

# CLIENT ALERTS

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## New Pregnant Workers Fairness Act Set to Take Effect in June 2023

### Client Alert

1.12.2023

Included as part of the most recent government funding bill signed by President Biden, is the Pregnant Workers Fairness Act ("PWFA"). Versions of the PWFA spent 10 years bouncing around Congress before the PWFA was officially passed by the House in May 2021. The PWFA was passed with bipartisan support and approval from large employer groups.

The PWFA largely mirrors what courts around the United States have enforced after the Supreme Court's opinion in *Young v. United Parcel Service, Inc.* regarding accommodation of pregnant employees, as well as what is required by the Americans with Disabilities Act of 1990 ("ADA") requiring accommodation of employees with disabilities. Moreover, dozens of states have already enacted laws requiring accommodations for pregnant employees.

The PWFA will require all employers with more than 15 workers to grant temporary and reasonable accommodations for pregnant workers. The PWFA will also apply to applicants and employees with conditions related to pregnancy or childbirth. As with accommodations under the ADA, once an employer is notified about an employee's need for an accommodation under the PWFA, employers should engage in an interactive process to determine what accommodation(s) may be needed and whether it can reasonably be provided.

### **When does the PWFA go into effect?**

The PWFA becomes effective on June 27, 2023.

The United States Equal Employment Opportunity Commission ("EEOC") is tasked with enforcing the PWFA. The EEOC has been directed to issue guidance in the next two years to provide examples of reasonable accommodations for pregnant workers. We will continue to provide additional guidance as more

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information about the PWFA becomes available.

### **What, if anything, should employers do right now?**

Given the prior U.S. Supreme Court decision discussed above, most employers are already complying with the accommodation requirements set forth in the PWFA for pregnant employees. Nonetheless, employers are encouraged to review their current practices and procedures in this regard to ensure that they can consistently and effectively address any requests for pregnancy related accommodations. For example, do your employees know how to request an accommodation? Does your organization have a standard procedure to address accommodation requests? This is a good time to review your entire accommodation process, and not just for pregnancy accommodations.

Additionally, most accommodation discussions are first addressed to the supervisors and managers. As such, employers should consider training management and supervisory personnel regarding accommodation requirements and the interactive process. In most cases, managers and supervisors should be trained to refer the accommodation request to the appropriate office or individual, and not make accommodation decisions themselves.

Finally, the PWFA does not preempt more generous state and local laws. Although Michigan does not have any additional requirements regarding accommodation of pregnant employees, employers should review the requirements in the other locations in which its employees are currently working, including remote employees, to ensure compliance with any other state or local laws.

Butzel has experienced attorneys that can assist employers with these steps. If you have any questions about this topic, please contact the authors.

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