New Workplace Protections for Pregnant and Postpartum Workers Take Effect June 27: Critical FAQs for Employers

Insights
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Many employers may have missed the news about a new federal law protecting pregnant employees and those with childbirth-related medical conditions. After all, it was approved as just one part of a massive omnibus spending bill, and it was signed into law during the rush of the winter holidays this past December. But the Pregnant Workers Fairness Act (PWFA) can't fly under your radar any longer, as it takes effect on June 27 – and could require you to change your workplace accommodation and leave practices in a significant way. What do you need to know about the new workplace requirements about to take effect? Here are some important FAQs for you to consider.

1. What does the law do?

While there are some key additional details we'll describe below, the PWFA essentially requires employers to consider employee and applicant accommodation requests related to pregnancy, childbirth, or related medical conditions the same way you consider requests for accommodation related to disabilities under the Americans with Disabilities Act (ADA).

2. Who does the law apply to?

The PWFA applies to employers with 15 or more employees.

3. Who does it protect?

The PWFA protects employees and applicants of such employers who have known limitations related to pregnancy, childbirth, or related medical conditions.

4. Can employers place employees impacted by pregnancy or childbirth on leave as an accommodation?

Not necessarily. The new law prohibits employers from placing an employee impacted by pregnancy, childbirth, or related medical conditions on a leave of absence – paid or unpaid – when a different reasonable accommodation option is available.

5. What are some examples of reasonable accommodations to consider?

The Congressional report accompanying passage of the law included the following examples, but they are by no means the only possible accommodations to consider:

- allowing workers to sit or drink water;
- providing closer parking spaces;
- offering flexible working hours;
- providing appropriately sized uniforms and safety apparel;
- allowing workers additional break time to use the bathroom, eat, and rest;
- excusing workers from strenuous activities or activities that involve exposure to compounds not safe for pregnancy; and
- giving leave or time off to recover from childbirth.

6. Can employers mandate certain accommodations without employee input?

No. Under the PFWA, employers cannot require a qualified employee to accept a reasonable accommodation without going through an interactive process.

7. Are there any exceptions?

Just as with the ADA, employers can deny reasonable accommodations requests if they would impose an undue hardship on their business operations, meaning something that causes "significant difficulty or expense." You should proceed with caution and check with your FP counsel before denying an accommodation request on this basis given the risks involved.

8. Are there other legal concerns to take into account?

The PWFA prohibits retaliation against employees for seeking or taking a reasonable accommodation related to their pregnancy, childbirth, or related medical condition. You are not allowed, for example, to deny a job or other employment opportunities to a qualified employee or applicant based on their need for a reasonable accommodation. You also can't retaliate against someone for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation).

9. I thought federal laws already protected employees impacted by pregnancy or childbirth – how is this different?

There are several federal laws already on the books providing protections, but they don't go nearly as far as the PFWA.

- The Pregnancy Discrimination Act (PDA) prohibits discrimination against individuals because they are pregnant – but does not affirmatively require employers to accommodate pregnancy or

pregnancy-related conditions. It requires only that employers accommodate pregnant employees in the same manner they accommodate other employees who are similar in their inability to work.

- The ADA offers little refuge to pregnant workers. Pregnancy is not considered a disability under that law, and workers are only entitled to accommodations under that law if they have a pregnancy-related disability.
- The Family and Medical Leave Act (FMLA) ensures that workers receive protected unpaid leave related to pregnancy and childbirth, but has no accommodation requirement.

10. Are there other new federal laws to take into account?

The Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act – which passed at the same time as the PWFA but took effect on April 28, 2023 – requires employers to provide time and space for breastfeeding parents. While the Affordable Care Act (ACA) has already required employers to provide reasonable time to express breast milk and a place for pumping, other than the bathroom, that is shielded from view and private, the PUMP Act goes further. It extends these rights to all breastfeeding employees for the first year of the baby's life – no longer excluding most salaried employees. Additionally, time spent to express breastmilk must be considered "hours worked" if the employee is also working.

11. What if our state or local law provides greater worker protections?

The PWFA does not replace federal, state, or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical conditions. Many states and cities already have some sort of expanded pregnancy accommodation law. In fact, 30 states and five cities require certain employers to provide some form of accommodations (including specific requirements for lactating employees) to pregnant employees. If you are an employer in one of these locations, your practices may not need to change much, or at all.

12. What should we do to comply with the new laws?

If you operate a business in a state where employers are not currently required to offer reasonable accommodations to employees who are pregnant or recently gave birth, it's time to get to work. If you already offer such protections due to a state or local law, or as part of a more-generous policy, you should still use this as an opportunity to review your policies and practices to ensure they are compliant.

- You should obviously expand your accommodations review process to include requests related to pregnancy, childbirth, and related medical conditions. This could include necessary revisions to any written documents or forms you use as part of the interactive or accommodation process.
- While you should already be conducting an interactive process with those employees or applicants who are seeking accommodations as a best practice, the PWFA requires it as a matter

applicants who are seeking accommodations as a best practice, the PWFA requires it as a matter of law. So you should certainly fold it into your HR processes.

- You may also want to expand your mandatory HR trainings to include a discussion of these new laws so that your managers – and employees – understand their rights and obligations under the law.
- Review any written policies related to accommodations and incorporate the new obligations as necessary.
- Review your policies, practices, and training materials related to expressing breast milk and places for pumping. Given that rights now extend to all breastfeeding employees for the first year of the baby's life and not just hourly workers, you may need to make adjustments. And since the time spent to express breastmilk must now be considered "hours worked" if the employee is also working, make sure your pay practices reflect this new reality.

Conclusion

We will monitor developments related this law, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Employee Leaves and Accommodations Practice Group.

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