

# CLIENT ALERTS

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## EEOC Issues Final Regulations on Pregnant Workers Fairness Act

### Client Alert

5.13.2024

As you know from our alert last summer, the Pregnant Workers Fairness Act (PWFA) took effect on June 27, 2023. As a reminder, the PWFA was modeled after the familiar Americans with Disabilities Act (ADA). Like the ADA, the PWFA requires employers with 15 or more employees to provide temporary and reasonable accommodations to employees unless doing so would pose an undue hardship to the employer. As the name suggests, the PWFA was specific to pregnant and nursing mothers and requires employers to accommodate limitations related to pregnancy, childbirth, or related medical conditions. The Equal Employment Opportunity Commission (EEOC) finalized its long-awaited PWFA regulations. While there are many important takeaways from the 200-page final rule, here are some of the highlights.

For one, the EEOC regulations retain a broad definition of “Pregnancy, Childbirth, or Related Medical Conditions.” The final rule defines the term to include “current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth.” Perhaps most notably, the term “related medical conditions” includes termination of a pregnancy (including miscarriage, stillbirth, or abortion). The EEOC received over 90,000 comments pertaining to its decision to include abortion in the definition of related medical conditions, but ultimately decided it should be included in the final regulations.

The regulations also provide a (non-exhaustive) list of possible reasonable accommodations, which includes frequent breaks, modified sitting/standing, schedule changes, remote work, change in parking, light duty work, and more. Additionally, the regulations provide employers with further guidance on when employers are required to accommodate an employee by temporarily eliminating an essential function, which is an

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important distinction between the ADA and the PWFA. Under the PWFA, an employee is qualified if: 1) the employee's inability to perform one or more essential functions of the job is temporary, 2) the employee will be able to perform the essential functions in the near future, and 3) the inability to perform the essential function can be reasonably accommodated without undue hardship. If those three factors are met, then employers are required to temporarily eliminate the essential function. The EEOC regulations identify certain factors employers can consider in determining if eliminating an essential function will be an undue hardship: length of time the employee will be unable to perform the essential function, the nature of the essential function, is there other work for the employee to perform, etc.

While the final regulations can be a lengthy read, it is worth it given the interpretive guidance the EEOC included with the final regulations. The guidance includes numerous examples for how employers should handle PWFA issues. The final rule was published on April 19, 2024, and will become effective 60 days later on June 18, 2024. Employers should take the remaining time to become familiar with the PWFA regulations.

Butzel's Labor and Employment Team stands ready to answer all your PWFA related questions as well as any other labor and employment issues that arise.

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