

New Protections for Pregnant and Nursing Employees

Alert

06.01.2023

By Alisa Nickel Ehrlich, Reiley Pankratz and Stephanie Scheck

In late 2022, President Biden signed legislation creating new protections for pregnant and nursing employees. The Pregnant Workers Fairness Act (PWFA), which goes into effect June 27, 2023, and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), enforcement of which became effective on April 28, 2023, expand existing federal law protections for covered workers.

PREGNANT WORKERS FAIRNESS ACT REQUIREMENTS

The PWFA creates a framework similar to the ADA and 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. Related conditions include illnesses, complications and symptoms that a worker is experiencing as a result of pregnancy or childbirth.

Like the ADA, the PWFA requires accommodations be made unless doing so would impose an undue hardship on the employer, and covered employers must engage in the interactive process with qualified employees. The PWFA also prohibits employers from discriminating or retaliating against employees and applicants who need a reasonable accommodation due to limitations related to pregnancy, childbirth or related medical conditions.

The PWFA fills the gap between Title VII, as amended by the Pregnancy Discrimination Act (which prohibits pregnancy discrimination), and the ADA (which requires accommodations for qualified individuals with disabilities) to specifically require accommodations for pregnancy, childbirth and related conditions. One difference between qualified employees under the ADA and PWFA is that an individual

New Protections for Pregnant and Nursing Employees

who cannot perform essential job functions remains qualified under the PWFA if the inability to perform essential functions is temporary, the job can be performed in the near future, and the inability can be reasonably accommodated. Under the PWFA, employers cannot require an employee to take paid or unpaid leave if another reasonable accommodation can be provided that would permit the employee to continue working.

PWFA GUIDANCE AND ENFORCEMENT

The Equal Employment Opportunity Commission (EEOC) is required to issue regulations within a year of enactment of the law. While no PWFA rule has been issued yet, the EEOC will begin accepting charges under the PWFA on June 27, 2023 and has provided some limited [PWFA guidance](#). In enacting the legislation, lawmakers provided [examples of possible reasonable accommodations under the PWFA](#) to include: closer parking, additional restroom breaks, appropriately sized uniforms and safety apparel, additional breaks to eat or drink, reduced lifting requirements, and additional leave for an employee who does not otherwise qualify for leave under the FMLA.

PUMP ACT CHANGES TO EXISTING LAWS

The PUMP Act generally applies to employers covered by the Fair Labor Standards Act (FLSA). Expanding on existing federal law protections for nursing mothers, the new law expands pumping protections to cover most all employees, not just non-exempt workers. While employers were previously required to provide protections for some employees who needed to express breast milk at work within a year after a child's birth, including unpaid break time and a sanitary and private area other than a bathroom to do so, most lactating employees will now be afforded the same protections. Additional categories of workers now provided these protections include teachers, "white collar" exempt employees and certain agriculture workers. And while breaks remain presumptively unpaid, time spent expressing breast milk will be working time if an employee is not completely relieved of job duties during that time.

Certain employees of airlines, railroads and motorcoach carriers remain exempt from the PUMP Act protections. And small employers with fewer than 50 employees may be excused from complying with the break time and pumping space requirements if doing so would create an undue hardship. The DOL has already issued [PUMP Act Guidance and FAQs](#).

NEXT STEPS FOR EMPLOYERS

In preparation for the PWFA to take effect, and in light of the expanded PUMP Act protections, covered employers should consider taking the following steps:

- Update reasonable accommodation and lactation policies, and train HR teams, managers and supervisors on the new requirements.

New Protections for Pregnant and Nursing Employees

- 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.

CONTACTS

Alisa Nickel Ehrlich

Stephanie N. Scheck

RELATED CAPABILITIES

Labor, Employment & Benefits