Asher, Gittler & D'Alba, Ltd.
Release: Volume 45 No. 18

EEOC ISSUES FINAL RULE INTERPRETING PREGNANT WORKERS FAIRNESS ACT

The Pregnant Workers Fairness Act, or PWFA, was passed on June 27, 2023. The PWFA requires employers with 15 or more employees to provide reasonable accommodations to employees who are experiencing known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. On April 15, 2024, the EEOC published its final rule[1] interpreting the PWFA, which becomes effective on June 18, 2024.

The Final Rule clarifies many aspects of the PWFA, which should result in more clear guidance for both employees and employers experiencing limitations due to pregnancy, childbirth, or related conditions. Employees experiencing such limitations may seek reasonable accommodations to allow them to continue working during pregnancy without endangering their health. Seeking accommodations requires a conversation, or an "interactive process," but that conversation need not happen in any specific way. An employee need only make their limitation known to the employer. Once the employer knows, it is required to provide an accommodation, so long as the requested accommodation does not cause the employer an "undue hardship."

The PWFA provides job protection to women experiencing temporary changes in abilities due to pregnancy or related conditions. The PWFA also prohibits retaliation against women who request accommodations, but it is not intended to replace other protections for pregnant women, such as the prohibition of discrimination against pregnant women under Title VII and the ability to take unpaid leave under the FMLA.

What does "limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions" mean?

In the Final Rule, the EEOC has defined this quite broadly. If a woman is experiencing a difficulty because she is pregnant, recently gave birth, or is trying to become pregnant, even if the pregnancy or childbirth is not the sole cause of that difficulty, it meets the definition. Conditions related to contraception, miscarriage or abortion also qualify. The PWFA only protects the woman experiencing the limitation, not their spouse or partner. A "limitation" includes a physical or mental impairment, the need to seek medical treatment, or a similar minor episodic problem. It does not need to meet the more stringent definition of a disability under the Americans with Disabilities Act ("ADA"). For example, under the PWFA, an employer is required to accommodate an employee who is experiencing back pain because she is pregnant, but need not accommodate that same back pain if the employee is not pregnant, unless the cause of the back pain is considered a disability under the ADA.

[1] Available at https://www.federalregister.gov/documents/2024/04/19/2024-07527/implementation-of-the-pregnant-workers-fairness-act.

What is an "undue hardship"?

The Final Rule also clarifies that the determination of whether or not a requested accommodation causes an undue hardship is determined on a case-by-case basis, but should be broadly construed. Barring undue hardship, if a reasonable accommodation is available, it must be granted. The factors to be considered include, but are not limited to, cost of the accommodation and the potential effect on others. A leave of absence may be a reasonable accommodation, but the new final rule makes it clear that if a reasonable accommodation can be made in lieu of leave, the employer must grant that alternative accommodation rather than force an employee to take leave.

In the process of creating the Final Rule, the EEOC considered over 100,000 public comments after releasing a Notice of Proposed Rule Making on August 11, 2023. The Final Rule is a comprehensive and helpful guide for employees and employers alike in making sure that both the health and livelihood of pregnant workers is well-protected.

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Dated. July 23, 2024

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