PEOPLE

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CAPABILITIES

Employment Law

HOW THE RECENTLY EXPANDED PROTECTIONS UNDER THE PREGNANCY WORKERS FAIRNESS ACT COULD AFFECT YOU OR YOUR BUSINESS

Advisory
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Congress recently expanded protections for pregnant workers and job applicants as part of the Pregnancy Workers Fairness Act ("PWFA"). Specifically, employers with at least 15 employees are now required to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."

Similar to the Americans with Disabilities Act ("ADA"), employers must engage in an "interactive process" with protected employees to determine if there are reasonable accommodations that do not impose an undue hardship. Unfortunately, it is unclear at this early stage what accommodations must be provided, but common accommodations under the ADA should be considered. Further, in a "fact sheet" discussing the PWFA, the EEOC noted the following potential accommodations that were identified by Congress during the PWFA's legislative process: the ability to sit or drink water; closer parking; flexible hours; appropriately sized uniforms and safety apparel; additional break time to use the bathroom, eat, and rest; leave or time off to recover from childbirth; and be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy. In an abundance of caution, these accommodations should be provided unless they would impose an "undue hardship" – i.e., significant difficulty or expense – for the employer.

The PWFA also provides that employers cannot:

- Require an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfere with any individual's rights under PWFA.

Importantly, under the PWFA, an employee is still considered qualified for a position if she is unable to perform an essential job function for a temporary period, as long as it could be performed in the near future, and as long as the inability to perform the essential function can be reasonably accommodated.

The PWFA applies only to pregnancy related accommodations. However, pregnant workers also enjoy certain protections under other federal and state laws, including the Pregnancy Discrimination Act, the ADA, the Family and Medical Leave Act, the Florida Civil Rights Act, and the PUMP Act. The PWFA also does not replace or preempt federal, state, or local laws that are more protective of workers affected by these conditions.

The EEOC is now accepting charges regarding employers failing to accommodate pregnancy-related conditions on or after June 27, 2023.

To ensure compliance with this new law, employers should immediately consider the following:

- Revising their policies/procedures and employee handbooks to reflect the new protections under PWFA and to establish a process by which pregnant workers can seek accommodations.
- Advising and training human resource employees and managers to recognize these new rights and respond appropriately to employees seeking accommodations.

Updating the required worksite EEOC posters – you can download the "Know Your Rights: Workplace Discrimination is Illegal" poster, updated with the PWFA protections, in English and Spanish.