

EEOC Proposes New Regulations For Pregnant Workers Fairness Act

Alert

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In late 2022, President Biden signed legislation creating new protections for pregnant and nursing employees, which was addressed in a previous [alert](#). The Pregnant Workers Fairness Act (PWFA), went into effect on June 27, 2023, and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), enforcement of which became effective on April 28, 2023, expanded existing federal law protections for covered workers. The U.S. Department of Labor previously issued [PUMP Act Guidance and FAQs](#), and the EEOC has now [proposed regulations implementing the PWFA](#).

The U.S. Equal Employment Opportunity Commission (EEOC) began to accept charges alleging violations of the PWFA on June 27, 2023. The PWFA gave the EEOC one year from the law's enactment to issue related regulations. In response, the EEOC recently proposed new regulations for implementing the PWFA and to clarify its requirements for employers. The EEOC's [proposed regulations](#) were published into the Federal Register on Friday, August 11, 2023. These regulations detail how the EEOC plans to enforce the PWFA, and provide direction to employers to ensure that they are complying with the new law's requirements.

The PWFA requires covered entities to provide reasonable accommodations to qualified employees' or applicants' known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity.

EEOC'S PROPOSED RULE IMPLEMENTING PWFA

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The public will have 60 days to comment on the proposed rule after it is published in the Federal Register. The comment period will close on October 10, 2023. The EEOC is calling for employer input on several different areas, including definitions of key terms and examples of reasonable accommodations. The EEOC has also provided further assurance that employees won't face consequences for requesting or using these accommodations available under the law.

In its proposed rule, the EEOC focuses on the fact that pregnancy is a temporary condition and suggests that temporary accommodations should be allowed during pregnancy and after childbirth. It has also included four accommodations that, in its view, should be granted in almost every circumstance. These accommodations include allowing the employee to drink water regularly during the workday, additional restroom breaks, modifications in policies regarding sitting or standing, and modifications in policies regarding eating or drinking. The agency noted that this type of accommodation is virtually always reasonable and does not impose an undue hardship on employers. If an employer is not already doing so, it should allow eligible employees these types of accommodations if requested.

The EEOC has also provided a "non-exhaustive list" of conditions it considers to generally fall within the scope of the law, including, but not limited to, "termination of pregnancy, including via miscarriage, stillbirth, or abortion; infertility; fertility treatment; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; gestational diabetes; preeclampsia; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; antenatal (during pregnancy) anxiety, depression, or psychosis; postpartum depression, anxiety, or psychosis; frequent urination; incontinence; loss of balance; vision changes; varicose veins; changes in hormone levels; vaginal bleeding; menstrual cycles; use of birth control; and lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections." It has further clarified that an employee or applicant does not have to identify a specific listed condition or use medical terms to describe a condition in order to be eligible for a reasonable accommodation under the law.

The EEOC is also calling for comments on potential issues between religious employers and employee rights under the law. The agency has released further guidance to clarify that the PWFA should not be interpreted to infringe on any individual's constitutional rights, and that it does not require an employer health plan to pay for or cover any "particular item, procedure, or treatment." It has further clarified that religious organizations may have a legitimate defense to some claims under the PWFA. The agency noted that a rule to construe the PWFA in a way that does not require a "religious entity to make any accommodation that would conflict with the entity's religion" may be a possible option.

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NEXT STEPS FOR EMPLOYERS

Employers should consider taking the following steps to ensure compliance with the PWFA:

- Update reasonable accommodation and lactation policies, and train HR teams, managers and supervisors on the new requirements.
- Consider providing comments on the EEOC's proposed rules.
- Allow pregnant or other eligible employees to drink water regularly during their workday, additional restroom breaks, modifications in policies regarding sitting or standing, and modifications in policies regarding eating or drinking, if requested by the employee.
- Create or update accommodation request processes to specifically include temporary accommodations due to pregnancy and childbirth limitations.
- Consider your company's approach to providing PWFA accommodations and think about solutions to expanded accommodation and lactation requirements for your workforce.

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