



Apr 26, 2024

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EEOC Issues Final Rule on Pregnant Workers Fairness Act and Employers' Duty to Accommodate

On April 19, 2024, employers received new clarity on employees' rights and protections related to pregnancy, childbirth, or related medical conditions and employers' duties to accommodate such conditions in [a new final rule](#) ("Final Rule") published by the U.S. Equal Employment Opportunity Commission (EEOC) implementing the Pregnant Workers Fairness Act (PWFA). Before the Final Rule's effective date, June 18, 2024, employers should familiarize themselves with these expansive requirements under the PWFA.

The PWFA

The PWFA, which went into effect on June 27, 2023, prohibits private- and public-sector employers with 15 or more employees from:

- Failing to provide "reasonable accommodations to the known limitations related to pregnancy, childbirth, or related medical conditions" unless such accommodation would "impose an undue hardship";
- Requiring an employee "affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation" determined by an "interactive process";
- Denying employment opportunities based on an employer's obligation to make "reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions";
- Requiring that such an affected employee take leave "if another reasonable accommodation can be provided"; and
- Take adverse action because an affected employee requested or used such a "reasonable accommodation" (i.e., retaliate against an employee requesting benefits under the

PWFA).

42 U.S.C. § 2000gg-1.

Broad Definition of “Pregnancy, Childbirth, or Related Medical Conditions”

The EEOC states that this newly published Final Rule “provides clarity to employers and workers about who is covered [by the PWFA], the types of limitations and medical conditions covered, how individuals can request reasonable accommodations, and numerous concrete examples.” In the Final Rule, the EEOC defined the PWFA’s coverage broadly to include current pregnancy, past pregnancy, potential pregnancy, lactation (including breastfeeding and pumping), use of contraception, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, or having or choosing not to have an abortion, among other conditions. Notably, there is no requirement that the physical or mental condition rises to a specific level of severity. Under the Final Rule, the physical or mental condition causing a working limitation may be modest, minor, and/or episodic.

Among the new clarifications and requirements provided by the 408-page Final Rule and interpretive guidance are the following:

- Confirmation that an employee or applicant filing a complaint under the PWFA will use the same administrative charge and investigation process that is used for other charges filed with the EEOC under Title VII or the ADA.
- A requirement that an employer, at an employee’s or applicant’s request, considers eliminating one or more essential functions of a job for up to 40 weeks during an employee’s pregnancy and for an additional amount of time after pregnancy for accommodations needed due to childbirth or related medical conditions, unless doing so poses an undue hardship.
- Clarification that an “undue hardship” for employers is defined as one causing “significant difficulty or expense” on the operation of the business.

- Restrictions on when an employer can ask for supporting documentation for a pregnancy-related accommodation and what information can be requested.
- Identification of the following four requests for accommodations that will virtually always be determined to be reasonable and will typically require “modest and minor” changes in the workplace on a temporary basis:
 - Allowing an employee to carry or keep water near and drink, as needed;
 - Allowing an employee to take additional restroom breaks, as needed;
 - Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
 - Allowing an employee to take breaks to eat and drink, as needed.

While the EEOC presumes the above changes will not impose an undue hardship in virtually all cases, an employer may, on an individual case-by-case basis, show that they do create an undue hardship.

The Final Rule has received criticism for its expansiveness. Notably, EEOC Commissioner Andrea Lucas, one of the five appointed members to the Commission, issued a press release following the Final Rule’s publication. Ms. Lucas stated, “I support elements of the final rule. However, I was unable to approve it because it purports to broaden the scope of the statute in ways that, in my view, cannot reasonably be reconciled with the text.... The Commission extends the new accommodation requirements to reach virtually every condition, circumstance, or procedure that relates to any aspect of the female reproductive system.”

Although the EEOC’s new Final Rule is expansive and confirms that the PWFA provides certain protections for employees and applicants who choose to have an abortion, it also clarifies that the PWFA does not require employers or employer-sponsored health plans to cover any specific items, procedures, or treatments, including abortion. Also, as with the ADA, any leave of absence an

employee requests under the PWFA as a form of accommodation does not have to be paid.

Next Steps for Employers

Employers should confirm they are in compliance with the PWFA. Human Resources Departments should familiarize themselves with the Final Rule and train supervisors on pregnancy and childbirth-related accommodation requests. Given the expansive protections afforded to workers in the Final Rule, supervisors should be informed of the different types of conditions that can be related to pregnancy and childbirth and not deny accommodation requests without consulting Human Resources. Before an employer denies an accommodation request, including taking the position that an accommodation causes an undue burden, employers should consult legal counsel.

For more information about the PWFA, please contact the authors or any member of Frost Brown Todd's [Labor and Employment Team](#).

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