

LEGAL UPDATES

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Service

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EEOC Proposed Regulations on PWFA Available for Public Comment

The Equal Employment Opportunity Commission (EEOC) has released proposed regulations to implement the Pregnant Workers Fairness Act (PWFA)—first signed into law December 23, 2022—and will begin accepting comments on the proposal today, August 11, 2023.

The PWFA, which went into effect on June 27, 2023, requires employers to provide reasonable accommodations for limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. Among other things, the proposed regulations elaborate on potential reasonable accommodations and the “related” medical conditions that could be covered under the PWFA.

As proposed, the regulations would significantly expand covered employers’ obligations under the act. The following provisions are of particular note:

The proposed regulations broadly define “pregnancy, childbirth, or related medical conditions” to include pregnancy, lactation, use of birth control, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, having or choosing not to have an abortion, and other conditions associated with pregnancy.

The PWFA provides that an employee who temporarily cannot perform an essential function of the job but will be able to do so “in the near future,” is still a “qualified” employee under the act if their inability to perform the essential function can be reasonably accommodated. While the act does not impose a specific timeframe, the proposed regulations define “in the near future” as up to 40 weeks. This means if an employee is temporarily unable to perform an

essential job function, but will be able to do so in 40 weeks, and the employer can reasonably accommodate the employee for up to 40 weeks, then the employee is “qualified” under the act.

In addition to identifying many potential reasonable accommodations under the act, the proposed regulations would create a presumption that the following four accommodations are “virtually always” reasonable and will not impose undue hardship: (1) allowing an employee to carry water and drink as needed in their work area, (2) allowing an employee to take additional restroom breaks, (3) allowing an employee to sit if their job requires standing, or stand if their job requires sitting, and (4) allowing an employee to take eating and drinking breaks as needed.

Employers and members of the public have 60 days from today to comment on the proposed regulations, which can be accessed through the Federal Register ([available here](#)). Once the comment period closes, the EEOC must issue final regulations by December 29, 2023.

Contact us

If you have questions about the PWFA, please contact Julianne Story, Eleanor Kittilstad, or your Husch Blackwell attorney.