

News & Types: Client Advisories

Updates to Federal Protections for Pregnant and Nursing Employees

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Executive Summary

On December 29, 2022, the Pregnant Worker Fairness Act (“PWFA”), and the Providing Urgent Maternal Protections for Nursing Mothers Act (the “PUMP Act”) were signed into law, requiring employers to grant reasonable accommodations to pregnant and nursing mothers alike. The following includes a brief summary of both the PWFA and the PUMP Act, actions that workplaces must soon take, and how they can begin preparing now.

PWFA

The Americans with Disabilities Act of 1990 (“ADA”) does not consider pregnancy a disability in and of itself. Because of this, only certain impairments related to pregnancy qualify as disabilities under the ADA, as amended, and require employers to provide reasonable accommodations only to some pregnant employees and job applicants for these certain impairments. In addition, while the Pregnancy Discrimination Act (“PDA”) amended Title VII of the Civil Rights Act of 1964 to prohibit discrimination on the basis of pregnancy, it does not guarantee reasonable accommodations (beyond those afforded to similarly situated employees). The PWFA is a bipartisan effort to bridge the gap between the ADA and the PDA. In doing so, it requires employers with 15 or more employees to provide reasonable accommodations to pregnant employees and applicants, effective June 27, 2023.

Modeled after the ADA, the PWFA:

- Requires employers to engage in an interactive process to determine if a reasonable accommodation is available unless the accommodation(s) being requested or considered would impose an undue hardship on the employer’s business. Examples of reasonable accommodations include light duty work, lifting restrictions, additional or longer breaks, restrictions on standing for long periods, a change in uniform or work schedule, or more frequent bathroom breaks.
- Prohibits employers from denying employment opportunities to pregnant applicants to avoid providing a reasonable accommodation.
- Prohibits employers from requiring qualified employees to take paid or unpaid leave if a reasonable accommodation other than a leave of absence can be provided.

- Prohibits employers from retaliating against an employee who requests or uses a reasonable accommodation.

THE PUMP ACT

The PUMP Act expands employers' obligations under the Fair Labor Standards Act ("FLSA") to require that employers provide: (1) reasonable break times, and (2) a private location (other than a bathroom) that is shielded from view and free from intrusion from coworkers and the public, for employees to express breast milk for two years following the birth of a child. While employers were already required to provide these accommodations to hourly non-exempt employees under the Affordable Care Act of 2010, the PUMP Act extends these protections to all breastfeeding employees, including salaried exempt employees and other workers not covered under existing law. In addition, time spent to express breast milk must be considered hours worked if the employee is not completely relieved from duty during the entirety of the break time.

Employers with less than 50 employees may be exempt from the requirements of the PUMP Act if the "requirements impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business."

The PUMP Act's expansion to all breastfeeding employees took effect on December 29, 2022. Amendments to available remedies will become effective on April 28, 2023.

GUIDANCE FOR EMPLOYERS

Employers are advised to review and revise existing policies related to accommodations, break times and timekeeping to ensure compliance with the PWFA and the PUMP Act. Likewise, employers should consider training supervisory employees, and Human Resource partners on the obligations to provide a reasonable accommodation under PWFA and the PUMP Act. Just as under the ADA, it is important to note that a one-size-fits-all approach to accommodations should not be taken and that engaging in and documenting the interactive process remains crucial.

Please contact Riebana E. Sachs or a member of the Employment, Labor and Benefit Group with any questions.