. An employer must make the following accommodations for a pregnant employee upon request: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. For other accommodation requests, the employee and employer are required to engage in an interactive process. The employer is not, however, required under the WESA to create a new or additional position, or substantially change the working conditions of another employee, in order to make an accommodation. An employer also cannot require the employee to take a leave of absence from work or to accept an accommodation against her wishes.

Related to nursing mothers, an employer is already required to provide reasonable unpaid break time each day and make a reasonable effort to provide a room or other location in close proximity to the work area where the employee can express milk in privacy. The WESA clarifies the type of space that an employer must provide: the space must not be a bathroom or a toilet stall. Instead, it must be a space shielded from view and free from intrusion from coworkers and the public with access to an electrical outlet.

### *Leave of Absence and Other Leave Benefits*

An employer must provide 12 weeks of unpaid leave of absence to: (1) a biological or adoptive parent within 12 months of the birth or adoption of the child or (2) a female employee for prenatal care or incapacity due to pregnancy, childbirth, or related health conditions. The employer may adopt reasonable policies that require timely requests and require information regarding the anticipated timeframe of the leave. An employee may not necessarily increase his or her cumulative leave by reliance on other employee benefits or related laws. An employer may, instead, reduce the length of leave provided here by any period of other leave, provided that the employee receives a cumulative total of at least 12 weeks of leave time. During the leave, the employer must continue to make coverage available to the employee and his or her dependents under any existing and applicable group insurance health plans.

If an employer provides sick leave benefits, it must allow an employee to use such benefits for absences due to an illness of or injury to a host of family members including parents, mothers-in-law, fathers-in-law, grandparents, siblings, spouses, children, and grandchildren. The law expressly includes biological, adopted, foster and step-children and grandchildren.

Under the WESA, an employee may also use personal sick leave benefits for "safety leave," leave for the purposes of providing or receiving assistance because of sexual assault, domestic abuse, or stalking related to the employee or a relative.

### *Wages and Pay Equity*

An employer shall not prohibit employees from discussing their wages as a condition of employment or take any adverse employment action against an employee for the same. Similar protections are already provided to employees under federal laws such as the National Labor Relations Act.

Effective August 1, 2014, companies with 40 or more full-time employees who desire to enter into a contract with the state in excess of \$500,000 must have an equal pay certificate or a written exemption. In order to obtain an equal pay certificate, a business must pay a fee and submit a statement attesting to the company's compliance with certain federal and state laws regarding non-discrimination and equal pay in the workplace. The statement must also provide substantive information regarding compensation of its employees including the efforts taken by the company to ensure that there are not pay disparities because of gender and "that the average compensation for its female employees is not consistently below the average compensation for its male employees" in job categories defined by the EOOC.

### *Unemployment Benefits*

An individual is not ordinarily entitled to unemployment benefits if he or she voluntarily quits employment, with limited exceptions. Under the WESA, effective October 5, 2014, an employee who quits because of domestic abuse, sexual assault, or stalking of the employee or an immediate family member may still be eligible for unemployment benefits, provided the conduct necessitated the employee's quitting the employment.

Similarly, an employee who is terminated by an employer because of misconduct may not ordinarily be entitled to unemployment benefits. Effective October 5, 2014, an employee's conduct that was a consequence of herself or himself or an immediate family member being a victim of domestic abuse, sexual assault, or stalking, is not misconduct that would otherwise disqualify the individual from unemployment benefits.

If you have any questions or would like assistance complying with these new provisions, please contact a labor and employment attorney at Larson • King.

