



EEOC Issues Final Rule on Pregnant Workers Fairness Act

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On April 15, 2024, the Equal Employment Opportunity Commission (EEOC) unveiled its final rule, i.e., regulations, implementing the Pregnant Workers Fairness Act (PWFA), enacted by Congress in 2023.

The PWFA requires private and public employers with 15 or more employees to provide reasonable accommodations for limitations that are “related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition.” The PWFA applies to employees and applicants.

The regulations include examples that illustrate the EEOC’s interpretation of the PWFA. At over 400 pages, the final rule reveals the EEOC’s broad interpretation of the PWFA’s requirements. Listed below are several highlights.

- **The PWFA covers a wide scope of conditions:** The regulations provide numerous examples of protected conditions in addition to pregnancy, including potential or intended pregnancy (e.g., infertility, fertility treatment, and use of contraception), conditions concerning the termination of pregnancy (e.g., miscarriages, stillbirths, and abortions), conditions that can arise as a result of pregnancy (e.g., ectopic pregnancy, pelvic prolapse, gestational diabetes, back or joint pain, migraines, nausea, and anxiety), and conditions related to lactation (e.g., low milk supply, engorgement, and mastitis). The regulations note that the list of examples is not exhaustive.
- **The condition need not be a “disability” under other federal law:** The regulations provide that the condition for which an accommodation is sought need not meet the definition of “disability” under the Americans with Disabilities Act.
- **Pregnancy, childbirth, or a related condition need not be the primary cause of the limitation at issue:** The EEOC interprets “related to, affected by, or arising out of” as an inclusive term, meaning that an employer’s obligation to provide a reasonable accommodation is triggered even if the pregnancy, childbirth, or related medical condition is not the only cause, the original cause, or even a substantial cause of the limitation at issue. The limitation need only be “related to, affected by, or arising out of” the employee’s pregnancy, childbirth, or related condition. For example, an employee with a prior back injury whose back pain is exacerbated by pregnancy could qualify for accommodations under the PWFA.

- **Certain accommodations are “virtually” always reasonable:** The EEOC identified four modifications that do not impose an undue hardship in “virtually . . . all cases.” They are: (a) allowing the employee to carry or keep water nearby and drink as needed; (b) allowing the employee additional restroom breaks; (c) allowing the employee to sit or stand as needed; and (d) allowing the employee to eat or drink as needed.
- **Suspension of essential job functions may constitute a reasonable accommodation:** In contrast to the Americans with Disabilities Act, where an employee is not able to perform an essential function of her job due to pregnancy, childbirth, or a related medical condition but will be able to do so “in the near future,” temporary suspension of that essential function may be a reasonable accommodation. The term “in the near future” is presumed generally to mean 40 weeks for a current pregnancy but must be determined on a case-by-case basis.
- **Delay in providing reasonable accommodations can violate the PWFA:** The PWFA requires the same interactive process as the Americans with Disabilities Act. An employer might violate the PWFA, however, where there is an “unnecessary delay” in providing a reasonable accommodation. The EEOC’s guidance recommends that employers consider interim reasonable accommodations during the interactive process to minimize the risk that delay will constitute a violation of the PWFA. That interim reasonable accommodation must allow the employee to continue working unless the employee selects or requests leave as an interim reasonable accommodation.

The regulations will take effect 60 days after their publication in the *Federal Register*, which is expected to occur on April 19, 2024. In anticipation of these regulations going into effect in mid-June, employers should review their policies and practices to be sure they do not run afoul of the PWFA’s expansive requirements and be prepared to address accommodation requests.

Additional Information

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