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Breastfeeding Is Now A Protected Class In New Jersey

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Before leaving office, former Governor Chris Christie signed an amendment to the New Jersey Law Against Discrimination (the Amendment) that adds breastfeeding as a protected class. This is in addition to gender, race, creed, national origin, ancestry, nationality, color, marital or domestic partnership status, affectional or sexual orientation, age, handicap (and/or disability), pregnancy, service in the armed forces, atypical hereditary cellular or blood trait, genetic information, refusal to submit to genetic tests, and refusal to make available results of genetic tests.

In addition to naming breastfeeding as a protected class, the Amendment specifically requires employers to give breastfeeding employees a “reasonable break time each day” to express milk. Employers must also provide employees with a suitable, private room “in close proximity to the work area” to express milk. The designated room cannot be a bathroom stall. The only exception to the Amendment’s breastfeeding provisions is if the accommodations “would be an undue hardship on the business operations of the employer.” However, this is a difficult standard to satisfy.

Employers should note that the Amendment differs from what is required under the Fair Labor Standards Act where employers are required to allow employees break time to express milk for up to a year after their babies’ birth. By contrast, the Amendment does not provide any such durational limitation.

TAKEAWAY: New Jersey employers should review their breastfeeding policies and ensure they comply with the Amendment.

Attorney

- Tracy Armstrong