

Publications

New Federal Laws Expand Protections for Pregnant and Nursing Employees

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On December 29, 2022, President Biden signed into law an omnibus appropriations bill which includes expanded protections for pregnant and nursing employees through two new acts: The Pregnant Workers Fairness Act and the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act.

New Reasonable Accommodations Requirements

The Pregnant Workers Fairness Act requires employers with 15 or more employees to provide “reasonable accommodations” for pregnant employees and prohibits employment practices that discriminate against qualified employees affected by pregnancy, childbirth, or related medical conditions. A qualified employee is an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the position.

Specifically, the Act makes it is an unlawful employment practice to take any of the following adverse actions with respect to a qualified employee’s pregnancy, childbirth, or related medical condition:

- refuse reasonable accommodations, unless such refusal would impose an undue hardship on the operation of the business;
- require the employee to accept an accommodation other than any reasonable accommodation arrived at through an interactive process with the employer;
- deny employment opportunities to the employee if such denial is based on the need to make reasonable accommodations;
- require the employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided that would enable the employee to continued working; or
- take an adverse employment action against the employee because the employee requested or used a reasonable accommodation.

Employees may seek enforcement and remedies concerning such unlawful employment practices in the same manner as pregnancy discrimination claims under Title VII of the Civil Rights Act.

The Equal Employment Opportunity Commission (EEOC) will adopt rules providing examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth and related medical conditions.

The Act does not affect other federal, state or local laws that provide greater or equal protection for individuals affected by pregnancy, childbirth or related medical conditions. Nor does the Act require an employer-sponsored health plan to pay for or cover any particular item, procedure, or treatment as a reasonable accommodation or to affect any right or remedy available under any other federal, state, or local with respect to any such payment or coverage requirement.

The above provisions take effect in 180 days.

New Requirements for Nursing Mothers

Since 2010, the federal Fair Labor Standards Act (FLSA) has required that employers provide reasonable break time for non-exempt employees to express breast milk. Employers with less than 50 employees are exempt from this requirement if it would impose an undue hardship on their business.

The new PUMP Act expands workplace protections for employees who need to express breast milk. Specifically, the PUMP Act expands the requirement that employers provide reasonable break time to cover both exempt and non-exempt employees. Such break time remains unpaid, unless the employee “is not completely relieved from duty during the entirety of the break.”

The PUMP Act continues to require that employers provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. However, the PUMP Act further requires that, before making a claim against an employer, an employee must first notify the employer of the failure to provide such a place. The employer has up to 10 days to come into compliance with the required accommodations.

Employers with less than 50 employees remain exempt from these requirements if it can be established that the requirements would impose an undue hardship. In addition, employees who are crewmembers of air carriers and certain employees of rail carriers are not covered by the PUMP Act.

The PUMP Act does not preempt any state or local law that provides greater protections.

The PUMP Act took effect on December 29, 2022.