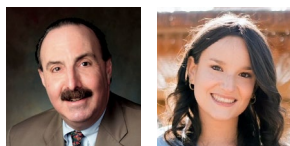


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## Employment Law Insider Alert

# Federal Pregnant Workers Fairness Act Goes Into Effect



By **Bennett Pine** and  
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On June 27, 2023 the **Pregnant Workers Fairness Act** (PWFA) went into effect, and the Equal Opportunity Employment Commission (EEOC) began accepting charges under the new law. Signed into law by President Biden on December 29, 2022, the PWFA requires “covered employers” to provide “reasonable accommodations” to workers with known limitations related to pregnancy, childbirth, or other related medical conditions.

This act fills in the grey areas that previously have existed for many years. For instance, the Pregnancy Discrimination Act of 1978 (PDA) only provided protections to pregnant workers requesting accommodations if they could prove the employer had granted another, similarly situated employee accommodations. Similarly, while the Americans with Disabilities Act (ADA) provides “reasonable accommodations” for workers with “disabilities,” many courts have held that only pregnancy-related disabilities qualify under the Act, and that pregnancy itself does not qualify as a disability under the ADA because it is a temporary condition. Thus, the PWFA provides legal protection for pregnant workers, or those with pregnancy-related medical conditions, seeking accommodations to continue working.

The EEOC has updated the **Know Your Rights** notice that most employers are required to post to include rights



under the PWFA and will be issuing proposed regulations for the new law in coming months.

### What Does This Mean for Workers?

Workers will now be able to receive a wide range of accommodations for known limitations related to pregnancy, childbirth, or other related conditions. A qualified worker covered by the Act’s protections must be an employee or applicant who, with or without the accommodation, can still perform the essential functions of the position.

### What Employers are Covered Under the Act?

Congress, federal agencies, employment agencies, labor organizations, and “covered employers” must abide by the PWFA. “Covered employers” are any private or public sector employer with at least 15 employees.

## What is Considered a Pregnancy-Related “Reasonable Accommodation”?

“Reasonable accommodations” are changes to the work environment or any alteration to the manner in which the work is typically conducted. The House Committee on Education and Labor has provided some examples of what may be considered a “reasonable accommodation” in their [report](#) on the PWFA. Some examples provided include: providing pregnant workers with closer parking; allowing for flexible work hours; allotting additional break time to use the bathroom, eat, and rest; allowing pregnant workers to sit or drink water; excusing pregnant workers from or limiting their participation in any tasks that involve heavy lifting, strenuous activities, or breathing in harsh chemicals deemed unsafe for pregnancy; and allowing employees leave or additional time off to recover from childbirth.

## What are Employers Prohibited from Doing?

In addition to prohibiting employers from interfering with an employee’s rights under the PWFA, the PWFA prohibits employers from denying an employee or applicant a job or opportunity because of their need for an accommodation, requiring an employee to accept an accommodation without discussing the accommodation with the employee beforehand, mandating the employee take leave if there is a way for them to continue working with an accommodation, or retaliating against an employee for requesting an accommodation or filing a complaint.

## Are There Exceptions?

If the employer can demonstrate that the accommodation would cause “undue hardship” on the employer, such as a significant additional burden or ex-

pense, they are excused from providing an accommodation.

## What to do if an Employer Does Not Comply with the PWFA

If an employee’s rights under the PWFA have been violated by their employer, as of June 27, 2023 employees can file complaints with the Equal Employment Opportunity Commission (EEOC). The complaint must be related to actions that took place on or after the Act’s effective date.

## Other Laws

The PWFA does not displace any other state or local law that is more protective of workers affected by pregnancy, childbirth, or related medical conditions.

## Conclusion

To ensure a comprehensive understanding of the law and its implications, covered employers should consider consulting legal counsel. It is important that covered employers evaluate and subsequently update their current pregnancy-related policies, practices, and procedures in accordance with the law. ▲

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