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New Law Alert: Pregnant Workers Fairness Act

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On December 29, 2022, President Biden signed the Pregnant Workers Fairness Act (PWFA), which will go into effect on June 27, 2023.

The Equal Employment Opportunity Commission (EEOC) already has existing laws that make it illegal to fire or discriminate against workers on the basis of pregnancy, childbirth, or related medical conditions. Among those laws is the Pregnancy Discrimination Act of 1978 (PDA).

The PDA was enacted to guarantee pregnant workers the right to not be treated adversely because of pregnancy, childbirth, or related medical conditions. However, many courts have interpreted the PDA narrowly and have allowed employers to refuse to accommodate workers with medical needs arising out of pregnancy. In light of this, in 2015 the Supreme Court held in *Young v. UPS* that an employer that fails to accommodate pregnant workers violates the PDA when its accommodation policies impose a significant burden on pregnant workers that outweighs any justification the employer offers for those policies.

While the decision in *Young* was an important victory for pregnant workers, it still left many important questions unanswered and created uncertainty about what exactly the PDA requires of employers in terms of pregnancy accommodations. In light of these uncertainties, the PWFA was created to answer the questions left open by the Supreme Court.

The PWFA now builds upon the protection afforded to pregnant workers by requiring employers to provide reasonable accommodations to a worker's known limitations as they relate to pregnancy, childbirth, or other related medical conditions, so long as the accommodations will not cause the employer any undue hardship.

A number of states and cities already have laws in place that provide accommodations for pregnant workers, and the PWFA will not replace any federal, state, or local laws that are more protective of affected workers.

Once the PWFA goes into effect on June 27, 2023, the EEOC will begin accepting charges for issues arising on or after June 27, 2023. The PWFA will protect qualified employees and applicants of "covered employers," which includes private and public sector employers with at least 15 employees. A qualified employee or applicant is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

The PWFA prohibits covered employers from doing the following:

- Failing to make reasonable accommodations to known limitations of pregnant workers unless the accommodation would impose an undue hardship on the entity's business operation;

- Requiring a qualified employee affected by such condition to accept an accommodation other than any reasonable accommodation arrived at through an interactive process;
- Denying employment opportunities based on the need of the entity to make such reasonable accommodations to a qualified employee;
- Requiring such employees to take paid or unpaid leave if another reasonable accommodation can be provided; or
- Taking adverse action in terms, conditions, or privileges of employment against a qualified employee requesting or using such reasonable accommodations.

Possible Reasonable Accommodations for Pregnant Workers

"Reasonable accommodations" are changes to the work environment or to the way work is usually done. The House Committee on Education and Labor Report on the PWFA and the EEOC both provide several examples of possible reasonable accommodations for pregnant workers that will allow employers to comply with the Act. These include:

- The ability to sit or drink water;
- Receive closer parking;
- Have flexible hours;
- Receive appropriately sized uniforms and safety apparel;
- Receive additional break time to use the bathroom, eat, and rest;
- Take leave or time off to recover from childbirth; and
- Be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

These examples are not to be viewed as an exhaustive list. Reasonable accommodations look different depending on the circumstances of the requesting employee. The employer should consider the limitations the employee is experiencing and how those limitations affect the employee and their job performance. In light of this information, the employer must make an effort to provide reasonable accommodations to the employee, so long as they do not create an undue hardship for the employer, per the PWFA.

The law is constantly changing and evolving. While the idea of protecting pregnant workers is not a novel concept, this new PWFA expands upon the protections of pregnant workers through these accommodation requirements.

It is important for employers to familiarize themselves with changes and requirements of the law to ensure they are in compliance, as we will see the PWFA go into effect on June 27, 2023.

If you have questions or concerns about the Pregnant Workers Fairness Act, please contact your Knox Law attorney, our Labor & Employment group, or call us at 814-459-2800.



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