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Ohio Pregnancy Accommodation Bill Much More “Accommodating” To Employees Than ADA

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A bill named the Pregnancy Reasonable Accommodation Act was recently introduced in the Ohio Senate (S.B. 301). Although the bill is only in its infancy, it has bipartisan support in the Senate and could quickly be ratified. If the bill becomes law, it could dramatically increase the rights of pregnant employees and place additional unwanted burdens on employers. The bill would require employers to grant pregnant employees a reasonable accommodation, which could include:

- modifying equipment, seating or uniforms
- providing assistance with manual labor
- providing light duty work
- modifying schedules
- restructuring jobs
- providing temporary transfer to a less strenuous or hazardous position
- providing break time to express breast milk
- providing time off to recover from childbirth.

The employer’s only defense to denying reasonable requests for accommodation would be to prove that the accommodation would create undue hardship to the business. This defense, however, is generally unavailable if the employer has provided a similar accommodation to any other employee. Moreover, the bill states that employers may not require any employee to accept an accommodation that she does not wish to accept and employers may not require any employee to take leave if there is another reasonable accommodation available that would not require leave. This bill raises some interesting issues. First, it is significant that an employer cannot claim an undue hardship if it has granted a similar accommodation to any other employee. Because many employers offer light duty work to employees who were injured on the job (but not employees injured outside of work or otherwise unable to perform all of their job duties), they likely would be required to offer any pregnant employee light duty as well. In this way, a pregnant employee would be treated more favorably than a disabled employee or an employee who was injured off the job. Second, the bill raises the question whether an employer is required to give a pregnant employee the accommodation she prefers. The bill expressly requires an employer to participate in an interactive process and to provide a reasonable accommodation unless it creates an undue hardship. The bill also expressly states that an employee does not have to accept an accommodation that the

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employer chooses. Does this mean that an employee can turn down the employer's proposed accommodations until the employer offers a reasonable accommodation she likes? The bill is not entirely clear on this point, but it is a reasonable interpretation of the bill's language. If so, this would offer pregnant employees greater rights than those available to disabled employees under the Americans with Disabilities Act (ADA), as disabled employees are not entitled to the accommodations they prefer, but only to a reasonable accommodation of their employer's choice. Third, although the accommodation and interactive process language is similar to that of the ADA, pregnant employees may again have greater rights than a disabled employee. The bill does not define "pregnancy" in a way that requires the pregnant employee to be substantially limited in any capacity. The language of the bill seemingly allows a perfectly healthy pregnant employee to seek an accommodation throughout her pregnancy even if one is not medically necessary. In theory, a pregnant employee could seek light duty work throughout her pregnancy even if she were in every way capable of performing her regular job. Senate Bill 301 could have a significant impact on how employers deal with pregnant employees. Keeping track of the bill's progress and having early discussions will help you plan for how to accommodate pregnant employees if the bill becomes law.