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2023 Omnibus Spending Bill Includes New Protections for Pregnant or Nursing Mothers

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Employers should take note that the 2023 omnibus spending bill, signed into law by President Biden on December 29, 2022, includes two new laws that expand federal protections for pregnant workers and breastfeeding mothers.

Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act requires employers with 15 or more employees to provide reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions. Examples of those accommodations include the ability to sit while working, restrictions on how much weight an employee must lift, and extra bathroom breaks. The employer need not provide these accommodations if it can establish that doing so would impose an undue hardship.

Further, the Act prohibits employers from retaliating against pregnant workers who request such accommodations. The Act also forbids an employer from requiring a pregnant employee to take paid or unpaid leave to accommodate a pregnancy-related medical condition if another reasonable accommodation can be provided. The damages available for violations of this law include back pay, front pay, and other damages available under Title VII of the Civil Rights Act of 1964.

The Equal Employment Opportunity Commission is directed to promulgate regulations applicable to the Act within one year after its enactment.

The PUMP Act

The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) requires employers to provide reasonable break time and a private, non-bathroom space for breastfeeding parents, for up to one year after the child's birth. While the Affordable Care Act of 2010 already required employers to provide a reasonable time and a private location for expressing milk, that law excluded most non-hourly employees from its protections. The PUMP Act extends those obligations to exempt employees.

The PUMP Act contains certain exceptions. The law does not apply to employers with fewer than 50 employees if these requirements would cause an undue hardship. Certain airline and rail industry employees also are exempted from the PUMP Act.

Damages for violating the PUMP Act include those available under the Fair Labor Standards Act, including unpaid wages and liquidated damages. However, the PUMP Act imposes a 10-day notice and cure period before a lawsuit may be filed, unless the employee alleges retaliation or the employer has indicated it has no intention of complying.

Next Steps

These two new laws go above and beyond what had been required at the federal level for pregnant employees and new mothers. Employers should take stock of their current policies to ensure they are in compliance, while also considering state and local laws and regulations that may impose additional requirements.

Additional Information

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