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Are You Prepared to Comply with the Pregnant Workers Fairness Act?

The [Pregnant Workers Fairness Act \(PWFA\)](#), recently signed into law by President Biden and effective June 27, 2023, will expand existing federal protections of pregnant workers. Employers will now be required to engage in the interactive process and make reasonable accommodations for physical or mental limitations related to pregnancy, childbirth, or related medical conditions, irrespective of whether the conditions rise to the level of a “disability” under the Americans with Disabilities Act (ADA), as long as such accommodations do not cause an undue hardship.

What Does the PWFA Prohibit?

Under the PWFA, employers **cannot**:

- Fail to provide a reasonable accommodation for workers who have limitations from pregnancy, childbirth, or related medical conditions, unless the employer can establish the accommodation would cause an undue hardship;
- Require that a qualified employee accept an accommodation other than a reasonable accommodation arrived at through the interactive process;
- Deny employment opportunities to qualified workers based on the need to provide an accommodation under the PWFA;
- Require leave as an accommodation if another reasonable accommodation can be provided; or
- Discriminate against a qualified worker who requests or uses an accommodation under the statute.

Who Is Covered?

The PWFA protects qualified employees and applicants who have known limitations related to pregnancy, childbirth, or related medical conditions and who work for an employer with 15 or more employees.

What Accommodations Are Reasonable?

The PWFA relies on the same definition of “reasonable accommodation” as the ADA. Employers must engage in the interactive process with an employee to determine an effective reasonable accommodation.

The House Committee on Education and Labor Report on the PWFA offers examples of *possible* reasonable accommodations, which the Equal Employment Opportunity Commission (EEOC) has also cited. These include: ability to sit; ability to drink water; access to closer parking; flexibility in work hours; issuance of “appropriately sized uniforms and safety apparel”; additional break time allowances for bathroom use, eating, or resting; use of leave to recover from childbirth; and excusal from “strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.”

What Has Not Changed?

The ADA, Title VII of the Civil Right Act, the Family and Medical Leave Act, and the Providing Urgent Maternal Protections for Nursing Mothers Act each continue to offer protections to workers affected by pregnancy, childbirth, and related conditions. Additionally, the PWFA does not replace any federal, state, or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical conditions.

What Are the Consequences for Violating the PWFA?

Under the PWFA, an employee may pursue a private action against their employer after completing all administrative procedures. Additionally, the EEOC and Attorney General have the same investigatory and enforcement powers as they do under Title VII.

Employer Takeaways

To prepare for compliance with the PWFA, employers should:

- Review existing accommodation policies and revise them accordingly;
- Train human resources and management on how to handle PWFA accommodation requests; and
- Engage in the interactive process with employees requesting accommodation based on pregnancy, childbirth, or related medical conditions.

For more information concerning the PWFA and how to comply, please feel free to contact the authors or any member of Frost Brown Todd's [Labor & Employment](#) practice group.

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