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EEOC Issues Final Rule to the Pregnant Workers Fairness Act

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New regulations to the Pregnant Workers Fairness Act (PWFA), which was enacted in 2023, will soon take effect. Yesterday, April 15, 2024, the EEOC unveiled its final rule, which will take effect 60 days after its anticipated April 19, 2024 publication in the Federal Register (approximately June 18, 2024).

The regulations interpret the PWFA's requirement that covered entities must provide reasonable accommodations for conditions "related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition," unless the accommodation would impose an undue hardship. Covered entities include private employers with 15 or more employees, and the provisions of the PWFA apply to employees and applicants.

Generally, the final rule reflects the EEOC's broad interpretation of the PWFA, and many provisions of the final rule and interpretive guidance are consistent with the EEOC's proposed rule issued in August 2023. However, the EEOC received approximately 100,000 comments in response to the proposed rule, and the final rule and interpretive guidance do include some important changes from the proposed rule.

Here are a few highlights from the 400+ pages of the final rule and interpretive guidance:

The phrase "related to, affected by, or arising out of" has been interpreted by the EEOC as an inclusive term, meaning that the obligation to provide a reasonable accommodation may be triggered even if pregnancy, childbirth, or a related medical condition is not the only cause, the original cause, or even a substantial cause of the limitation for which an accommodation is requested.

The limitation need only be "related to, affected by, or arising out of" the pregnancy, childbirth, or related condition.

Like the proposed rule, the final rule clarifies that the limitation or condition need not be a "disability" as defined by the ADA.

The final rule expressly includes miscarriage, stillbirth, and abortion as "related medical conditions" under the PWFA. According to the EEOC, approximately 94,000 comments were submitted advocating for or against the inclusion of abortion in the final rule.

Under the PWFA, a reasonable accommodation may include the temporary suspension of an essential job function if the employee will be able to resume the essential function "in the near future." Under the final rule, "in the near future" is presumed to mean generally 40 weeks for a current pregnancy and must otherwise be determined on a case-by-case basis.

The final rule provides for additional factors in the "undue hardship" analysis that are unique to requested accommodations for temporary suspension of an essential function. Those additional factors include the length of time the employee will be unable to perform the essential function, whether there is other work for the employee to accomplish, the nature and frequency of the essential function, whether the employer has provided other employees in similar positions with temporary suspensions of essential functions, whether other employees or temporary employees can perform or be hired to perform the essential function, and whether the essential function can be postponed or remained unperformed for a length of time.

The EEOC will consider the following four modifications for pregnant employees to be reasonable accommodations that do not impose undue hardship "virtually in all cases": allowing the employee to carry or keep water near and drink as needed, allowing the employee additional restroom breaks as needed, allowing the employee to sit or stand as needed, and allowing the employee eating and drinking breaks as needed. The interpretive guidance also notes, however, that these "predictable assessments" do not alter the meaning of "undue hardship" and that employers should still conduct individualized assessment of undue hardship for any of these requested accommodations.

The final rule provides that unnecessary delay in providing a reasonable accommodation may amount to denial of the accommodation in violation of the PWFA.

The final rule imposes a limitation on monetary damages for violations of the reasonable accommodation provision of the PWFA if an employer has made a "good faith effort" to provide a reasonable accommodation.

The final rule imposes additional requirements that covered employers should be familiar with and provides examples that illustrate the EEOC's interpretation of the PWFA. With the PWFA already in effect and the new regulations taking effect soon, employers should act now to ensure their policies and practices related to reasonable accommodations are compliant with the law.

Contact us

Reach out to Jenna Brofsky, Barbara Grandjean, Julianne Story, Eleanor Kittilstad, or your Husch Blackwell attorney to discuss how the final rule may impact your organization or business.