Pregnant Workers Fairness Act: Top 5 Takeaways from the EEOC's Final Regulations

Labor & Employment Law Update

By Margaret Valenti on April 19, 2024

On April 19, 2024, the Equal Employment Opportunity Commission (EEOC) published the **final rule and interpretive guidance** for implementation of the Pregnant Workers Fairness Act (PWFA). The final rule becomes effective June 18, 2024.

The PWFA, implemented in June 2023, requires employers to make reasonable accommodations for the known limitations of qualified employees and applicants experiencing pregnancy, childbirth, or related medical conditions unless the accommodation would impose and undue hardship on the employer.

Below are 5 key takeaways from the final rule:

#1: The Definition of "Related Medical Conditions" is Expansive

In addition to employees who are currently pregnant or experiencing conditions related to a current pregnancy, ***past or potential pregnancies*** and their related conditions are also covered, such as infertility or contraception use. Examples of the many conditions that constitute a "related medical condition," include endometriosis, changes in hormone levels, and menstruation—conditions that apply to a much larger portion of the population than just those experiencing conditions related to ***current*** pregnancy.

#2: A Reasonable Accommodation May Include a Temporary Pause of Essential Job Functions

Unlike the Americans with Disabilities Act, under the PWFA, an employee may be considered qualified even if they cannot perform the essential functions of their job if (1) the inability to perform the function is temporary; (2) the function can be performed in the near future; ***and*** (3) the inability to perform the function can be reasonably accommodated. "In the near future" should be determined on a case-by-case basis, but for conditions related to current pregnancy, this will generally be within 40 weeks.

#3: Four Accommodations Will Almost Always Be Reasonable

Certain accommodations are presumed reasonable when they are requested by an employee who is currently pregnant "in virtually all cases." Stopping short of stating that these accommodations are ***automatically*** reasonable, the regulations provide that the following accommodations should require only a simple, straightforward "predictable assessment":

1. Carrying or keeping water nearby;
2. Additional restroom breaks;
3. Allowing employees to sit or stand, as needed; and
4. Breaks to eat and drink.

#4: Employers are Limited as to When They May Request Documentation

An employer may only request supporting documentation from an employee who requests an accommodation under the PWFA when it is reasonable under the circumstances for the employer to determine whether the employee has a condition related to pregnancy. For example, it is unreasonable for an employer to request documentation when a condition is obvious and the employee provides self-confirmation; when requesting any of the 4 "predictable assessment" accommodations; or when the accommodation is related to pumping at work.

#5: Employers Cannot Unnecessarily Delay Providing an Accommodation

An unnecessary delay in providing a reasonable accommodation under the PWFA may constitute discrimination, even if an employer eventually provides the reasonable accommodation. There are multiple factors to consider when determining whether a delay is "unnecessary." A delay in providing any of the four "predictable assessment" accommodations "will virtually always result in a finding of unnecessary delay."