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EEOC Releases Final Rule Implementing the Pregnant Workers Fairness Act

On April 15, 2024, the Equal Employment Opportunity Commission (EEOC) issued its final rule to carry out the Pregnant Workers Fairness Act (PWFA), requiring covered employers to provide a "reasonable accommodation" to qualified employees or applicants with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The PWFA went into effect on June 27, 2023, and applies to employers with 15 or more employees. Such employers have additional legal obligations towards pregnant employees *and* applicants.

The EEOC's final rule provides clarity on the PWFA and additional guidance concerning reasonable accommodations for pregnant workers. It also expands employers' obligations to accommodate pregnancy-related conditions well beyond what was previously required for such conditions under the Americans with Disabilities Act (ADA).

Broad, Expansive Definition of "Related Medical Conditions"

Pregnancy itself does not meet the definition of a disability under the ADA. However, under the PWFA, pregnant and postpartum employees now have access to workplace accommodations that were previously not required under the ADA.

In the final rule implementing the PWFA, the EEOC adopts an expansive reading of "pregnancy, childbirth, or related medical conditions." That phrase includes current, past, potential, or intended pregnancy, termination of pregnancy, including miscarriage and abortion, postpartum depression, and lactation conditions. Additionally, the EEOC's guidance document states, "a pregnancy, childbirth, or related medical condition does not need to be the sole, the original, or a substantial cause of the physical or mental condition at issue for the physical or mental condition." Notably, time for bonding or childcare is not covered by the PWFA.

Further, employers must comply with both the ADA and the PWFA. As the EEOC notes in the guidance document, some employees will be entitled to accommodations under *both* the ADA and PWFA.

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Low Bar for an Employer to Receive Notice of an Employee's Request for an Accommodation

When an employee is eligible for an accommodation under the PWFA, the employer must engage in an "interactive process," which generally tracks with the ADA's interactive process. The final rule emphasizes employee requests for PWFA accommodations may be "simple processes that do not require any specific language." The employee, or a representative on behalf of the employee, need only *identify the relevant limitation* and their need for an accommodation at work to trigger an employer's obligation to engage in the interactive process. This requires employers to swiftly identify when an employee's pregnancy or related medical condition requires a discussion with the employee and perhaps, a potential reasonable accommodation.

Due to the "temporary nature of pregnancy, childbirth, and related medical conditions," the employer's response to an employee's request makes "expediency in responding to and providing requested accommodations" crucial. The final rule suggests an interim accommodation may be necessary depending on the circumstances. Providing an interim reasonable accommodation may help limit employer liability and can be used as evidence to contest a claim that an employer caused an unnecessary delay in providing a reasonable accommodation.

Potential Reasonable Accommodations

The EEOC published a non-exhaustive list of reasonable accommodations that employers could offer to an employee. Examples of potential reasonable accommodations include:

- Frequent breaks;
- Sitting/standing;
- Schedule changes, part-time work, and paid and unpaid leave;
- Telework or remote work;
- Reserved parking;
- Light duty;
- Making existing facilities accessible or modifying work environment;

- Job restructuring;
- Temporarily suspending one or more essential functions;
- Acquiring or modifying equipment, uniforms, or devices.

An employee's circumstances may warrant the need for more than one accommodation simultaneously.

Employers Are Limited in the "Supporting Documentation" They Can Request

The final rule also limits whether an employer can request supporting documentation from an employee who requests an accommodation, allowing it "only if it is reasonable under the circumstances." Moreover, there are five instances where employers are prohibited from seeking supporting documentation:

1. When the limitation and need for a reasonable accommodation is obvious;
2. When the employer already has sufficient information to support a known limitation related to pregnancy;
3. When the request is for one of the four “predictable assessment” accommodations (allowing an employee to carry water, allowing an employee to take additional restroom breaks, allowing an employee to sit during work, allowing an employee to take breaks, eat and drink as needed);
4. When the request is for a lactation accommodation; and
5. When employees without known PWFA-limitations receive the requested modification under the employer’s policy or practice without submitting supporting documentation.

What Employers Should Do

Employers should ensure their accommodation process for covered employees complies with the PWFA requirements. Employers should update any pregnancy-related policies and ensure they have a pregnancy accommodation policy. Additionally, staff members, human resources, supervisors, and other employees who may receive a request for a pregnancy-related accommodation should be

trained to handle the request. Please contact Robert Driscoll, Katie Triska, or your Reinhart attorney if you have questions about the PWFA.