EEOC Ordered to Remove Elective Abortion Accommodation Provision in PWFA Final Rule

Related Attorneys

Morgan A. Davis

Michael C. Griffaton

Related Services

Employment Counseling

Labor and Employment

CLIENT ALERT | 5.28.2025

A Louisiana federal judge has ordered the Equal Employment Opportunity Commission (EEOC) to remove a portion of its final rule implementing the Pregnant Workers Fairness Act (PWFA) to the extent that the final rule includes elective abortion as a condition for which employers are required to make reasonable accommodations. This ruling, from Judge David C. Joseph of the U.S. District Court for the Western District of Louisiana, applies nationwide.

PWFA Final Rule

The EEOC issued the final rule in April 2024, requiring covered employers to provide reasonable accommodation to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation would cause undue hardship to the employer's business. The EEOC's interpretation of "pregnancy, childbirth, or related medical conditions" permitted individuals to seek accommodation in connection with choosing or not choosing to have an elective abortion. The EEOC explained that this interpretation is consistent with the plain language, congressional intent, and federal courts' interpretation of Title VII's "pregnancy, childbirth, or related medical conditions" provisions.

Litigation Following Implementation of Final Rule and Order to Rescind Elective Abortion Accommodations

Less than a month after the final rule was implemented, the states of Mississippi and Louisiana filed a lawsuit challenging the EEOC's interpretation of the PWFA. Specifically, the states sought a declaratory judgment stating that neither state is obligated to accommodate employees' elective abortions, which are unlawful under each state's respective abortion-ban laws. This case was consolidated with another lawsuit filed by four Roman Catholic-affiliated organizations, which also sought to challenge the EEOC's interpretation of the PWFA. Judge David C. Joseph presided over the consolidated case.

On May 21, 2025, Judge Joseph ruled that the EEOC exceeded its rulemaking authority with respect to the "abortion accommodation mandate" and violated the major questions doctrine, which requires clear congressional authorization for agency actions of significant economic and political importance. The Judge explained: "[A]ny analysis of the Final Rule must begin with the presumption that Congress's decision not to include any reference to abortion in the PWFA was intentional."

As a result of the ruling, the portions of the final rule that require or suggest to employers that they are required to provide employees with accommodations for purely elective abortions are no longer in effect. The Judge also instructed the EEOC to revise the rule and all related implementation regulations and guidance in accordance with the May 21, 2025, order.

Takeaways for Employers

Employers should note that while the court vacated the need to accommodate purely elective abortions under the PWFA, abortions stemming from the underlying treatment of medical conditions related to pregnancy are not affected by the order. Employers should, therefore, continue to provide reasonable accommodation for such abortions to the extent required by the PWFA.

Employers should also ensure that managers and HR personnel understand the nuances of the PWFA, including recognizing requests for an accommodation under the PWFA, knowing potential accommodations under the law, understanding what kinds of accommodation requests may cause undue hardship to the employer, and recognizing the potential for accommodation under the Americans With Disabilities Act and state law. Contact your Vorys lawyer if you have questions about the PWFA.