

Expanding Workplace Protections for Pregnant Workers: New Federal Law Explained

Labor & Employment Law Update

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

New Reasonable Accommodation Requirements

Pregnancy discrimination in employment has been unlawful at the federal level since 1978 when the Pregnancy Discrimination Act (PDA) amended Title VII. However, unlike the PWFA, the language of the PDA does not mandate accommodations specifically.

Mirroring existing laws in many states, the PWFA expands protections for employees (and applicants) who, because of pregnancy, childbirth, or a related medical condition, require an accommodation to perform their job duties.

The PWFA requires employers with 15 or more employees to provide “reasonable accommodations” to “qualified employees” affected by pregnancy, childbirth, or related medical conditions. Qualified employees include employees and applicants who, with or without reasonable accommodation, can perform the essential functions of their position.

Under the PWFA, it is an unlawful employment practice to:

- refuse to provide reasonable accommodations, unless to do so 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 paid or unpaid leave if another reasonable accommodation can be provided that would enable the employee to continue working; or

- take an adverse employment action against the employee because the employee requested or used a reasonable accommodation.

In other words, the PWFA requires employers to consider employee and applicant accommodation requests related to pregnancy, childbirth, or related medical conditions in the same way as it considers requests for accommodation related to disabilities under the Americans with Disabilities Act (ADA).

Employers are also prohibited from placing qualified employees on leave when another reasonable accommodation option is available and from retaliating against qualified employees for seeking or taking a reasonable accommodation. The requirements of the PWFA take effect immediately. EEOC guidance will be forthcoming.

New Requirements for Nursing Mothers

Since 2010, the federal Fair Labor Standards Act (FLSA) has required employers to provide reasonable break time and a private, non-bathroom space for non-exempt employees to express breast milk during work hours. The new PUMP Act expands the requirement to include both exempt and non-exempt employees. Such breaks must be paid unless the employee is relieved of all duties while expressing breast milk.

As before, employers must continue to provide breastfeeding employees with a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, to express breast milk.

The PUMP Act provides for a private cause of action but 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 comply with the required accommodations.

In other words, the PUMP Act makes several changes to the current standard, such as:

- providing the right to a break time and space to express breast milk for all eligible employees, including teachers and nurses;
- making it possible for workers to file a lawsuit to seek monetary remedies in the event that their employer fails to comply; and
- clarifying that pumping time must be paid if an employee is not completely relieved from duty.

Employers with less than 50 employees may be relieved of these requirements if they can establish that the requirements would impose an undue hardship on the business. Additionally, crewmembers of air carriers and certain employees of rail carriers are not covered by the PUMP Act.

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Neither the PWFA or the PUMP Act preempt state or local law that provides greater employee protections.

What This Means for Employers

While the PWFA and PUMP Act are significant expansions of employees' rights under federal employment law, many states already have expanded pregnancy accommodation laws in place.

Employers should review and update their current pregnancy accommodation policies and ensure that frontline supervisors and managers are trained on how to properly respond to employees' requests for assistance.

If you have any questions regarding the new PWFA or the PUMP Act or need assistance updating your policies and practices, we recommend contacting experienced labor and employment attorneys.

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