

**MHRA**  
**Employment Law Update**

April 18, 2019  
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**S. C. Pregnancy Accommodations Act**

- **Purpose:** It is the intent of the General Assembly by this act to combat pregnancy discrimination, promote public health, and ensure full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related medical conditions. Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job. Many pregnant women are single mothers or the primary breadwinners for their families; if they lose their jobs then the whole family will suffer. This is not an outcome that families can afford in today's difficult economy.

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The Act amends the S.C. Human Affairs Law in three main ways:

1. Amending Section 1-13-30(l) to provide that the terms "because of sex" or "on the basis of sex" expressly include "because of or on the basis of pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation," and providing that women affected by pregnancy, childbirth, or related medical conditions "must be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs."

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2. Amending Section 1-13-80(A) (unlawful employment practices) to provide that it is an **unlawful employment practice** for an employer to

- (1) fail or refuse to make **reasonable accommodations** for medical needs arising from pregnancy, childbirth or related medical conditions for applicants or employees;
- (2) **deny employment** or opportunities to an employee or applicant if the denial is based on the employee's or applicant's need for a reasonable accommodation;

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- (3) require a pregnant employee or applicant to **accept an accommodation not of her choosing**, if the applicant or employee does not have a known limitation related to pregnancy or the accommodation is unnecessary for her to perform essential job functions;
- (4) **require the employee to take leave** under any leave law or policy if another reasonable accommodation can be provided; or

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- (5) take **adverse action** against an applicant or employee for requesting or using a reasonable accommodation for a medical need arising from or related to pregnancy, childbirth or related medical condition

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- Notice Requirement

- Effective September 14, 2018
- Conspicuously posted
- [www/schac.gov](http://www.schac.gov)

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- Reasonable accommodations:

- Making existing facilities accessible
- Providing a private place, other than a bathroom stall, for the purpose of expressing milk
  - Employer does not have to construct a permanent dedicated space for employee to do so
- Modifying food or drink policies
- Providing seating or allowing the employee to sit more frequently if the job requires the employee to stand

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- Providing more frequent or longer break periods
- Providing assistance with manual labor and limits on lifting
- Temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified
- Providing job restructuring or light duty, if available
- Acquiring or modifying equipment or devices necessary for performing essential job functions, and
- Modifying work schedules

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• What Employers Need to Do

- Provide the **required notice** and post it in a conspicuous place
- Provide **reasonable accommodations** for pregnant employees as long as that does not create undue hardship.

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- Update **policies and handbooks** to include the Act
  - Make sure that EEO statement and policy expressly includes the verbiage "on the basis of pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation"
- **Train** appropriate personnel on how to manage accommodation requests
- **Train** supervisors and managers on how to spot and handle accommodation requests and how to direct such to Human Resources

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Americans With Disabilities Act

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## Drug Testing Issue

- CBD oil
  - Might produce positive drug test
  - Advise employees that positive test is a positive test, no matter the cause
  - Problem – doctor prescribes

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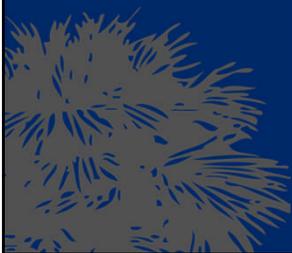
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## Employee Conduct



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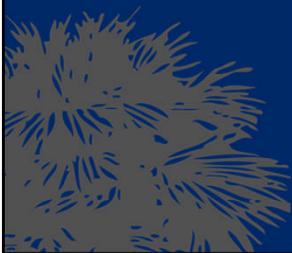
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## Off Duty Conduct – Grounds for Discipline?



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• Employees – Legal Issue

- Employees have a First Amendment right to speak on matters of public (not private) concern

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- Even if public concern, employer can discipline the employee if the employee's interest in speaking is outweighed by the government's interest in providing effective and efficient service to the public
- Consider the context in which the speech was made, including the employee's role and the extent to which the speech impairs the efficiency of the workplace

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- Interfere with the operation of the agency
- Undermine the mission of the agency
- Communicate to the public or to coworkers in private
- Conflict with the responsibilities of the employee within the agency
- Abuse the authority and public accountability the employee's role entailed

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• Social Media Policy

- Remind employees that what they post can be seen, even if “private”
- Remind employees they need to advise readers they do not speak for the City (unless official City communication)

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- No “prior restraints.”
- Not overly broad.
  - E.g., “Any information that would tend to discredit or reflect unfavorably upon the ounity” found to be overly broad.

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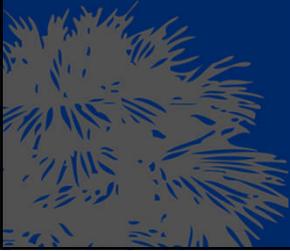
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Firefighters -- Overtime



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