

# CLIENT ALERTS

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## Pregnant Workers Fairness Act Takes Effect

### Client Alert

6.29.2023

In 1978, Congress passed the Pregnancy Discrimination Act (PDA), which prohibits employers from firing or otherwise discriminating against workers on the basis of pregnancy, childbirth, or related medical conditions. The PDA prohibited employers from discriminating, but did not impose any affirmative obligations on employers. Employers now have additional obligations to pregnant and nursing workers. The Pregnant Workers Fairness Act (PWFA) took effect on June 27, 2023. Under the PWFA, employers are now required to grant reasonable accommodations to pregnant and nursing workers.

The PWFA is modeled after the Americans with Disabilities Act of 1990 (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 impose an undue hardship. While pregnancy itself is not a “disability” under the ADA, the PWFA requires accommodation and provides those protections to pregnant employees and applicants with known limitations related to pregnancy, childbirth, or related medical conditions. The PWFA mirrors the ADA’s definition of “reasonable accommodation” and “undue hardship,” but there is one very important distinction. Unlike the ADA, the PWFA requires employers to accommodate pregnant workers by eliminating an essential function of the position for a temporary period of time.

As a reminder, the PWFA was signed into law with a companion bill, the Providing Urgent Maternal Protections for Nursing Mothers Act (the “PUMP Act”). The PUMP Act amended the Fair Labor Standards Act to require that employers provide reasonable break time, and a private location, for employees to express breast milk for two years following the birth of a child. That private location must be some place other than a restroom, that is shielded from view and free from intrusion from

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coworkers and the public. The PUMP Act does have an exemption for employers with less than 50 employees if complying with the Act's requirements would impose an undue hardship by causing the employer "significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business."

Like the ADA, employers must engage in an interactive process in determining reasonable accommodations under the PWFA, including potentially eliminating an essential function of the position for a temporary period of time. Employers should review and if necessary amend existing policies and practices to ensure pregnant and nursing workers can request and receive appropriate accommodations. Additionally, if not already doing so, employers should ensure they are complying with the PUMP Act.

If you have any questions about the PWFA, the PUMP Act, or any other Labor & Employment issue, please contact your Butzel Labor & Employment attorney.

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