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News & Insights

# EEOC Releases its Final Rule for the Pregnant Workers Fairness Act Covering a Broad Range of Accommodations

Alert
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This week the EEOC issued its final rule implementing the Pregnant Workers Fairness Act (PWFA), which went into effect in June 2023. The PWFA requires employers with 15 or more employees to provide reasonable accommodations to qualified employees and job applicants with known temporary physical or mental limitations due to pregnancy, childbirth, or related medical conditions. The PWFA expands existing protections against pregnancy discrimination under Title VII of the Civil Rights Act of 1964 (Title VII) and access to reasonable accommodations under the Americans with Disabilities Act (ADA).

The Equal Employment Opportunity Commission (EEOC) began accepting charges under the PWFA on June 27, 2023. Per the law, the EEOC was required to issue regulations to implement the law within a year of its enactment. The final rule will be published in the *Federal Register* on April 19, 2024, and will go into effect on or around June 18, 2024.

The EEOC released a press release with its final rule, stating that the rule "provides clarity to employers and workers about who is covered, the types of limitations and medical conditions covered, how individuals can request reasonable accommodations, and numerous concrete examples." Through its final rule, the EEOC articulated a broad interpretation of the PWFA, indicating that this expansive interpretation is how courts and the agency itself have historically interpreted "pregnancy, childbirth, or related medical conditions" under Title VII.

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Under the EEOC's final rule, the definition of "pregnancy, childbirth, or related medical conditions" covers a broad range of conditions, including a person's decision to have or not to have an abortion, lactation, endometriosis, infertility, fertility treatments and miscarriages. Such conditions may be covered under the PWFA, even if they do not meet the definition of "disability" under the ADA. While many industry groups have shown their support for the law, its expansive coverage has also drawn criticism from some EEOC commissioners and members of Congress, who argue that the regulatory definition goes beyond the scope of the language of the statute.

## REASONABLE ACCOMMODATIONS

The final rule also provides specific examples of possible reasonable accommodations under the law. These accommodations include frequent breaks; sitting/standing; schedule changes, part-time work and paid and unpaid leave; telework; parking; light duty; making existing facilities accessible or modifying the work environment; job restructuring; acquiring or modifying equipment, uniforms, or devices; and adjusting or modifying examinations or policies.

Under the final rule, reasonable accommodations may also include temporarily suspending essential functions of a position if the employee can perform the essential function(s) "in the near future." Suspension of essential functions as a reasonable accommodation is determined on a case-by-case basis and could require the employer to reassign the function(s) to another worker, assign other tasks to the employee receiving the accommodation to replace the essential function(s), and/or temporarily transfer the employee to a different position.

The final rule also identifies a list of accommodations that are essentially per se reasonable and do not impose an undue hardship. These "predictable assessments" include: (1) allowing an employee to carry or keep water near and drink, as needed; (2) allowing an employee to take additional restroom breaks, as needed; (3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and (4) allowing an employee to take breaks to eat and drink, as needed.

EEOC Chair Charlotte A. Burrows, commented on the release of the rule, stating that "the EEOC's [rule] encourages early and open communication between employees and employers, allowing them to address issues in a timely manner to get employees the temporary accommodations they need and to avoid unnecessary disputes or litigation." While the EEOC suggests that the individualized assessment should be "simple and straightforward," employers should still engage with the employee to determine whether accommodations are in fact reasonable and do not cause an undue hardship.

In addition to the final rule, the EEOC indicated that it plans to issue additional guidance for employers to further explain and implement the law. In preparation for these regulations to take effect June 2024, covered employers should consider taking the following steps to ensure compliance with the PWFA:

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- Update reasonable accommodation and lactation policies to include covered conditions.
- Update or create pregnancy and childbirth-specific accommodation request procedures and processes to conform with the PWFA and the new regulations.
- Train human resources teams, managers, and supervisors on the new requirements under the PWFA and the EEOC's regulations, including the rule's "predictable assessments," which are almost always considered reasonable accommodations and should be granted absent a specific finding of unreasonableness or undue hardship.
- Consider your company's approach to providing PWFA accommodations, particularly related to the "predictable assessments" and covered conditions such as abortions, endometriosis, fertility treatments, miscarriages and similar conditions related to childbirth and pregnancy.

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