

THOUGHT LEADERSHIP**Service**

Labor & Employment

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LEGAL UPDATES

PUBLISHED: DECEMBER 29, 2022

New Federal Protections for Pregnant and Nursing Employees Coming in 2023

On December 23, 2022, President Biden signed into law two measures that expand the rights of pregnant and breastfeeding workers: the Pregnant Workers Fairness Act and the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act. Both measures were included in the 2023 Consolidated Appropriations Act and will impose new federal requirements on employers with respect to accommodations for pregnancy- and childbirth-related conditions and nursing mothers.

Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (PWFA) gives workers with conditions arising from pregnancy or childbirth the right to reasonable accommodations in the workplace. The Act provides for broader protections than are available to pregnant employees under the Americans with Disabilities Act (ADA)—it requires an employer to provide reasonable accommodation for a known physical or mental condition related to, affected by, or arising out of pregnancy, childbirth or related medical conditions regardless of whether the condition meets the definition of disability under the ADA. It also provides for broader protection than the Pregnancy Discrimination Act.

The PWFA applies to employers with 15 or more employees and to “qualified employees,” meaning an employee or job applicant who can perform the essential functions of the position with or without reasonable accommodation.

The Act leaves open the question of what accommodations are “reasonable” in the context of pregnancy. Employers should be mindful that a reasonable accommodation for a pregnancy-related condition may be different than a reasonable accommodation for a more permanent condition, as the likely

temporary nature of a pregnancy accommodation may change the analysis of what is reasonable. Employers can eventually expect greater clarity on what the Act requires, as the Equal Employment Opportunity Commission (EEOC) issues regulations per PWFA's requirements—including examples of reasonable accommodations under the Act—within 2 years of enactment. For now, we know the Act requires employers and qualified employees to engage in the interactive process (much like what the ADA requires).

Employees who believe their rights under this Act have been violated can file a complaint with the EEOC.

PUMP Act

The PUMP Act amends the Fair Labor Standards Act and expands already-existing federal law requiring employers covered under the FLSA to provide accommodations—including breaks and a private, non-bathroom space—for breastfeeding workers to express milk. Under the Act, many workers not previously entitled to lactation accommodations under federal law (such as salaried employees) are now covered.

The Act requires employers to allow for reasonable breaks each time an employee needs to express milk for up to one year after the employee's child is born. While employees are not entitled to compensation during these breaks if no work is being performed during the breaks, the breaks will be considered "hours worked" subject to compensation if the employee is not completely relieved from duty for the entirety of each break.

And, importantly for employers, employees must now notify their employers if they believe their employer is out of compliance with the Act's requirements in terms of the space provided for lactation breaks and must give their employer 10 days to come into compliance before making any claim of liability against their employer.

The Department of Labor (DOL) is responsible for enforcing a number of federal labor laws, including this Act. Employees who believe their rights have been violated pursuant to this Act can file a complaint with the DOL's Wage and Hour Division.

What this means to you

This new legislation expands the rights of pregnant and breastfeeding workers and may require employers to develop and/or amend workplace policies to remain compliant with the law.

Contact us

If you would like assistance regarding the implementation of PWFA or the PUMP Act, contact Julianne Story, Eleanor Kittilstad, Ayissa Maldonado or your Husch Blackwell attorney.