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Legal Update

New Federal legislation regarding pregnant employees is effective on June 27, 2023.

Pregnant Workers Fairness Act (PWFA)

The Pregnant Workers Fairness Act (PWFA) is a new federal law offering protections to pregnant employees that goes into effect on June 27, 2023.

Similar to the Americans with Disabilities Act (ADA), the PWFA:

- requires employers to offer pregnant employees reasonable accommodations if pregnancy interferes with the applicant's or employee's ability to perform the essential functions of a position; and
- prohibits employers from denying an applicant employment opportunities based on their need for an accommodation.

While the ADA did require employers to provide reasonable accommodations for “pregnancy-related conditions” that constituted a disability, the ADA did not explicitly extend protections on the basis of pregnancy alone. The PWFA is designed to bridge the gap between pregnancy related protections under Title VII (anti-discrimination) and the ADA (reasonable accommodations for pregnancy-related conditions).

Which Employers are Covered?

- Employers with 15 or more employees.

Which Employees and Applicants are Covered?

- An employee or applicant affected by pregnancy, childbirth, or related medical conditions, who can perform the essential functions of a position with or without a reasonable accommodation.

What Protections are Provided Under the PWFA?

- Employers must provide a reasonable accommodation to affected employees and applicants unless the accommodation would impose an undue hardship.
- Employers must engage in an interactive process with employees and applicants to determine a reasonable accommodation. An employer cannot unilaterally impose an accommodation without going through an interactive process (i.e., a dialog with the affected employee to determine which accommodation is appropriate).
- Employers cannot refuse to hire an affected applicant to avoid making a reasonable accommodation.
- Employers cannot require an affected employee to take leave if another reasonable accommodation is available.
- Employers cannot retaliate against an affected employee who has requested a reasonable accommodation.

What are Examples of a Reasonable Accommodation Under PWFA?

The House Committee on Education and Labor provided examples of reasonable accommodations under the PWFA:

- Light duty (fewer physical demands);
- The ability to sit or drink water;
- Receive closer parking;
- Have flexible hours;
- Receive appropriately sized uniforms and safety apparel;
- Receive additional break time to use the bathroom, eat, and rest;
- Take 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.

Employers are required to provide reasonable accommodations unless they would cause an “undue hardship” on the employer’s operations. An “undue hardship” is significant difficulty or expense for the employer.

See <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>.

What Can Employers Do to Prepare for the New Law?

To comply with PWFA Employers should:

- Review and update policies for pregnant applicants and employees;
- Alert managers to the new accommodation requirements; and
- Review working conditions to determine if there are limitations requiring an accommodation if you have employees who are currently pregnant.