

# Labor & Employment Law E-Alert

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## **OHIO CIVIL RIGHTS COMMISSION PROPOSES SIGNIFICANT CHANGES TO OHIO'S PREGNANCY DISCRIMINATION REGULATIONS**

The Ohio Civil Rights Commission (OCRC) is attempting to re-write the rules governing pregnancy-related leaves of absence for Ohio employers. The proposed regulations would require Ohio employers with four or more employees to provide a minimum of 12 weeks of unpaid leave for pregnancy, childbirth, and related medical conditions, regardless of how long these employees have worked for the employer. Currently, the state does not require a minimum leave period, as long as employees with pregnancy-related conditions are treated no less favorably than similarly situated co-workers.

Ohio employees who need time off due to pregnancy, childbirth, or related medical conditions would not need to meet the FMLA coverage requirements, i.e., working 12 months and performing 1,250 hours of work for the employer in the preceding year, in order to qualify for the pregnancy leave time required under the proposed new regulations. Thus, the proposed regulations would essentially increase the leave rights provided to Ohio employees under the federal Family and Medical Leave Act (FMLA).

Further, while granting an employee 12 weeks of pregnancy leave does provide the employer with a presumption of compliance with Ohio's pregnancy discrimination act, the proposed regulations do not provide any guarantees. In the proposed regulations, the OCRC would retain the right to rebut that presumption of compliance, if in the OCRC's view circumstances dictate that a longer leave period should be provided. Moreover, if a pregnant employee has, for example, already exhausted her 12 weeks of FMLA leave before needing the pregnancy-related leave, it appears from the proposed regulation that the employer would be required to grant that employee at least 12 *additional* weeks of leave.

Under the proposed regulations an employer can only provide less than 12 weeks of pregnancy-related leave if a shorter leave period is justified by business necessity. However, "business necessity" is not defined in the regulations and is obviously subject to widely differing interpretations.

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The proposed regulations also require Ohio employers to allow pregnant employees the opportunity to work in light duty jobs and modified work programs, even if the employer normally only offers such positions to employees recovering from industrial injuries covered by Ohio's workers' compensation system. The proposed regulations provide that employees affected by pregnancy-related conditions receive the same leave and other employment-related opportunities as others "similar in their ability or inability to work." No other distinctions (such as length of service or whether employees are similarly situated in any other respect) are permitted by the proposed regulations.

It is anticipated that the OCRC will review the public comments it received and issue final proposed regulations in the next two months. The regulations are then subject to approval by the Ohio Joint Committee on Agency Rule Review (JCARR), a committee comprised of elected state senators and representatives.

**If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.**

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