

HOME SERVICES EMPLOYER LEARNS THE DANGERS OF FAILING TO ACCOMMODATE PREGNANT EMPLOYEE – 4 LESSONS FOR EMPLOYERS

Insights
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The Equal Employment Opportunity Commission (EEOC) recently announced a settlement to resolve a discrimination charge alleging an employer terminated a pregnant employee after she requested a reasonable accommodation to attend medical appointments. As part of the conciliation agreement, the employer agreed to pay \$47,480 in damages and revise its policies and procedures. The conciliation agreement was announced just one day after [the EEOC filed its first lawsuit under the Pregnant Workers Fairness Act \(PWFA\)](#) and sends a stark reminder to employers regarding the requirements of the PWFA as well as the EEOC's initiative to enforce the law's accommodation requirements. Here are four lessons employers can learn from this settlement to avoid the same fate.

1. Revise Your Accommodation Policies to Include PWFA Requirements

You should review your accommodations policies to ensure that they include requests related to pregnancy, childbirth, and related medical conditions. This may also include revisions to interactive process paperwork that you rely upon to review requests for accommodations. By revising your policies, you can reduce the risk of failing to engage in the interactive process with pregnant employees who are in need of an accommodation. You should also be aware that the PWFA protects both applicants and employees.

2. Train Your Managers Regarding the Nuances of the PWFA

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Your managers should understand the required steps for assessing and providing accommodations under the PWFA since that they are distinct from the ADA. For example, under the PWFA, employees can still be considered “qualified” individuals if their inability to perform an essential function is just temporary and the essential functions can be performed in the near future. Managers and employees alike should understand these and other important distinctions in order to streamline the interactive process pursuant to the PWFA.

3. Familiarize Management and Employees with available Accommodations and Undue Hardship Requirements

Ideally, your managers should be able to recognize when an employee is in need of a reasonable accommodation and your employees should understand they have the ability to request accommodations to assist them in performing their job duties. The EEOC has provided voluminous examples of available reasonable accommodations:

- Frequent breaks;
- Sitting or standing;
- Schedule changes, part-time work, and paid and unpaid leave;
- Telework;
- Parking;
- Light duty;
- Making existing facilities accessible or modifying the work environment;
- Job restructuring;
- Temporarily suspending one or more essential function;
- Acquiring or modifying equipment, uniforms, or devices; and
- Adjusting or modifying examinations or policies.

Additionally, you should be aware of the analysis to consider whether an accommodation request is an undue hardship. In general, an accommodation creates an undue hardship if it causes significant difficulty or expense for the employer’s

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operations. Under the PWFA, employers must conduct an individualized assessment when determining whether an accommodation will impose an undue burden. If you believe a request constitutes an undue hardship, you should review the matter thoroughly with your employment counsel to ensure compliance with the PWFA.

4. Be Mindful of Other Laws Providing Protections for Pregnant Workers

The PWFA does not replace federal, state, or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical conditions. For example, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act requires employers to provide time and space for breastfeeding parents. The PUMP Act has created new protections and extends to all breastfeeding employees for the first year of the baby's life. Notably, salaried employees are not excluded from this requirement. Additionally, time spent to express breastmilk must be considered "hours worked" if the employee is also working.

Conclusion

If you want a comprehensive recap, [you can read our detailed FAQs about the PWFA here](#). 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](#).