

EEOC Publishes Regulations Interpreting Pregnant Workers Fairness Act

The Bottom Line

- The PWFA regulations and guidance create expansive obligations for employers to provide reasonable accommodations for pregnancy-related conditions.
- Absent a court striking down the regulations, employers should familiarize themselves with the regulations in advance of the June 18, 2024 effective date.
- Employers should ensure their job accommodations procedures, including requests for supporting documentation, are adjusted to comply with the regulations.

The Equal Employment Opportunity Commission (EEOC) recently [released regulations and interpretive guidance](#) under the Pregnant Workers Fairness Act (PWFA). The PWFA, which was enacted in December 2022, requires employers with 15 or more employees to provide reasonable accommodations to employees with conditions associated with pregnancy, childbirth or other related medical conditions unless such accommodations would impose an undue hardship.

Similar to the Americans with Disabilities Act (ADA) and certain state and local laws, employers must engage in an interactive process with employees regarding the accommodations needed. Below are key takeaways from the PWFA regulations and guidance, which take effect June 18, 2024.

Covered Pregnancy-Related Conditions

The PWFA applies to employees who have a known limitation related to pregnancy, childbirth or other related medical conditions. The regulations provide an expansive list of covered conditions that are not limited to a current pregnancy, including fertility treatment, miscarriage, stillbirth, endometriosis, postpartum depression, lactation and abortion procedures.

Types of Reasonable Accommodations

The regulations provide a non-exhaustive list of reasonable accommodations including schedule modifications, sitting/standing, breaks, light duty, remote work, use of paid or unpaid leave and most notably, temporary suspension of essential functions of the employee's position. The following accommodations will, in virtually all cases, be found to be reasonable and not impose an undue hardship:

- additional restroom breaks
- food and drink breaks
- allowing water and other drinks to be kept nearby
- allowing sitting or standing, as necessary

The regulations also list examples of lactation accommodations, including lactation breaks (as already required under the federal PUMP Act and certain state and local laws), as well as the provision of a private and regularly cleaned space to express breastmilk that has electricity, appropriate seating, a surface to place a breast pump and is in close proximity to a sink, running water and refrigeration.

Temporary Elimination of Essential Functions

In a significant departure from the ADA, the PWFA and its accompanying regulations contemplate that a temporary suspension of the essential functions of an employee's position is a reasonable accommodation that must be granted so long as it does not impose an undue hardship. Under the PWFA, a "qualified employee" is defined as someone who, with or without reasonable accommodation, can perform the essential functions of their position; however, an employee will still be considered qualified if:

1. Any inability to perform an essential function is for a "temporary period,"
2. The essential function could be performed in the "near future" and
3. The inability to perform the essential function can be reasonably accommodated.

The EEOC's regulations and guidance define "near future" as something that is not indefinite, which in cases of current pregnancy would be 40 weeks from the start of the temporary suspension. However, the regulations do not provide a definition of "near future" for conditions other than current pregnancy, noting that outside current pregnancy, there is not a consistent measure of how long other conditions covered by the PWFA generally last.

Supporting Documentation

Under the regulations, employers may seek supporting documentation in connection with an accommodation request only when it is reasonable to determine the employee's condition and the specific accommodation needed. The regulations note that it would be unreasonable (and thus prohibited) for an employer to seek supporting documentation in the following circumstances:

- The employer already has sufficient information to determine whether the employee has a covered condition and needs accommodation.
- The employee's limitation and need for accommodation is either obvious or related to pumping, and the employee provides self-confirmation. Self-confirmation is a simple statement where the employee confirms their condition and the adjustment they need due to such limitation. The statement can be made in any manner (including as part of the accommodation request) and employers may not require that the statement be in a specific format, use specific words or be on a specific form.
- An employee seeks an accommodation to sit/stand, carry/keep water with them or take additional restroom, eating or drinking breaks.
- The requested accommodation is available to other employees without known limitations covered by the PWFA under the employer's policies or practices and without submitting supporting documentation.

Where a request for supporting documentation is permitted, employers can ask for:

1. Confirmation of the employee's condition and that it relates to pregnancy, childbirth or a related medical condition,
2. A description of the adjustment or change at work needed due to the limitation and
3. The expected duration of the adjustment.

Employers may not require that documentation be in a specific format or be from a provider of the employer's choosing.

Legal Challenges

On April 25, 2024, a group of state attorneys general filed suit against the EEOC challenging the constitutionality of the regulations based on their inclusion of abortion-related accommodations. A similar lawsuit was filed on May 13, 2024 by the state attorneys general in Louisiana and Mississippi. Since it remains to be seen whether these challenges will be successful, employers should familiarize themselves with the PWFA regulations in advance of the effective date.

For More Information

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