



EEOC PROMULGATES RULES RELATED TO NEWLY ENACTED PREGNANT WORKERS FAIRNESS ACT

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The Pregnant Workers Fairness Act (“PWFA”), which went into effect on June 27, 2023, requires covered employers to provide “reasonable accommodations” to an employee’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. The Federal Equal Employment Opportunity Commission (“EEOC”), which is required to issue regulations to carry out the law, published the proposed regulations earlier this month.

The EEOC regulations provide a “non-exhaustive list” of conditions that fall within the scope of the Act, including: “current pregnancy, past pregnancy, potential pregnancy, lactation (including breastfeeding and pumping), use of birth control, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, or having or choosing not to have an abortion, among other conditions.”

The regulations further provide that an employee is a qualified employee under the Act, even if they cannot perform one or more essential functions of the job, as long as: the inability to perform the essential function is temporary; the employee could perform the essential function in the near future (generally, 40 weeks); and the employer can reasonably accommodate the employee’s inability to perform the essential function without undue hardship.

The EEOC states that four accommodations should be granted in almost every circumstance for workers protected under the Act: (1) allowing employees to have extra time for bathroom breaks; (2) allowing food and drink breaks; (3) allowing employees to drink water on the job; and (4) allowing employees to sit or stand as necessary. Other accommodations that may be reasonable include: longer, more frequent breaks; schedule changes; teleworking

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privileges; and possible job restructuring.

The Commission clarified in the proposed regulation that the Pregnant Workers Fairness Act should not infringe on anyone's constitutional rights, that it does not require employer health plans to “pay for or cover any item, procedure, or treatment,” and that religious organizations may have a legitimate defense to PWFA claims.

In light of this guidance, employers will be expected to take a more flexible approach to the potential need for accommodations, including in many cases, moving away from rigid forms and strict documentation, in favor of establishing open lines of communication with employees. Educating supervisors regarding the new regulations and stressing the importance of engaging in the interactive process will be key in determining what, if any, accommodations an employee may need.

The full text of the regulations can be found **here**. The regulations are open for public comment until October 10, 2023. One way to provide comment is via Federal eRulemaking Portal at **<https://www.regulations.gov>**.